

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88829; File No. SR-NYSE-2020-41)

May 6, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to add Commentary .02 to Rule 7.35B

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 May 4, 2020, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “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 add Commentary .02 to Rule 7.35B to provide that, for a temporary period that begins on May 6, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, the Exchange would make available specified Closing Auction Imbalance Information to member organizations beginning one hour before the end of Core Trading Hours. The proposed rule 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 add Commentary .02 to Rule 7.35B to provide that, for a temporary period that begins on May 6, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, the Exchange would make available specified Closing Auction Imbalance Information to member organizations beginning one hour before the end of Core Trading Hours.

Background

In its listed securities, the Exchange disseminates Auction Imbalance Information⁴ for the Closing Auction, as provided for in Rule 7.35B(e), beginning at the Closing Auction Imbalance Freeze Time, which is 10 minutes before the scheduled end of Core

⁴ The term "Auction Imbalance Information" means the information that is disseminated by the Exchange for an Auction (see Rule 7.35(a)(4)) and, depending on the Auction, can include Total Imbalance (Rule 7.35(a)(4)(A)(i)); Closing Imbalance (Rule 7.35(a)(4)(A)(ii); Paired Quantity, Unpaired Quantity, and Side of Unpaired Quantity (Rule 7.35(a)(4)(B)); Continuous Book Clearing Price (Rule 7.35(a)(4)(C)); and Closing Interest Only Clearing Price (Rule 7.35(a)(4)(D)).

Trading Hours.⁵ In addition to disseminating Auction Imbalance Information on its proprietary data feeds, specified Auction Imbalance Information is also made available to member organizations via the NYSE Pillar Trade Ops Portal, which is a free web-based management tool for member organizations to manage their interaction with the Exchange.⁶

Auction Imbalance Information for the Closing Auction becomes available on the NYSE Pillar Trade Ops Portal at the Closing Auction Imbalance Freeze time, as provided for in Rule 7.35B(e)(1)(A), and includes the following content: Total Imbalance, Side of Total Imbalance, Paired Quantity, Continuous Book Clearing Price, and Closing Interest Only Clearing Price. On the portal, such data is updated every 30 seconds, and once updated, overwrites the prior data available on the portal. To access such Auction Imbalance Information, users of the NYSE Pillar Trade Ops Portal must manually query the tool to view Auction Imbalance Information.⁷

⁵ For the Closing Auction, the Exchange begins disseminating the following Auction Imbalance Information at the Closing Auction Imbalance Freeze Time: Total Imbalance, Side of Total Imbalance, Paired Quantity, Unpaired Quantity, Side of Unpaired Quantity, Continuous Book Clearing Price, Closing Interest Only Clearing Price, and Regulatory Closing Imbalance. See Rules 7.35B(e)(1)(A) and 7.35B(e)(2). See also Rule 7.35(a)(7) (specifying the Closing Auction Imbalance Freeze Time).

⁶ Through the NYSE Pillar Trade Ops Portal, NYSE member organizations can view their executed trade details, review their Pillar order entry and drop copy sessions, and view their firm's volume by liquidity tag. To gain access, a member organization's compliance department must submit a form to establish which individuals at that firm are authorized to become users of the NYSE Pillar Trade Ops Portal. Information about the NYSE Pillar Trade Ops Portal is available here: <https://www.nyse.com/pillar/trade-ops-portal>.

⁷ See User Guide for the NYSE Trade Ops Portal, available here: https://www.nyse.com/publicdocs/nyse/NYSE_Trade_Ops_Portal_User_Guide.pdf. The static information that is displayed can be manually exported to an Excel table, but is not otherwise not available for real-time distribution of the data.

In addition, pursuant to Rule 7.35B(e)(1)(B), beginning two hours before the end of Core Trading Hours (e.g., beginning at 2 p.m. Eastern Time) up to the Closing Auction Imbalance Freeze Time (e.g., 3:50 p.m. Eastern Time), the Exchange makes available Total Imbalance, Side of Total Imbalance, Paired Quantity, Unpaired Quantity, Side of Unpaired Quantity, and if published, Manual Closing Imbalance, to Floor brokers for any security (i) in which a Floor broker has entered an order or (ii) as specifically requested by a Floor broker. This Auction Imbalance Information is provided in a manner that does not permit electronic distribution. Specifically, this information is displayed on the trading systems that Floor brokers use on the Trading Floor.

Temporary Floor Closure Impacts Floor brokers and Their Customers

Since March 9, 2020, markets worldwide have been experiencing unprecedented market-wide declines and volatility because of the ongoing spread of COVID-19. Beginning on March 16, 2020, to slow the spread of COVID-19 through social-distancing measures, significant limitations were placed on large gatherings throughout the country.

On March 18, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.⁸ Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination.

⁸ The Exchange's current rules establish how the Exchange will function fully-electronically. The CEO also closed the NYSE American Options Trading Floor, which is located at the same 11 Wall Street facilities, and the NYSE Arca Options Trading Floor, which is located in San Francisco, CA. See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110>.

Because the Trading Floor is temporarily closed, Floor brokers are not present on the Trading Floor and do not have access to their Floor-based systems for trading and cannot enter orders available to Floor brokers, such as Closing D Orders. Unlike Market-on-Close (“MOC”) and Limit-on-Close (“LOC”) Orders, Closing D Orders can be entered into Exchange systems up to ten seconds before the end of Core Trading Hours.⁹ By contrast, MOC and LOC Orders can be entered in the last ten minutes of trading only to offset a published Regulatory Closing Imbalance.¹⁰ Accordingly, while the Trading Floor is closed, customers of Floor brokers seeking to participate in the Closing Auction must arrange to have their closing-only interest entered before 3:50 p.m.

Notwithstanding the temporary closure of the Trading Floor, Floor brokers continue to provide services to their institutional investor customers. For such customers, Floor brokers continue to play an important role for those transactions that require the expertise of a professional trading agent, and a key component of that role as agent for these sophisticated customers is to provide market “color,” including providing imbalance information leading into the close. However, because Floor brokers do not have access to their Floor-based systems, they no longer have access to the systems that display Auction Imbalance Information, as provided for under Rule 7.35B(e)(1)(B). As such, during this temporary period, Floor brokers are no longer able to provide their customers with the same level of market color about the Closing Auction as they would when the Trading Floor is open.

Proposed Rule Change

⁹ See Rule 7.35B(f)(3).

¹⁰ See Rule 7.35B(f)(1).

Both Floor brokers and their customers have requested that, during the temporary period while the Trading Floor is closed, be provided access to Auction Imbalance before 3:50 p.m. so that Floor brokers can provide a similar level of service that they provide when the Trading Floor is open. The Exchange has been advised that Floor brokers' lack of access to imbalance information is particularly impactful because Floor brokers cannot use Closing D Orders during this temporary period, and Floor broker customers need to enter their closing-only interest before 3:50 p.m. if they want to participate in the Closing Auction.

The Exchange has identified a temporary, interim technology solution to provide Floor brokers with Auction Imbalance Information before the Closing Auction Imbalance Freeze Time so that Floor brokers can continue to provide the type of service to their customers that they provided before the Trading Floor was temporarily closed. Specifically, the Exchange proposes to temporarily change the NYSE Pillar Trade Ops Portal to make the Closing Auction Imbalance Information available on that portal beginning at 3:00 p.m., rather than at the Closing Auction Imbalance Freeze Time at 3:50 p.m. Because the NYSE Pillar Trade Ops Portal is available to all member organizations, any User authorized to access the portal, including non-Floor brokers, would have access to this Auction Imbalance Information beginning at 3:00 p.m.

Because the Exchange would be leveraging different technology, the Auction Imbalance Information would differ from what is available to Floor brokers on the Trading Floor pursuant to Rule 7.35B(e)(1)(B). As described above, the portal would include Total Imbalance, Side of Total Imbalance, and Paired Quantity, which are provided under Rule 7.35B(e)(1)(B), and would also include Continuous Book Clearing

Price and Closing Interest Only Clearing Price, which are not provided under Rule 7.35B(e)(1)(B). In addition, the portal does not support Unpaired Quantity or Side of Unpaired Quantity, which are provided under Rule 7.35B(e)(1)(B).

As described above, the Exchange provides data pursuant to Rule 7.35B(e)(1)(B) in a manner that does not permit electronic redistribution. Auction Imbalance Information made available before the Closing Auction Imbalance Freeze Time would be similarly limited. To view the data on the NYSE Pillar Trade Ops Portal, a User must manually query the tool, and the data is updated only every 30 seconds. Once the data is updated on a 30-second interval, the tool overwrites the last set of data that was available for display. The tool permits export of the data to an Excel file, but that export must be performed manually, and it only exports the static information that is available to be viewed at that given time. Accordingly, the NYSE Pillar Trade Ops Portal does not permit real-time electronic redistribution of the data. The purpose of this proposed rule change is to provide Floor brokers with a tool to provide preliminary guidance to their customers of whether to enter MOC or LOC Orders, and on which side of the market, earlier in the trading session. It would not replace or supersede the data that is distributed via the Exchange's proprietary data feeds beginning at the Closing Auction Imbalance Freeze Time.

Finally, this Auction Imbalance Information would be available beginning at 3:00 p.m., not 2:00 p.m. This proposed time period is consistent with the period when Auction Imbalance Information is made available on NYSE Arca, Inc. ("NYSE Arca")¹¹ and NYSE American LLC ("NYSE American"), which both operate electronic auctions

¹¹ See NYSE Arca Rule 7.35-E(d)(1).

without a Trading Floor.¹² For example, NYSE American similarly restricts entry of MOC and LOC Orders after 3:50 p.m.,¹³ and makes its Auction Imbalance Information available beginning at 3:00 p.m. The Exchange believes that providing such imbalance information beginning at 3:00 p.m. during this temporary period would provide sufficient time for member organizations and their customers to enter MOC and LOC Orders before the Closing Auction Imbalance Freeze Time.

To effect this change, the Exchange proposes to add Commentary .02 to Rule 7.35B, which would provide:

For a temporary period that begins on May 6, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, beginning one hour before the end of Core Trading Hours up to the Closing Auction Imbalance Freeze Time, the Exchange will make available Total Imbalance, Side of Total Imbalance, Paired Quantity, Continuous Book Clearing Price, and Closing Interest Only Clearing Price to member organizations. This Auction Imbalance Information will be provided in a manner that does not permit electronic real-time distribution and will be updated every 30 seconds.

At the Closing Auction Imbalance Freeze Time, Auction Imbalance Information for the Closing Auction would be made available as provided for under Rule 7.35B(e)(1)(A). Accordingly, this proposed rule text addresses only what would be different during the temporary period while the Trading Floor is closed, i.e., that

¹² See NYSE American Rule 7.35E(d)(1).

¹³ See NYSE American Rule 7.35E(d)(2).

specified Auction Imbalance Information would be available to member organizations for the period 3:00 p.m. to 3:50 p.m. Eastern Time.

The Exchange has tested the technology change to begin disseminating such Auction Imbalance Information via the NYSE Pillar Trade Ops Portal at 3:00 p.m. Eastern Time. In addition, when the Trading Floors were temporarily closed, numerous Floor brokers received authorization to become Users of the NYSE Pillar Trade Ops Portal, and therefore already have connectivity to that portal to access Auction Imbalance Information. Accordingly, the Exchange would be able to implement the proposed rule change immediately when the technology is available, which is anticipated for May 6, 2020.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ 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.

As a result of uncertainty related to the ongoing spread of COVID-19, the U.S. equities markets are experiencing unprecedented market volatility. In addition, social-distancing measures have been implemented throughout the country, including in New York City, to reduce the spread of COVID-19. Directly related to such social-distancing

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

measures, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.

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, during the temporary period while the Trading Floor is closed and Floor brokers do not have access to Auction Imbalance Information as provided for in Rule 7.35B(e)(1)(B), providing Auction Imbalance Information to member organizations via the NYSE Pillar Trade Ops Portal beginning at 3:00 p.m. would allow Floor brokers to provide their customers with similar levels of service with respect to providing market color about the Closing Auction as they would when the Trading Floor is open.

The proposed rule change is designed to be an interim, temporary solution that would be in effect only during the temporary period when the Trading Floor is closed. Because of the temporary nature of the proposed relief, the Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to leverage existing technology rather than attempt to reproduce the data that is provided to Floor brokers pursuant to Rule 7.35B(e)(1)(B) on the exact same terms. By using existing technology, the Exchange can provide this service to Floor brokers on an expedited basis.

In addition, 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 during the temporary period during which the Trading Floor is

closed, Closing D Orders are not available, and therefore, unless a Regulatory Closing Imbalance has been published, MOC and LOC Orders must be entered by the Closing Auction Imbalance Freeze Time. The Exchange therefore believes that during this period when Closing D Orders are not available, providing all member organizations with access to the Auction Imbalance Information at 3:00 p.m. would assist them in making their closing-interest order entry decisions before 3:50 p.m.

The Exchange further believes that providing such information beginning at 3:00 p.m. would remove impediments to and perfect the mechanism of a free and open market and a national market system because, similar to how NYSE American functions, providing such imbalance information beginning 50 minutes before the Closing Auction Imbalance Freeze Time would provide sufficient time for member organizations to make order entry decisions for the Closing Auction.

The Exchange also believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to provide that the Auction Imbalance Information that would be available on the NYSE Pillar Trade Ops Portal would not be provided in a manner that permits electronic real-time distribution. This proposed rule change is designed to provide Floor brokers with a tool to provide guidance to their customers of whether to enter MOC or LOC Orders, and on which side of the market. It would not replace or supersede the data that is distributed via the Exchange's proprietary data feeds beginning at the Closing Auction Imbalance Freeze Time.

The Exchange believes that, by clearly stating that this relief will be in effect through the earlier of the reopening of the Trading Floor facilities or the close of the

Exchange on May 15, 2020, market participants will have advance notice that the Exchange would disseminate Auction Imbalance Information via the NYSE Pillar Trade Ops Tool beginning at 3:00 p.m. for only a temporary period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would 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 is designed to provide Floor brokers with a tool to provide guidance to their customers of whether to enter MOC or LOC Orders, and on which side of the market, before the Closing Auction Imbalance Freeze Time. The proposed rule change is designed to be in effect only during a temporary period when the Exchange Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of the COVID-19 virus and, as a result, Floor brokers do not have access to information as provided for in Rule 7.35B(e)(1)(B) and cannot enter Closing D Orders.

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as

the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the operative delay would be consistent with the protection of investors and the public interest because the proposed rule change is designed to be in effect only during a temporary period when the Exchange Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of the COVID-19 virus and Floor brokers, as a result, do not have access to their Floor-based systems for trading and the information as provided for in Rule 7.35B(e)(1)(B) and cannot enter Closing D Orders. In addition, when the Trading Floors were temporarily closed, numerous Floor brokers received authorization to become Users of the NYSE Pillar Trade Ops Portal, and therefore already have connectivity to that portal to access Auction Imbalance Information. Moreover, the

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

Exchange represents that it has tested, and will be able to implement, the proposed interim technology change on May 6, 2020. For the foregoing reasons, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest and has determined to waive the 30-day operative date so that the proposal may take effect upon filing.²⁰

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²¹ of the Act to determine whether the proposed rule change 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 e-mail to rule-comments@sec.gov. Please include File Number SR-

²⁰ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78s(b)(2)(B).

NYSE-2020-41 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-NYSE-2020-41. 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-NYSE-2020-41 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.²²

J. Matthew DeLesDernier
Assistant Secretary

²² 17 CFR 200.30-3(a)(12).