

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87645; File No. SR-NYSE-2019-65)

December 2, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 71

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 November 18, 2019, 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 amend Rule 71 to remove the preamble that such rule is not applicable to trading on the Pillar trading platform. 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.

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 71 (Precedence of Highest Bid and Lowest Offer) to remove the preamble that such rule is not applicable to trading on the Pillar trading platform.

Rule 71 is applicable only to manual trading on the Trading Floor⁴ and governs bids and offers verbally represented by Floor brokers at the point of sale. Paragraph (a) of that rule provides that all bids made and accepted, and all offers made and accepted, in accordance with Exchange Rules shall be binding. Accordingly, if a Floor broker bids or offers at the point of sale and another member accepts that bid or offer, the original bid or offer is binding. With respect to the close of trading, because bids and offers represented orally by a Floor broker must be represented at the point of sale by the end of Core Trading Hours,⁵ in accordance with Exchange rules, the last representation of verbal interest by the end of Core Trading Hours is binding on a Floor broker and cannot be modified or cancelled after the end of Core Trading Hours.⁶

In 2017, in anticipation of the transition to the Pillar trading platform, the

⁴ “Trading Floor” is defined as the restricted-access physical areas designated by the Exchange for the trading of securities. See Rule 6A.

⁵ See Rule 7.34(a)(2)(B).

⁶ Rule 7.35B(a)(1)(C) provides an exception to this requirement because, subject to Floor Official approval, electronically-entered Floor Broker Interest can be cancelled in full to correct a Legitimate Error.

Exchange amended Rule 71 to include a preamble that it was not applicable to trading UTP Securities⁷ on the Pillar trading platform.⁸ At that time, it was contemplated that UTP Securities would not be eligible for Floor-based trading. Accordingly, it was appropriate at that time that a rule governing Floor-based trading conduct would not be applicable to trading on Pillar. The Exchange did not amend the preamble to Rule 71 when UTP Securities began trading on Pillar, which included Floor-based crossing transactions.⁹

In preparation for the transition of Exchange-listed securities to the Pillar trading platform, the Exchange amended the preambles to specified rules to provide that such rules were not applicable to trading on the Pillar trading platform.¹⁰ In other words, the preamble is applicable to both UTP Securities and Exchange-listed securities. The Exchange inadvertently included Rule 71 in this filing, and that preamble now provides that the rule is not applicable to trading on the Pillar trading platform, which includes Exchange-listed securities.

Because on the Pillar trading platform, Exchange-listed securities continue to be eligible for manual trading on the Trading Floor and UTP Securities are eligible for crossing transactions, the Exchange proposes to amend Rule 71 to delete the preamble in

⁷ The term “UTP Securities” means a security that is listed on a national securities exchange other than the Exchange and that trades on the Exchange pursuant to unlisted trading privileges.

⁸ See Securities Exchange Act Release No. 81225 (July 27, 2017), 82 FR 26033 (August 2, 2017) (SR-NYSE-2017-35) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change).

⁹ See Securities Exchange Act Release No. 82945 (March 26, 2018), 83 FR 13553, 13555 (March 29, 2018) (SR-NYSE-2017-36) (Approval Order).

¹⁰ See Securities Exchange Act Release No. 85962 (May 29, 2019), 84 FR 26188 (June 5, 2019) (SR-NYSE-2019-05) (Approval Order).

its entirety. The Exchange believes that deleting the preamble will promote transparency in Exchange rules that the rules governing manual trading on the Trading Floor have not changed even with the transition to the Pillar trading platform.

To further promote transparency, the Exchange proposes to amend Rule 71 to specify that the bids and offers referenced in that Rule that are binding are “verbal” bids and offers. Orders entered electronically on the Exchange are governed by Rule 7P under the Pillar platform rules. The Exchange believes that this proposed amendment will promote transparency and clarity in Exchange rules that Rule 71 addresses manual trading only, and is not applicable to the electronic entry of orders.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5),¹² 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 that deleting the preamble to Rule 71 would remove impediments to and perfect the mechanism of a free and open market and a national market system because manual trading continues on the Exchange, even after the transition to the Pillar trading platform, and Rule 71 governs such trading. Removing the

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

preamble would therefore promote clarity and transparency in Exchange rules that the rules governing manual trading on the Trading Floor have not changed with the transition to the Pillar trading platform. The Exchange further believes that amending the rule to add the term “verbal” before “bids” and “offers” would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote clarity and transparency in Exchange rules that Rule 71 concerns only manual trading, and is not applicable to the electronic entry of orders.

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 is not designed to address any competitive issues. Rather, the proposed rule change is designed to promote clarity and transparency that with the transition to the Pillar trading platform, the rules governing manual trading have not changed. Accordingly, the proposed rule change removes a preamble that was inadvertently included for securities that continue to be eligible for manual trading.

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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹⁵ normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁶ permits the Commission to 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. According to the Exchange, waiver of the operative delay would clarify, without undue delay, that Rule 71 continues to be applicable to Floor-based trading. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁷

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 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.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ For purposes only of waiving the 30-day operative delay, the Commission has

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 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 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-NYSE-2019-65 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-2019-65. 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

also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

(<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-2019-65 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.¹⁸

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Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).