

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89205; File No. SR-NYSE-2020-55)

June 30, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Rules 7.36 and 7.37

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 June 24, 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 amend Rules 7.36 and 7.37 relating to Setter Priority. 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 statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Rules 7.36 and 7.37 relating to Setter Priority.

Background

Rule 7.36(h) provides that Setter Priority will be assigned to an order ranked Priority 2 - Display Orders⁴ with a display quantity of at least a round lot if such order (i) establishes a new BBO and (ii) either establishes a new NBBO or joins an Away Market NBBO provided that such order will not be eligible for Setter Priority if there is an odd-lot sized order with Setter Priority at that price.⁵ The Rule further provides that only one order is eligible for Setter Priority at each Price. Rules 7.36(h)(1) - (3) describe how an order is evaluated for Setter Priority, how it retains Setter Priority, and how it loses Setter Priority. Finally, Setter Priority is not available for any portion of an order that is ranked Priority 3 - Non-Display Orders and is not available for allocations in an Auction.

Rule 7.37(b)(1) specifies how an Aggressing Order will be allocated against contra-side

⁴ Rule 7.36(e) defines the priority categories to which orders are assigned at each price point. Priority 1 - Market Orders are defined as unexecuted Market Orders that have priority over all other same-side orders with the same working price (Rule 7.36(e)(1)). Priority 2 - Display Orders are defined as non-marketable Limit Orders with a display price and have second priority (Rule 7.36(e)(2)). Priority 3 - Non-Display Orders are defined as non-marketable Limit Orders for which the working price is not displayed, including reserve interest of Reserve Orders, and have third priority (Rule 7.36(e)(3)).

⁵ The term "BBO" means the best bid or offer on the Exchange. See Rule 1.1(c). The term "NBBO" means the national best bid or offer. See Rule 1.1(q). An "Away Market" means any exchange, alternative trading system, or other broker-dealer (1) with which the Exchange maintains an electronic linkage and (2) that provides instantaneous responses to orders routed from the Exchange. Accordingly, an Away Market NBBO refers to an NBBO that does not include the Exchange's BBO.

orders at each price.⁶ After first trading with resting orders ranked Priority 1 - Market Orders based on time, an Aggressing Order will next trade with an order with Setter Priority. As set forth in Rule 7.37(b)(1)(B), an order with Setter Priority that has a display price and a working price equal to the BBO will receive 15% of the remaining quantity of the Aggressing Order, rounded up to the next round lot size or the remaining displayed quantity of the order with Setter Priority, whichever is lower. That Rule further provides that an order with Setter Priority is eligible for allocation under this Rule if the BBO is no longer the same as the NBBO. Next, the Aggressing Order will be allocated against orders ranked Priority 2 - Displayed Orders on parity by Participant. Any remaining quantity of an order with Setter Priority is eligible to participate in this parity allocation, consistent with the allocation wheel position of the Participant that entered the order with Setter Priority. Rules 7.37(b)(1)(C) - (I) describe how the remaining quantity of an Aggressing Order would be allocated.

Proposed Rule Change

The Exchange proposes two changes to Setter Priority. First, the Exchange proposes that only those orders that set the NBBO (which would also set the BBO) would be eligible for Setter Priority. Orders that set the BBO and join an existing NBBO would no longer be eligible for Setter Priority. Second, the Exchange proposes that when an order with Setter Priority is the Exchange's BBO, it would be eligible to trade in full with the contra-side Aggressing Order.

To effect these changes, the Exchange proposes to change the first sentence of Rule 7.36(h) to provide as follows (deleted text in brackets):

⁶ An "Aggressing Order" is defined as a buy (sell) order that is or becomes marketable against sell (buy) interest on the Exchange Book. See Rule 7.36(a)(6).

Setter Priority will be assigned to an order ranked Priority 2 - Display Orders with a display quantity of at least a round lot if such order [(i) establishes a new BBO and (ii) either] establishes a new NBBO [or joins an Away Market NBBO] provided that such order will not be eligible for Setter Priority if there is an odd-lot sized order with Setter Priority at that price.

With this proposed rule change, the only orders that would be eligible for Setter Priority would be displayed orders that establish a new NBBO. The Exchange does not believe that it needs to separately state that such an order also needs to establish a new BBO because if an order establishes a new NBBO, it also establishes a new BBO.⁷

The Exchange further proposes to change Rule 7.37(b)(1)(B) as follows (new text italicized, deleted text bracketed):

Next, an order with Setter Priority that has a display price and working price equal to the BBO will *trade with*[receive 15% of] the remaining quantity of the Aggressing Order[, rounded up to the next round lot size or the remaining displayed quantity of the order with Setter Priority, whichever is lower]. *If the size of the Aggressing Order is equal to or larger than the size of the order with Setter Priority, the order with Setter Priority will trade in full. If the size of the Aggressing Order is smaller than the size of the order with Setter Priority, the order with Setter Priority will trade with the remaining quantity of the Aggressing*

⁷ For example, if the BBO is \$10.00 x \$10.05 and the NBBO is \$10.01 x \$10.05, to be eligible for Setter Priority, a bid would need a limit price of \$10.02 or higher (an order with a limit price of \$10.05 or higher would either be routed pursuant to Rule 7.37(c)(1), be assigned a display price of \$10.04 pursuant to Rule 7.31(e)(1) or (2), or be displayed at its limit price pursuant to Rule 7.31(e)(3)).

Order. An order with Setter Priority is eligible for allocation under this subparagraph if the BBO is no longer the same as the NBBO.

With this proposed change, after an Aggressing Order trades first with Market Orders, as described in Rule 7.37(b)(1)(A), the remaining quantity of the Aggressing Order would trade with an order with Setter Priority that has a display price and working price equal to the BBO. As with the current rule, an order with Setter Priority is eligible for this priority allocation only if such order is the BBO when it is trading with the Aggressing Order.

Under the proposal, instead of a 15% allocation (rounded up to the next round lot size, or the full quantity of the Aggressing Order), an order with Setter Priority would be eligible for up to 100% of the size of the Aggressing Order. Accordingly, with this proposed change, an order with Setter Priority would execute in the same manner that a top-of-book, resting, displayed order would trade on an exchange with a price-time priority model.⁸

If the size of the Aggressing Order is equal to or larger than the size of the order with Setter Priority, the order with Setter Priority would trade in full. For example, if the order with Setter Priority is 400 shares and the remaining quantity of the contra-side Aggressing Order is 400 shares or more, the order with Setter Priority would trade in full. If the size of the Aggressing Order is over 400 shares, the remaining quantity of the Aggressing Order would be allocated as described in Rules 7.37(b)(1)(C) - (I).

If the size of the Aggressing Order is smaller than the size of the order with Setter Priority, the order with Setter Priority would trade with the remaining quantity of the Aggressing

⁸ For example, on NYSE Arca, Inc. ("NYSE Arca"), an incoming marketable order will be matched for execution against contra-side orders in the NYSE Arca Book according to the price-time priority ranking of the resting orders. See NYSE Arca Rule 7.37-E(a). Non-marketable Limit Orders with a displayed working price have second priority on NYSE Arca. See NYSE Arca Rule 7.37-E(e)(2).

Order. For example, if the order with Setter Priority is 400 shares and the remaining quantity of the contra-side Aggressing Order is 300 shares, the order with Setter Priority would trade with those 300 shares and the Aggressing Order would be fully executed. The remaining 100 shares of the order with Setter Priority would retain their Setter Priority and be eligible to interact with the next contra-side Aggressing Order.⁹

With this revised allocation proposal, if there is a remaining quantity of the Aggressing Order, there would not be any quantity left of the order with Setter Priority. Because there would not be any quantity of the order with Setter Priority to trade on parity with other displayed orders, the Exchange proposes to amend Rule 7.37(b)(1)(C) to delete the second sentence of that Rule in full.¹⁰

The Exchange believes that these proposed changes would provide an incentive for member organizations to improve the best bid or offer on the Exchange. Specifically, the Exchange believes that providing orders with Setter Priority an execution experience similar to that on price-time priority models, i.e., that such orders would be eligible to trade in full with the contra-side Aggressing Order, would provide an incentive for member organizations to direct their liquidity-providing order flow to the Exchange.

This proposed rule change is also designed to operate seamlessly with the Exchange's parity allocation model. If there is no order with Setter Priority eligible to trade, an Aggressing Order would be allocated consistent with the existing allocation model, as described in Rule 7.37(b)(1)(C) - (I), without any changes. Likewise, after trading with an order with Setter

⁹ See Rule 7.36(h)(2)(A).

¹⁰ The second sentence of Rule 7.37(b)(1)(C) currently provides: "Any remaining quantity of an order with Setter Priority is eligible to participate in this parity allocation, consistent with the allocation wheel position of the Participant that entered the order with Setter Priority."

Priority, any remaining quantity of an Aggressing Order would be allocated consistent with the existing allocation model, as described in Rule 7.37(b)(1)(C) - (I), without any changes.

Implementation

Subject to approval of this proposed rule change, the Exchange anticipates that it could implement the proposed changes to Setter Priority in August 2020. The Exchange would announce the implementation date of this proposed rule change by Trader Update.

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) of the Act,¹² 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.

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 it is designed to create an incentive to improve the best displayed bid or offer on the Exchange. The Exchange already provides an increased allocation opportunity for orders with Setter Priority. The Exchange believes that both narrowing which orders are eligible for Setter Priority and increasing the execution opportunity for an order with Setter Priority would provide an incentive for member organizations to route orders to the Exchange that would set a new NBBO, which would benefit all market participants.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

The Exchange further 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 it is designed to provide an incentive for member organizations to route their price-forming liquidity-providing orders to the Exchange by providing such orders with an execution opportunity that is similar to how such orders would trade if they were the top-of-book, resting, displayed order on an exchange with a price-time priority model. Accordingly, the proposed allocation of an order with Setter Priority is not novel, as it is how such a resting, displayed order would trade if it were top of book on an exchange with a price-time priority model.

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 Exchange operates in a highly competitive market. Equity trading is currently dispersed across 13 exchanges,¹³ 31 alternative trading systems,¹⁴ and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 20% market share (whether including or excluding auction volume).¹⁵ More specifically, the Exchange's market share of trading in Tapes A, B and C securities combined is less than 13%. In this competitive market, Exchange member organizations are

¹³ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexcangeshtml.html>.

¹⁴ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atslist.htm>.

¹⁵ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

often members of multiple exchanges, and can direct liquidity-providing order flow to more than one exchange. The proposed rule change would promote inter-market competition because it would provide an additional incentive for member organizations to improve the best displayed bid or offer on the Exchange, which would benefit all market participants. The Exchange further believes that the proposed rule change would promote intra-market competition because Setter Priority would be available on equal terms to any member organization that sets a new NBBO on the Exchange.

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the Federal Register, or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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-2020-55 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-2020-55. 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-2020-55 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.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12).