

SECURITIES AND EXCHANGE COMMISSION
(Release No.34-94483; File No. SR-NYSE-2021-74)

March 22, 2022

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Amend the Provisions of NYSE Rule 7.35B

I. Introduction

On December 14, 2021, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Rule 7.35B relating to the cancellation of MOC, LOC, and Closing IO Orders before the Closing Auction. The proposed rule change was published for comment in the Federal Register on December 29, 2021.³ On February 8, 2022, pursuant to Section 19(b)(2) of the Act,⁴ the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed change.⁵ The Commission has received no comment letters on the proposed rule change.

This order institutes proceedings under Section 19(b)(2)(B) of the Act⁶ to determine whether to approve or disapprove the proposed rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 93849 (Dec. 22, 2021), 86 FR 74204 (Dec. 29, 2021 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 94181, (Feb. 8, 2022), 87 FR 8305 (Feb. 14, 2022).

⁶ 15 U.S.C. 78s(b)(2)(B).

II. Description of the Proposal

The Exchange proposes to modify NYSE Rule 7.35B(f)(2), which sets forth rules pertaining to the cancellation of MOC, LOC, and Closing IO Orders before the Closing Auction Imbalance Freeze, and to make conforming changes to NYSE Rule 7.35B(j)(2)(B).

NYSE Rule 7.35B(f) provides that the Auction Imbalance Freeze for the Closing Auction will begin at the Closing Auction Imbalance Freeze Time and specifies how order entry and cancellation will be processed during the Closing Auction Imbalance Freeze.⁷ NYSE Rule 7.35B(f)(2)(A) currently provides that, between the beginning of the Auction Imbalance Freeze and two minutes before the scheduled end of the Core Trading Hours, MOC, LOC, and Closing IO Orders⁸ may be canceled or reduced in size only to correct a Legitimate Error.⁹ NYSE Rule 7.35B(f)(2)(B) currently specifies that, except as provided for in NYSE Rule 7.35B(j)(2)(B),¹⁰ a

⁷ The “Auction Imbalance Freeze” is the period that begins before the scheduled time for an Auction. See NYSE Rule 7.35(a)(3). “Auction” means the process for the opening, reopening, or closing of the trading of Auction-Eligible Securities on the Exchange, and an “Auction-Eligible Security” is a security for which the Exchange is the primary listing market. See NYSE Rules 7.35(a)(1) and 7.35(a)(2). The “Closing Auction” is the Auction that closes trading at the end of the Core Trading Session, and the “Closing Auction Imbalance Freeze Time” is 10 minutes before the scheduled end of Core Trading Hours. See NYSE Rules 7.35(a)(1)(C) and 7.35(a)(8).

⁸ A “MOC Order” or “Market-on-Close Order” is a Market Order that is to be traded only during a closing auction. See NYSE Rule 7.31(c)(2)(B). A “LOC Order” or “Limit-on-Close Order” is a Limit Order that is to be traded only during a closing auction. See NYSE Rule 7.31(c)(2)(A). A “Closing IO Order” or “Closing Imbalance Offset Order” is a Limit Order to buy (sell) an in an Auction-Eligible Security that it to be traded only in a Closing Auction. See NYSE Rule 7.31(c)(2)(D).

⁹ “Legitimate Error” means an error in any term of an order, such as price, number of shares, side of the transaction (buy or sell), or identification of the security. See NYSE Rule 7.35(a)(13).

¹⁰ NYSE Rule 7.35B(j)(2)(B) currently specifies the circumstances under which the Exchange may temporarily suspend the prohibition on canceling an MOC or LOC Order in connection with the Closing Auction.

request to cancel, cancel and replace, or reduce in size a MOC, LOC, or Closing IO Order entered two minutes or less before the scheduled end of the Core Trading Hours will be rejected.

The Exchange proposes to modify NYSE Rule 7.35B(f)(2) to provide that any requests to cancel, cancel and replace, or reduce in size a MOC, LOC, or Closing IO Order that are entered between the beginning of the Auction Imbalance Freeze and the scheduled end of Core Trading Hours would be rejected. As proposed, requests to cancel, replace, and/or reduce in size a MOC, LOC, or Closing IO Order must be received prior to the beginning of the Auction Imbalance Freeze (i.e., 10 minutes prior to the scheduled end of Core Trading Hours), even in the case of a Legitimate Error.

Finally, NYSE proposes to make the following conforming changes to make NYSE Rule 7.35B(j)(2)(B) consistent with the proposed changes described above: (1) replace the reference to “two minutes before the scheduled end of Core Trading Hours” with “the beginning of the Auction Imbalance Freeze,” and (2) replace the reference to “paragraph (f)(2)(B)” with “paragraph (f)(2).” Thus, NYSE Rule 7.35B(j)(2)(B), as amended, would provide that the Exchange may temporarily suspend the prohibition on cancelling an MOC or LOC Order after the beginning of the Auction Imbalance Freeze (as such prohibition would be set forth in NYSE Rule 7.35B(f)(2), as amended).

III. Proceedings to Determine Whether to Disapprove SR-NYSE-2021-74 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal. Institution of disapproval proceedings does not indicate that the Commission has

reached any conclusions with respect to any of the issues involved. Rather, the Commission encourages interested persons to provide additional comment on the proposal.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with the Act¹¹ and, in particular, with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchanges 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.¹² In addition, Section 6(b)(5) of the Act¹³ prohibits the rules of an exchange from being designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Further, Section 6(b)(8) of the Act requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate under the Act.¹⁴

The Exchange's proposal would change how cancellation of MOC, LOC, and Closing IO Orders would be handled under NYSE Rule 7.35(B)(f)(2) with respect to the NYSE Closing Auction. The Commission notes that the Exchange has separately proposed a different set of changes to its Closing Auction process and that the other proposal is currently in proceedings

¹¹ 15 U.S.C. 78s(b)(2)(B).

¹² 15 U.S.C. 78f(b)(5).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(8).

before the Commission.¹⁵ The Commission believes that it is appropriate to institute proceedings to allow for additional analysis and input concerning the instant proposed rule change's consistency with requirements of the Act and to evaluate this proposed rule change in light of other pending proposed changes to the Closing Auction.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,¹⁶ any request for an opportunity to make an oral presentation.¹⁷

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. The Commission asks that commenters address the sufficiency of the Exchange's

¹⁵ See Securities Exchange Act Release No. 93037 (Sept. 16, 2021), 86 FR 52719 (Sept. 22, 2021) (SR-NYSE-2021-44) (Notice); Securities Exchange Act Release No. 93809 (Dec. 17, 2021), 86 FR 73060 (Dec. 23, 2021) (Order Instituting Proceedings).

¹⁶ 17 CFR 240.19b-4.

¹⁷ Rule 700(c)(2) of the Commission's Rules of Practice provides that "[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views." 17 CFR 201.700(c)(2).

statements in support of the proposal which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed change. 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-2021-74 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-2021-74. 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 Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposal that are filed with the Commission, and all written communications relating to the proposal 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 such filings 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-2021-74 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(57).