

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-102400; File No. SR-NYSEARCA-2024-89)

February 11, 2025

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, to Lengthen Current Extended Trading Sessions

I. Introduction

On October 25, 2024, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to lengthen the hours of NYSE Arca’s extended trading sessions. The proposed rule change was published for comment in the Federal Register on November 14, 2024.³ The Commission received comments on the proposed rule change⁴ and a letter responding to the comments from NYSE Arca.⁵ On December 13, 2024, the Exchange filed an amendment to the proposed rule change, which superseded and replaced the Initial Proposal. Amendment No. 1 was published for comment in the Federal Register on December 30, 2024.⁶ On December 19, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁷ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 101559 (Nov. 7, 2024), 89 FR 90143 (Nov. 14, 2024) (“Initial Proposal”).

⁴ Comment letters on the proposal are available at <https://www.sec.gov/comments/sr-nysearca-2024-89/srnysearca202489.htm>.

⁵ See letter from David De Gregorio, Associate General Counsel, NYSE Arca, dated Jan. 15, 2025 (“NYSE Arca Letter”).

⁶ See Securities Exchange Act Release No. 101985 (Dec. 19, 2024), 89 FR 106709 (Dec. 30, 2024) (“Amendment No. 1”).

⁷ 15 U.S.C. 78s(b)(2).

disapprove the proposed rule change.⁸ On January 27, 2025, the Exchange filed a second amendment to the proposed rule change, which superseded and replaced the Initial Proposal and Amendment No. 1 (“Amendment No. 2”).⁹ The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

The Exchange proposed to amend its rules to lengthen the hours of trading for its two extended hours trading sessions for NMS stocks so that it will offer trading 22 hours a day, 5 days a week. Specifically, the Exchange proposed to adopt temporary NYSE Arca Rule 7.34-E(T) and revise NYSE Arca Rules 1.1 (Definitions) and 7.34-E (Trading Sessions) to lengthen its hours of trading. In addition, the Exchange proposed certain technical, conforming changes to NYSE Arca Rule 5.1-E(a) (General Provisions and Unlisted Trading Privileges) and Commentary .08 to NYSE Arca Rule 9.5320-E (Prohibition Against Trading Ahead of Customer Orders).

The Exchange offers three trading sessions each day the Exchange is open for business unless the Exchange determines otherwise. Under NYSE Arca Rule 7.34-E, the Exchange’s pre-market trading session – the “Early Trading Session” - begins at 4:00 a.m. Eastern Time (“E.T.”) and concludes at the commencement of the “Core Trading Session.”¹⁰ The Core Trading Session begins for each security at 9:30 a.m. E.T. and ends at the conclusion of Core Trading Hours or the Core Closing Auction, whichever comes later.¹¹ The final, post-market trading session - the “Late

⁸ See Securities Exchange Act Release No. 102002 (Dec. 19, 2024), 89 FR 105650 (Dec. 27, 2024).

⁹ In Amendment No. 2, the Exchange, in addition to incorporating the changes to the Initial Proposal set forth in Amendment No. 1, corrected typographical errors in the proposed preamble to NYSE Arca Rule 7.34-E and revised the numbering of NYSE Arca Rule 7.34-E(d)(3). Amendment No. 2 is available at <https://www.sec.gov/comments/sr-nysearca-2024-89/srnysearca202489-560875-1609542.pdf>.

¹⁰ See NYSE Arca Rule 7.34-E(a)(1).

¹¹ See NYSE Arca Rule 7.34-E(a)(2). NYSE Arca Rule 1.1 defines “Core Trading Hours” as the hours of 9:30 a.m. E.T. through 4:00 p.m. E.T. or such other hours as may be determined by the Exchange from time to time.

Trading Session” - begins following the conclusion of the Core Trading Session and concludes at 8:00 p.m. E.T.¹²

The Exchange proposed to extend the hours of its Early Trading Session and Late Trading Session so that the Exchange will offer trading from 1:30 a.m. E.T. through 11:30 p.m. E.T. on Monday through Thursday, and 1:30 a.m. E.T. through 8:00 p.m. E.T. on Friday.¹³ Specifically, proposed NYSE Arca Rule 7.34-E(T) will require that the Early Trading Session begin at 1:30 a.m. E.T.¹⁴ and will require that the Late Trading Session end at 11:30 p.m. E.T., except on Fridays when the Late Trading Session will conclude at 8:00 p.m. E.T.¹⁵

Proposed NYSE Arca Rule 7.34-E(T) will be a temporary rule that is identical to NYSE Arca Rule 7.34-E with the following exceptions. First, the beginning time of the Early Trading Session and the ending time of the Late Trading Session will reflect the new hours for these sessions. Second, the Exchange proposed to shorten the time when the Exchange will accept orders from 90 minutes before the start of the Early Trading Session¹⁶ to 30 minutes before the start of the Early Trading Session, so that under the amended rule, the Exchange will accept orders beginning at 1:00 a.m. E.T. Third, proposed NYSE Arca Rule 7.34-E(T) contains six new disclosures that identify potential risks associated with Extended Hours Trading to supplement the customer disclosures that are currently set forth in NYSE Arca Rule 7.34-E(d).¹⁷ These disclosures were added to proposed NYSE Arca Rule 7.34-E(T) in Amendment No. 1, and the Exchange stated that

¹² See NYSE Arca Rule 7.34-E(a)(3).

¹³ The Exchange stated that concluding the Late Trading Session at 8:00 p.m. E.T. on Friday would “maximize the available time to make changes at the end of the week before weekend testing.” See Amendment No. 2, at 7.

¹⁴ NYSE Arca Rule 7.34-E(T)(a)(1).

¹⁵ NYSE Arca Rule 7.34-E(T)(a)(3).

¹⁶ See NYSE Arca Rule 7.34-E(a)(1).

¹⁷ The Exchange proposed to define “Extended Hours Trading” as trading during the Early Trading Session and the Late Trading Session. See NYSE Arca Rule 1.1.

the disclosures were based on the rules of 24X National Exchange LLC.¹⁸

Finally, the Exchange proposed that NYSE Arca Rule 7.34-E remain operative until the Exchange is ready to transition to the new NYSE Arca Rule 7.34-E(T). In Amendment No. 1, the Exchange proposed to amend NYSE Arca Rule 7.34-E to add a preamble stating that the Exchange will not commence operation of the Extended Hours Trading set forth in proposed NYSE Arca Rule 7.34-E(T) unless the Equity Data Plans:¹⁹ (1) have established a mechanism to collect, consolidate, process and disseminate quotation and transaction information at all times during Extended Hours Trading²⁰ that is equivalent to the mechanism established for the Core Trading Session, and (2) have provided the Exchange with notification that they are prepared to collect, consolidate, process and disseminate quotation and transaction information to accommodate Extended Hours Trading. Further, the proposed preamble states that prior to commencing operation during Extended Hours Trading as set forth in proposed NYSE Arca Rule 7.34-E(T), the Exchange will file a proposed rule change pursuant to Section 19(b) of the Exchange Act and the rules thereunder to amend its rules to delete the current version of NYSE Arca Rule 7.34-E and the preamble and to delete the “T” designation in proposed NYSE Arca Rule 7.34-E(T) (“Extended Hours Trading Proposed Rule Change”). The Extended Hours Trading Proposed Rule Change submitted by the Exchange will also confirm that the Exchange is able to comply with its

¹⁸ See Amendment No. 2, at 7; see also 24X Rule 3.21(g) and (i)(1)-(5) and Securities Exchange Act Release No. 101777 (Nov. 27, 2024), 89 FR 97092 (Dec. 06, 2024) (In the Matter of the Application of 24X National Exchange LLC for Registration as a National Securities Exchange; Findings, Opinion, and Order of the Commission) (“24X Approval Order”).

¹⁹ The Exchange proposed to define “Equity Data Plans” as the effective national market system plan(s) governing the collection, consolidation, processing and dissemination of consolidated equity market data via the exclusive securities information processors (“SIPs”), including (1) Consolidated Tape Association Plan (“CTA Plan”), (2) Consolidated Quotation Plan (“CQ Plan”), (3) the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (“UTP Plan”), (4) the CT Plan established by the Limited Liability Company Agreement of CT Plan LLC, and (5) any successor thereto to the named Plan(s). See NYSE Arca Rule 1.1.

²⁰ In Amendment No. 2, the Exchange, among other things, corrected typographical errors in references to the defined term “Extended Hours Trading” in the proposed preamble to NYSE Arca Rule 7.34-E.

obligations under the Exchange Act and the rules thereunder during Extended Hours Trading and that the Equity Data Plans are prepared to collect, consolidate, process and disseminate quotation and transaction information at all times during Extended Hours Trading. The proposed preamble of NYSE Arca Rule 7.34-E further requires that the Extended Hours Trading Proposed Rule Change must be filed with the SEC within 18 months of the SEC's approval of the Exchange's rule filing adopting NYSE Arca Rule 7.34-E(T) and requires that if the Exchange fails to file such a rule change within 18 months of approval of NYSE Arca Rule 7.34-E(T), the Exchange will promptly file a proposed rule change to delete NYSE Arca Rule 7.34-E(T).

According to the Exchange, notwithstanding the proposed longer hours of the Early and Late Trading Sessions, the operations of these sessions will remain the same under NYSE Arca Rule 7.34-E(T) as under NYSE Arca Rule 7.34-E.²¹ Specifically, all order types eligible for such sessions and order type behaviors will remain unchanged.²² The Exchange stated that order processing during the proposed longer hours of the Early and Late Trading Sessions will function the same way as it does under NYSE Arca Rule 7.34-E and that there will be no changes to the ranking, display, or decrementation processes or rules. The Exchange also stated that it will report the best bid and offer on the Exchange to the appropriate exclusive SIP at the beginning of the Early Trading Session using the same formats and delivery mechanisms. Trades executed and reported outside of the Core Trading Session will be reported to the appropriate exclusive SIP with the ".T" modifier. Finally, the Exchange stated that no fee changes were proposed in connection with the proposal.

In addition, the Exchange stated that it will continue to work with primary listing exchanges

²¹ See Amendment No. 2, at 7; see also NYSE Arca Letter, at 4.

²² The Exchange will also route to away markets between 1:30 a.m. E.T. through 11:30 p.m. E.T. on Monday through Thursday, and 1:30 a.m. E.T. through 8:00 p.m. E.T. on Friday, just as it currently does between 4:00 a.m. E.T. and 9:30 a.m. E.T. and between 4:00 p.m. E.T. and 8:00 p.m. E.T.

to coordinate trading halts where appropriate, including halts implemented due to significant material events (i.e., a bankruptcy declaration). During the proposed extended hours of the Early and Late Trading Sessions, the Exchange will pause trading in the underlying security until trading resumes on the primary listing market for the security. The Exchange stated that it will halt trading automatically in the subject security on NYSE Arca, regardless of trading session, when a halt has been declared on the primary market. As discussed in the amended proposal, Exchange staff will be available during the proposed Extended Hours Trading sessions in order to maintain a fair and orderly market, make any necessary rulings or take any action that may be necessary. Similarly, Exchange staff will be available if any action such as a declaration of a halt in a NYSE Arca primary symbol would be necessary in the event of a system malfunction or a significant material event, such as a bankruptcy declaration.

The Exchange also stated that, to the extent material corporate news is released during the Extended Hours Trading and the primary listing market does not impose a halt, the requirements of proposed NYSE Arca Rule 7.34-E(T)(d)(3)(v) (which mirrors existing NYSE Arca Rule 7.34-E(d)(3)(5)) and proposed NYSE Arca Rules 7.34-E(T)(d)(3)(viii)-(xiii) that disclosures be provided to investors relating to the risks associated with news announcements and the additional risks of trading during Extended Hours Trading, respectively, will help ensure that market participants, including investors, are informed about the potential risks associated with trading during that time period.

Further, the Exchange stated that “[t]rading on the Exchange is subject to a comprehensive regulatory program applicable to the current Early, Core, and Late Trading Sessions that includes a suite of surveillances that reviews trading during each trading session as well as routine examinations of ETP Holders consistent with the current exam-based regulatory program.”²³ The

²³ See Amendment No. 2, at 12.

Exchange stated that its current regulatory program would be completely applicable to trading during the extended Early and Late Trading Sessions.²⁴

III. Discussion and Commission Findings

The Commission finds that the amended proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.²⁵ In particular, the Commission finds that the amended proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,²⁶ which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, proposed NYSE Arca Rule 7.34-E(T) will extend the hours of the Early and Late Trading Sessions with certain changes that are necessary to account for the longer timeframe that trading will be permitted. This proposed NYSE Arca rule is modeled on the Exchange's existing rule that governs its Early and Late Trading Sessions,²⁷ as well as rules recently approved by the Commission for another exchange.²⁸ For example, as discussed below,²⁹ proposed NYSE Arca Rule 7.34-E(T) will operate the same as NYSE Arca Rule 7.34-E but will require additional customer disclosures about potential risks of trading during the newly extended hours.

²⁴ Id.

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

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ See NYSE Arca Rule 7.34-E.

²⁸ See 24X Approval Order.

²⁹ See infra section III.C.

In addition, as discussed below,³⁰ the Exchange will not commence operation of the Extended Hours Trading under NYSE Arca Rule 7.34-E(T) prior to filing a proposed rule change to confirm its and the Equity Data Plans' readiness. Specifically, the proposed preamble to NYSE Arca Rule 7.34-E requires the Exchange, prior to commencing operations during Extended Hours Trading under NYSE Arca Rule 7.34-E(T), to file a proposed rule change, pursuant to Section 19(b) of the Exchange Act³¹ and the rules thereunder, to amend its rules confirming that the Exchange is able to comply with its obligations under the Exchange Act during Extended Hours Trading and that the Equity Data Plans are prepared to collect, consolidate, process and disseminate quotation and transaction information during that time period.

Accordingly, the amended proposal is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in NMS stocks, and perfect the mechanism of a free and open market and a national market system. Moreover, the amended proposal will foster competition by introducing another trading venue during extended trading hours. As amended, the Exchange's rules for its Extended Hours Trading are designed to increase transparency and enhance customer risk disclosures such that the Exchange will operate its Extended Hours Trading in a manner that is consistent with the regulatory framework of the extended hours sessions of other national securities exchanges.

A. General Comments on Extended Hours Trading

The Commission received comments on the proposal and a response from the Exchange.³²

³⁰ See infra section III.B.

³¹ 15 U.S.C. 78s(b).

³² See supra notes 4 and 5.

Several commenters opposed the proposal to extend the Exchange’s trading hours.³³ Some commenters raised concerns about the propriety of lengthening the hours of trading.³⁴ Two of these commenters stated that additional deliberation should be undertaken prior to the Commission’s approval of the proposal as the public, including market participants, should be afforded an opportunity to provide views on overnight trading.³⁵ These commenters recommended that the Commission host roundtable(s) or open comment files on the issues raised by the proposed expansion to overnight on-exchange trading.³⁶

In response to the commenters, the Exchange stated that comments related to roundtables and open comment files on extending exchange trading hours were raised and contemplated during the Commission’s consideration of the 24X application for exchange registration, which included extended hours trading sessions that will overlap with NYSE Arca’s Extended Hours Trading.³⁷ The Exchange, quoting the Commission, stated that, “[t]he public, including market participants, have been afforded adequate opportunity for comment, and interested persons have taken the opportunity to provide written data, views, and arguments concerning this application which has yielded a robust analysis of the relevant issues. Accordingly, issues related to the 24X Market Session have been raised, analyzed, and addressed, and the Commission action on the 24X Form 1 should not be delayed by, and is not dependent on, a broader study of equity market structure.”³⁸

³³ See letters from Bryant, dated Nov. 25, 2024; Kelsey Greenlake, dated Nov. 25, 2024 (“Greenlake Letter”); Anonymous, dated Nov. 25, 2024; Blake Campos, dated Nov. 25, 2024; Javier C. Limon Rodriguez, dated Nov. 25, 2024; Richard Pasquali, dated Nov. 25, 2024 (“Pasquali Letter”); Benjamin L. Schiffrin, Director Securities Policy, Better Markets, Inc., dated Dec, 5, 2024 (“Better Markets Letter”); and Ellen Green, Managing Director, Equities & Options Market Structure, Securities Industry and Financial Markets Association, dated Dec. 16, 2024 (“SIFMA Letter”).

³⁴ Id. See also infra section III.C. (discussing comments regarding effects of the proposal on retail investors).

³⁵ See SIFMA Letter, at 1; Better Markets Letter, at 2.

³⁶ See SIFMA Letter, at 2-3; Better Markets Letter, at 1-2.

³⁷ See NYSE Arca Letter, at 2-3.

³⁸ See id., at 2 (quoting 24X Approval Order, 89 FR at 97107). The 24X Market Session will operate between 8:00 p.m. and 4:00 a.m. E.T. Sunday, Monday, Tuesday, Wednesday, and Thursday nights that precede a U.S. Business Day. See 24X Rule 1.5(c).

The Exchange also stated that it “continues to engage with the industry to address questions surrounding implementation” of its proposal.³⁹

As the Commission stated in the 24X Approval Order, the Commission continually monitors the national market system and the operation of the Federal securities laws, and the Commission, consistent with its oversight of the national market system, will continue to monitor the developments of extended hours trading.⁴⁰ As with the 24X application, the monitoring of new market developments does not foreclose Commission action on this proposal.⁴¹ The Commission finds that the NYSE Arca rules related to the NYSE Arca’s Extended Hours Trading, as amended, are consistent with the Exchange Act. Specifically, NYSE Arca Rule 7.34-E(T) is based on NYSE Arca Rule 7.34-E, which governs the Early and Late Trading Sessions and is designed to address the potential differences in trading compared to NYSE Arca’s Core Trading Session. NYSE Arca has proposed a preamble to its Rule 7.34-E, as discussed below, as well as additional customer disclosures in its proposed new Rule 7.34-E(T), to accommodate the further expansion of trading hours.

B. Equity Data Plans and Securities Information Processor Readiness

One commenter stated that the Equity Data Plans must be extended to accommodate real-time quote and trade collection and dissemination.⁴²

Pursuant to the proposed new preamble to NYSE Arca Rule 7.34-E, the Exchange will not commence operation of Extended Hours Trading under NYSE Arca Rule 7.34-E(T) unless the

³⁹ See NYSE Arca Letter, at 3.

⁴⁰ See 24X Approval Order, 89 FR at 97106.

⁴¹ Id.

⁴² See SIFMA Letter, at 2. This commenter also stated that if the Equity Data Plans are extended, then the equity trade reporting facilities (“TRFs”) should also be expanded so that overnight off-exchange trades are not delayed relative to on-exchange trades. Id. at 4. The Commission agrees and believes that the Equity Data Plans and FINRA should consider accommodating real-time over-the-counter (“OTC”) trade reporting. See also 24X Approval Order, 89 FR at 97107, n. 291.

Equity Data Plans: (1) have established a mechanism to collect, consolidate, process, and disseminate quotation and transaction information at all times during Extended Hours Trading that is equivalent to the mechanism established for the Core Trading Session, and (2) have provided the Exchange with notification that they are prepared to collect, consolidate, process and disseminate quotation and transaction information to accommodate Extended Trading Hours. The Exchange stated it will submit all quotes and trades that are generated in the extended Early and Late Trading Sessions to the consolidated quote and trade systems maintained by the exclusive SIPs for public dissemination so that “quotes and trades will be made available to the investing public in the same manner that quotes and trades are currently made available.”⁴³

Further, as stated in the proposed preamble to NYSE Arca Rule 7.34-E, as amended, the Exchange will not commence operation of the Extended Hours Trading prior to filing a proposed rule change that specifies its ability to comply with its obligations under the Exchange Act during the Extended Hours Trading.⁴⁴ This Extended Hours Trading Proposed Rule Change will specify that the Equity Data Plans are prepared to collect, consolidate, process and disseminate quotation and transaction information at all times during the Extended Hours Trading.⁴⁵ The Extended Hours Trading Proposed Rule Change must be filed with the Commission and approved, or otherwise become effective pursuant to Exchange Act Section 19(b), before NYSE Arca can offer Extended Hours Trading under NYSE Arca Rule 7.34-E(T).⁴⁶ The NYSE Arca rule requiring the operation of the Equity Data Plans during the Extended Hours Trading is designed to ensure that consolidated quotation and transaction data are provided in a manner that is consistent with the existing

⁴³ See Amendment No. 2, at 12. The two exclusive SIPs -- the Securities Industry Automation Corporation (“SIAC”) and Nasdaq -- both currently operate from 4:00 a.m. E.T. through 8:00 p.m. E.T. Monday through Friday.

⁴⁴ See proposed preamble to NYSE Arca Rule 7.34-E.

⁴⁵ See id.

⁴⁶ See id.

extended hours sessions on exchanges, including NYSE Arca. The NYSE Arca rules for the Extended Hours Trading are designed to provide investor protections and will foster competition by introducing another trading venue during these trading hours. The Commission recently approved another national securities exchange's proposal to introduce extended trading hours that overlap with the hours proposed by NYSE Arca with substantively identical provisions.⁴⁷

C. Effect on Retail Investors and Customer Disclosures

The Commission received several comments in opposition to the proposal that stated that extended trading sessions adversely harm retail investors.⁴⁸ One commenter stated that retail investors would get worse prices for their trades because of low volumes and wider spreads in extended trading hours and that customer disclosures are “unlikely to protect investors”⁴⁹ because investors tend to not read disclosures.⁵⁰ NYSE Arca stated that customer disclosures about the risks of extended hours trading have been standard in the markets.⁵¹

NYSE Arca Rule 7.34-E(T) includes the customer disclosures that are required in NYSE

⁴⁷ 24X will not start operating its 24X Market Session unless the Equity Data Plans have established a mechanism to collect, consolidate, process, and disseminate quotation and transaction information at all times during the 24X Market Session that is equivalent to the mechanism established for Exchange Trading Hours other than the 24X Market Session, among other things. See 24X Rule 1.5(c).

⁴⁸ See Better Markets Letter; SIFMA Letter; Greenlake Letter; Pasquali Letter.

⁴⁹ See Better Markets Letter, at 3. The commenter also stated that gamification, combined with “around-the-clock” trading, would harm retail investors. In addition, the commenter stated that the fact that cryptocurrency trading occurs around the clock does not support the expansion of exchange trading hours in NMS stocks. See id., at 6-8. As discussed below, trading in NMS stocks occurs during the overnight hours in the OTC market. The proposal seeks to allow NYSE Arca to expand the hours of its existing Early Trading Session and Late Trading Session to overlap with some of the hours available OTC. NYSE Arca stated that “the existing safeguards applicable to the pre-market and post market sessions, including, among other things, operational safeguards, availability of consolidated last sale and quotation information, and specific disclosures to investors regarding the heightened risks of after-hours trading, and market surveillance capabilities, would be available to the proposed extended Early and Late Trading Sessions.” See NYSE Arca Letter at 4. NYSE Arca Rules 7.34-E and 7.34-E(T) are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest.

⁵⁰ Better Markets Letter, at 4.

⁵¹ See NYSE Arca Letter, at 2. NYSE Arca's existing rule, Rule 7.34-E, requires disclosures regarding the risks of Extended Hours Trading and are similar to the rules of other self-regulatory organizations (“SROs”). See e.g., Cboe EDGX Rule 3.21; MEMX Exchange Rule 3.21; Nasdaq Rule Equity 2, Section 20; FINRA Rule 2265.

Arca Rule 7.34-E. Specifically, NYSE Arca Rule 7.34-E(T)(d)(3) provides that ETP Holders may not accept orders from non-ETP Holders for execution during Extended Hours Trading without disclosing, among other things,⁵² that Extended Hours Trading “involves material trading risks, including the possibility of lower liquidity, high volatility, changing prices, unlinked markets, an exaggerated effect from news announcements, wider spreads, and any other relevant risk.”⁵³ The Exchange proposes, in NYSE Arca Rule 7.34-E(T), to supplement the existing required customer disclosures in NYSE Arca Rule 7.34-E to require the disclosure of six additional potential risks: (i) trading during hours in which financial market infrastructure companies are closed; (ii) risk of trading during hours in which primary listing markets may not be open; (iii) trading during hours in which there may be limited or different regulatory protections; (iv) trading because of limited alternatives; (v) continuous trading; and (vi) additional unforeseen risks.⁵⁴ Such disclosures notify investors of potential risks, and allow them to evaluate whether to trade during either the Early Trading Session or the Late Trading Session or not. The proposed new disclosures incorporate and place the same customer disclosure obligations on NYSE Arca ETP Holders that the Commission approved in the 24X Approval Order.⁵⁵

Further, under existing NYSE Arca Rule 7.34-E(d) and proposed NYSE Arca Rule 7.34-E(T)(d), ETP Holders must also disclose to non-ETP Holders that limit orders are the only order type accepted in Extended Hours Trading and that orders must be designated for trading in the Extended Hours Trading sessions. Accepting only limit orders during extended hours sessions can help to address the potential risks that there may be wider spreads, or that prices may be affected by news announcements made by issuers. Requiring that orders be designated for a specific

⁵² See NYSE Arca Rule 7.34-E(T)(d)(1) and (d)(2).

⁵³ NYSE Arca Rule 7.34-E(T)(d)(3). These disclosures are required by other SROs. See *supra* note 51.

⁵⁴ See NYSE Arca Rule 7.34-E(T)(d)(3)(viii)-(xiii).

⁵⁵ See 24X Approval Order, 89 FR at 97110-111.

Extended Hours Trading session also helps to ensure that investors are aware of when their order will be submitted for execution.

Finally, the Exchange's extended hours for the Early and Late Trading Sessions will overlap with some of the hours of trading that already occurs in the OTC market.⁵⁶ Accordingly, while the Exchange's proposal represents an extension of the hours of the existing trading sessions on the Exchange, market participants, including retail investors, are already able to trade during the times proposed by NYSE Arca.

D. Other Comments

One commenter stated that the proposed expansion of Extended Hours Trading sessions should not occur unless the trade guarantee provided by the National Securities Clearing Corporation ("NSCC"), a subsidiary of the Depository Trust and Clearing Corporation ("DTCC") for exchange-executed trades, is available in real-time as it is currently during both regular and extended trading hours.⁵⁷ Specifically, the commenter stated that "central-clearing party ("CCP") hours must be extended to accommodate real-time CCP trade guarantee for any exchange-executed trades."⁵⁸ The Exchange responded that its proposal is "entirely consistent with that suggestion" and that its proposed expanded trading hours were "entirely within the hours that NSCC is currently available for clearing."⁵⁹

NYSE Arca's proposed hours are within the hours of operation of the NSCC.⁶⁰ The amended proposal is consistent with the requirements of Section 6(b)(5) of the Exchange Act that provides, among other things, that the rules of an exchange must foster cooperation and

⁵⁶ See, e.g., Blue Ocean ATS, LLC ("BOATS"). The operating hours for BOATS occur from 8:00 p.m. to 4:00 a.m. E.T. on days when the NYSE Trade Reporting Facility is open for trade reporting. See Form ATS-N, available at sec.gov/Archives/edgar/data/1795131/000153949723000091/xslATS-N_X01/primary_doc.xml.

⁵⁷ See SIFMA Letter, at 2, 3-4.

⁵⁸ See SIFMA Letter, at 2.

⁵⁹ See NYSE Arca Letter, at 3.

⁶⁰ See <https://www.dtcc.com/-/media/Files/pdf/2024/8/15/A9473.pdf>.

coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.⁶¹ Further, as the Commission stated in the 24X Approval Order, “while risk cannot be eliminated, it can be appropriately managed as it relates to: . . . the ability of the relevant clearing agencies for equities, NSCC and the DTC, to address any potential credit, market, and liquidity risks associated with trades submitted by the Exchange.”⁶²

The commenter also stated that “there should be a harmonized approach to the treatment of all trades that take place, whether on- or off-exchange” and that this should include “clearing, settlement, trade reporting, and quote and trade dissemination.”⁶³ The commenter stated that it “understand[s] that NSCC believes” that its trade guarantees attach at different times for exchange-executed trades as compared to off-exchange executed trades.⁶⁴ The commenter also posed a number of questions about NSCC rules. As the Commission stated in the 24X Approval Order, market participants “should direct their interpretative questions” to the relevant SROs, in this case the NSCC, for confirmation and clarification about their rules.⁶⁵

E. Other Proposed Rules

The Exchange proposed to amend NYSE Arca Rule 5.1-E and Commentary .08 to NYSE Arca Rule 9.5320-E to make conforming changes and to replace references to Pacific Time. The

⁶¹ 15 U.S.C. 78f(b)(5).

⁶² See 24X Approval Order, 89 FR at 97112.

⁶³ See SIFMA Letter, at 2. The commenter also posed a number of questions that were interpretative in nature or technical and related to implementation of extended trading hours. The Exchange stated that, “it continues to engage with the industry to address questions surrounding implementation of the Proposal, which includes the issues SIFMA identifies regarding processes and costs associated with clearing, settlement and margin as well as the specific suggestion regarding the necessity for a separate member clearing letter of consent to participate in the overnight session.” See NYSE Arca Letter, at 3. Moreover, as discussed above, there are existing extended hours trading sessions on exchanges, including NYSE Arca, and the rules that are applicable during extended hours, including NYSE Arca Rule 7.34-E, are clear. The commenter stated that it had preliminary discussions with the Exchange regarding the planned expansion of the Exchange’s trading hours. As discussed above, the Commission continues to monitor the national market system, including the expansion of trading hours in the equity market.

⁶⁴ See SIFMA Letter, at 3.

⁶⁵ See 24X Approval Order, 89 FR at 97112, n. 375.

Exchange stated that these changes would replace obsolete references and add clarity in its rules.

These changes are consistent with the requirements under Section 6(b)(5) of the Exchange Act that the rules of an exchange are designed to remove impediments to and perfect the mechanism of a national market system, and protect investors and the public interest because they are designed to provide transparency and clarity to the Exchange's rules.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views and arguments concerning whether the proposed rule change, as modified by Amendment No. 2 is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules-regulations/self-regulatory-organization-rulemaking>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2024-89 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-2024-89. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2024-89 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

V. Accelerated Approval of Proposed Rule Change, as modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of the notice of filing of Amendment No. 2 in the Federal Register. In Amendment No. 2, in addition to incorporating the changes to the Initial Proposal set forth in Amendment No. 1, the Exchange corrected non-substantive, typographical errors in the proposed preamble to NYSE Arca Rule 7.34-E and revised the numbering of NYSE Arca Rule 7.34-E(d)(3). While Amendment No. 2 superseded and replaced the Initial Proposal and Amendment No. 1, Amendment No. 2 does not modify the operation or the meaning of the proposed rules, which were published for comment in the Federal Register.⁶⁶ Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,⁶⁷ to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

⁶⁶ See supra notes 3 and 6.

⁶⁷ 15 U.S.C. 78s(b)(2).

VI. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.⁶⁸

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁶⁹ that the proposed rule change (SR-NYSEARCA-2024-89), as modified by Amendment Nos. 1 and 2, be, and is hereby, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷⁰

Sherry R. Haywood,

Assistant Secretary.

⁶⁸ 15 U.S.C. 78f(b)(5).

⁶⁹ 15 U.S.C. 78s(b)(2).

⁷⁰ 17 CFR 200.30-3(a)(12).