

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-95466; File No. SR-NYSE-2022-34)

August 10, 2022

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend and Update Rule 35

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on July 28, 2022, 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 and update Rule 35 (Floor Employees To Be Registered) to remove certain provisions that are obsolete and no longer necessary. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 purpose of this filing is to amend and update Rule 35, which governs the requirements for admittance to the Floor of the Exchange, to remove certain provisions that are obsolete and no longer necessary.<sup>4</sup> In addition, the Exchange proposes to re-number the remaining paragraphs of Rule 35 to conform with the proposed deletions, which are described below.

Rule 35.10 and 35.30 govern the issuance of “Floor tickets” and “Employee Floor Tickets” -- each of which may be “Regular” or “Special” -- to Floor employees as a prerequisite to enter the trading Floor. A Regular ticket would “admit holders to the telephone booths around the perimeter of the stock trading Floor, and the area behind the stock trading posts” and “are issued only to employees of members or member organizations that are assigned telephone or post spaces.”<sup>5</sup> Special tickets are issued “only for the purpose of assisting or relieving a Floor employee of the same member or member organization.”<sup>6</sup> The Exchange no longer issues Floor tickets but instead requires Trading Floor Badges for admittance to the Floor, which requirement

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<sup>4</sup> Rule 35 provides, in relevant part that “[n]o employee of a member or member organization shall be admitted to the Floor unless he is registered with, qualified by and approved by the Exchange, and upon compliance of both the employer and employee with such requirements as the Exchange may determine.”

<sup>5</sup> See Rule 37(d). See also Securities Exchange Act Release No. 94217 (February 10, 2022), 87 FR 8901 (February 10, 2022) (SR-NYSE-2021-73) (“Rule 37 Approval Order”). The Exchange notes that Rule 37 is administered by the Exchange’s regulatory staff.

<sup>6</sup> See Rule 35.10.

was codified in Exchange rules earlier this year. Specifically, paragraph (d) to Rule 37 (Admission and Conduct on the Trading Floor), provides that:

Admission to the Floor will be by Exchange-issued badge only.

Exchange-issued badges must be appropriately displayed, with the photo visible, at all times while on the Floor. Use of an Exchange-issued badge belonging to another member or Floor employee to enter or exit the Floor is prohibited. Authorized persons seeking admission to the Floor without a badge must show proper identification and obtain a temporary badge from the Security Office. Visitor's badges are not acceptable identification cards for Floor employees.<sup>7</sup>

Further, Rule 303(a) provides that members who execute orders on the Floor must be provided with an identification badge and must wear the same while on the Floor, and that every member's badge must contain his or her name and a number and the name of his or her member organization.<sup>8</sup>

Rule 35.10 and 35.30

In light of the Trading Floor badge requirements set forth in Rule 37(d) and Rule 303(a), and the fact that the Exchange no longer issues nor relies upon Floor tickets for admission to the Floor, the Exchange proposes to delete Rule 35.10 and 35.30 as obsolete.

Rule 35.20 sets forth "Regulations pertaining to Floor employees." The regulations set forth include requirements that:

- all Floor employees be at their booths or posts on the Floor one-half hour prior to

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<sup>7</sup> See Rule 35.30.

<sup>8</sup> See Rule 303(a).

the opening of business or such earlier time as directed by the Exchange;

- all members or member organizations with a telephone space on the Floor, have at least one Floor employee at such space for fifteen minutes (or as determined by the Exchange) following the later of the close of the market each day or until all reports due said member or member organization have been received;
- Floor employees may not be upon or to cross the trading area of the Floor ten minutes preceding the market opening and five minutes following the market, other than as specified in the Exchange’s Floor Conduct and Safety Guidelines”;
- Floor employees who, because of illness or injury, are relieved from duty by the medical clinic located in the Exchange building, must report to that clinic before returning to duty and that any such Floor employees that is absent for more than two days, without having previously reported to the Exchange’s medical clinic, must likewise report to that clinic before returning to duty;
- Floor employees are to be instructed that they must keep a day’s supply of stationery on hand, and that arrangements should be made for this stationery to be delivered to the Exchange either after the close by the employer’s messengers or one-half hour prior to the opening of business by the Floor employees; and
- Floor employees may not make bids or offers nor may any employee interfere with any order during its transmission.<sup>9</sup>

Of the foregoing requirements, the Exchange proposes to delete as obsolete all but the last requirement (i.e., that Floor employees not make bids or offers nor interfere with order

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<sup>9</sup> See Rule 35.20.

transmission), which it proposes to re-number at Rule 35.10.<sup>10</sup> During continuous trading, Floor Brokers must verbally announce crossing transactions at the point of sale prior to such transactions printing to the tape. To avoid interference with the announcement and consummation of such interest, the Exchange believes it is appropriate to retain the prohibition against Floor employees making bids/offers or otherwise interfering with order transmission.<sup>11</sup>

As set forth below, advancements in technology related to trading on the Exchange and electronic communications have rendered nearly all of the remaining Rule 35.20 requirements as obsolete and no longer necessary.

First, because of technical enhancements that allow the Exchange to process, disseminate, and publish trading information in “real-time”, the requirements that Floor employees (including those with telephones on the Floor) report to and remain at their booths/posts at specified times before the open and after the close of trading are no longer necessary.<sup>12</sup> These technical advancements have alleviated the need for the physical presence of Floor employees by the times specified in the current provisions. As such, the Exchange proposes to delete such provisions.

The Exchange likewise proposes to delete the prohibition against Floor employees being in (upon) or crossing through the trading area of the Floor for specified times before and after the close of trading. The purpose of this prohibition was to restrict movement on the trading Floor at the opening or closing of trading to prevent anyone from blocking access to point of sale or interfering order executions. Because of advancements in technology that allow for fewer Floor

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<sup>10</sup> See proposed Rule 35.10.

<sup>11</sup> See proposed Rule 35.10.

<sup>12</sup> See, e.g., Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions) and Rule 7.35B (DMM-Facilitated Closing Auctions) and Rule 7.35C (Exchange-Facilitated Auctions) (providing, in relevant part, that certain Auction Imbalance Information would be disseminated and published by the Exchange).

personnel to be physically on the Floor during the open and close of trading, the Exchange proposes to delete this provision as no longer necessary. With respect to reference to the Floor Conduct and Safety Guidelines (“Guidelines”), which historically regulated the behavior and conduct of members and was administered by Floor Officials, the NYSE eliminated the role and function of Floor Officials and recently adopted a new Rule 37, setting forth standards of dress and conduct for the Floor. For the foregoing reason, the Exchange proposes to delete this provision as obsolete and no longer necessary.

In addition, due to communication enhancements, the Exchange proposes to delete as obsolete the requirement that Floor employees keep a certain amount of stationary on hand. Communication is no longer limited to written correspondence on physical stationary and Floor employees have the ability to communicate through others means (such as the cell phone, email and internet) at any time. Thus, the Exchange proposes to delete this provision as obsolete and no longer necessary.

Finally, the Exchange no longer operates an on-site medical clinic and therefore the requirement that Floor employees be cleared by the Exchange clinic before returning to the Floor after an illness-related absence is obsolete and no longer necessary.

Consistent with the foregoing, the Exchange proposes to re-number the balance of Rule 35 as Rule 35.20-Rule 35.60.<sup>13</sup>

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and

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<sup>13</sup> See proposed Rule 35.20-Rule 35.60.

<sup>14</sup> 15 U.S.C. 78f(b).

further the objectives of Section 6(b)(5),<sup>15</sup> 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 the proposal to delete certain provisions of Rule 35, which have been determined to be obsolete and unnecessary, would add clarity, transparency and internal consistency to Exchange rules making them easier to navigate and comprehend. Further, the Exchange believes that the proposed revisions are consistent with the Act as no regulatory purposes are currently served by the aforementioned obsolete (and in some cases anachronistic) requirements. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules.

Finally, the proposed non-substantive conforming changes (to renumber the remaining provisions of Rule 35) would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed non-substantive changes would add clarity, transparency and consistency to the Exchange's rules.

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

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<sup>15</sup> 15 U.S.C. 78f(b)(5).

proposed rule change is not intended to address competitive issues but is rather concerned with deleting obsolete references that and making non-substantive conforming changes to the Exchange rules. Since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

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 foregoing 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 Act<sup>16</sup> and Rule 19b-4(f)(6)<sup>17</sup> thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay.<sup>18</sup> The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because waiver of the operative delay will reduce the potential for confusion related to how to comply with aspects of Rule 35 rules that are now obsolete or impracticable. The Exchange requested the operative delay in order to update the text of Rule 35 to be consistent with current requirements by removing provisions that, because of technical

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>17</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. The Exchange has satisfied this requirement.

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).



enhancements to trading and improvements to electronic communications, are obsolete and no longer necessary without delay. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>19</sup>

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 will 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2022-34 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.

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<sup>19</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

All submissions should refer to File Number SR-NYSE-2022-34. 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-2022-34 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.<sup>20</sup>

J. Matthew DeLesDernier  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).