

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95498; File No. SR-NYSE-2022-37)

August 12, 2022

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a New Rule 7.39 and Delete Current Rules 900-907

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 5, 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 (1) adopt a new Rule 7.39 governing its Off-Hours Trading Facility based on the rule adopted by its affiliate NYSE American LLC for the Pillar trading platform, and (2) delete current Rules 900-907 governing Off-Hours Trading. 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

¹ 15 U.S.C. 78s(b)(1).

² 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 Exchange proposes (1) adopt a new Rule 7.39 governing its Off-Hours Trading Facility based on the rule adopted by its affiliate NYSE American LLC for the Pillar trading platform, and (2) delete current Rules 900-907 governing Off-Hours Trading.

Background

In 2017, in connection with the transition to the Pillar trading platform, the Exchange’s affiliate NYSE American LLC (then NYSE MKT LLC) (“NYSE American”) adopted NYSE American Rule 7.39E in order to maintain certain functionality in its Off-Hours Trading Facility. At the time, NYSE American Rules 900 – Equities through 907 – Equities governed off-hours trading activity on NYSE American.³ NYSE American Rules 900 – Equities through 907 – Equities were based in turn on the Exchange’s current Rules 900-907.⁴ When NYSE American added Rule 7.39E, it described how each element of Rule 7.39E was related to former NYSE American Rules 900-Equities through 907- Equities.⁵

³ See Securities Exchange Act Release No. 80590 (May 4, 2017), 82 FR 21843, 21847 (May 10, 2017) (SR-NYSEMKT-2017-01) (Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Adopt New Equity Trading Rules To Transition Trading on the Exchange From a Floor-Based Market With a Parity Allocation Model to a Fully Automated Market With a Price-Time Priority Model on the Exchange's New Trading Technology Platform, Pillar).

⁴ See Securities Exchange Act Release No. 58705 (Oct. 1, 2008), 73 FR 58995 (Oct. 8, 2008) (SR-Amex-2008-63) (approving adoption of new equity trading rules by NYSE American that are substantially identical to the equity trading rules of NYSE).

⁵ See Securities Exchange Act Release No. 79993 (February 9, 2017), 82 FR 10814, 10822-10823 (February 15, 2017) (SR-NYSEMKT-2017-01) (“NYSE American

As described in NYSE American Rule 7.39E, the only functionality available on its Off-Hours Trading Facility following the transition to Pillar is for ETP Holders to enter aggregate-price coupled orders. NYSE American Rules 900 – Equities through 907 – Equities were designated as inapplicable to trading on the Pillar trading platform and later deleted.⁶

NYSE American recently determined to cease offering an after-hours crossing session and that it would delete NYSE American Rule 7.39E.

Currently, the Exchange offers an off-hours trading facility known as Crossing Session II pursuant to NYSE Rules 900-907 that operates between 4:00 p.m. and 6:30 p.m.⁷ Like the NYSE American after-hours trading facility, the NYSE's off-hours trading facility only accepts aggregate-price coupled orders. In 2018, NYSE began its own multi-phase transition to the Pillar trading platform.⁸ As described below, the Exchange proposes to continue to offer the

Notice”).

⁶ See Securities Exchange Act Release No. 82212 (December 4, 2017), 82 FR 58036 (December 8, 2017) (SR-NYSEAMER-2017-34) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rules To Delete Obsolete Cash Equities Rules That Are Not Applicable to Trading on the Pillar Trading Platform and To Delete Other Obsolete Rules).

⁷ See Securities Exchange Act Release No. 52026 (July 13, 2005), 70 FR 41806 (July 20, 2005) (SR-NYSE-2005-26) (Order) (extending hours of operation of Crossing Session II from 4:00 p.m. to 6:30 p.m., instead of 6:15 p.m.); NYSE Information Memo 05-57 (August 19, 2005).

⁸ See Securities Exchange Act Release No. 82945 (March 26, 2018), 83 FR 13553 (March 29, 2018) (SR-NYSE-2017-36) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt New Equity Trading Rules To Trade Securities Pursuant to Unlisted Trading Privileges, Including Orders and Modifiers, Order Ranking and Display, and Order Execution and Routing on Pillar, the Exchange's New Trading Technology Platform); Securities Exchange Act Release No. 85962 (May 29, 2019), 84 FR 26188 (June 5, 2019) (SR-NYSE-2019-05) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 3, To Amend NYSE Rules 7.31, 7.36, 7.37; Make Conforming Amendments to NYSE Rules 1.1, 7.11, 7.12, 7.16, 7.18, 7.32, 7.34, and 7.36; and Amend the Preambles

current functionality pursuant to an updated and streamlined rule modeled on NYSE American Rule 7.39E that reflects current Pillar terminology.

Proposed Rule Change

The Exchange proposes to delete Rules 900-907 and add new Rule 7.39 to describe the Exchange's Off-Hours-Trading Facility. With this proposed rule change, the Exchange would permit member organizations to enter into the Off-Hours Trading Facility Aggregate-Price Coupled Orders, defined as orders to buy or sell a group of securities, which group includes no fewer than 15 Exchange-listed or traded securities having a total market value of \$1 million or more. The Exchange would not otherwise change the functionality available on the current Off-Hours Trading Facility. The Exchange believes that proposed Rule 7.39, which would be located in the rule book together with rules describing trading on the Exchange and is based on NYSE American Rule 7.39E, would streamline the Exchange's rules and make them easier to navigate.

Proposed Rule 7.39 would be titled "Off-Hours Trading" and the current "Reserved" designation would be deleted.

Proposed Rule 7.39(a) would provide that Rule 7.39 would apply to all Exchange contracts made on the Exchange through its "Off-Hours Trading Facility." This proposed rule text is identical to current NYSE American Rule 7.39E(a).

Proposed Rule 7.39(b) would establish the definitions for the Off-Hours Trading Facility.

Proposed Rule 7.39(b)(i) would define the term "Aggregate-Price Coupled Order" to mean an order to buy or sell a group of securities, which group includes no fewer than 15

on Current Exchange Rules Relating to Their Applicability to the Pillar Trading Platform).

Exchange-listed or traded securities having a total market value of \$1 million or more. This proposed definition is identical to that in NYSE American Rule 7.39E(b)(i).

Proposed Rule 7.39(b)(ii) would define the term “Off-Hours Trading Facility,” to mean the Exchange facility that permits member organizations to effect securities transactions on the Exchange under proposed Rule 7.39. Except for the non-substantive difference to use the term “member organization” rather than “ETP Holder,” proposed Rule 7.39(b)(ii) would be identical to NYSE American Rule 7.39E(b)(ii). Proposed Rule 7.39(b)(ii) would also define the term “Off-Hours Trading” to mean trading through the Off-Hours Trading Facility. This text is based on NYSE American Rule 7.39E(b)(ii) without difference. Because the Exchange would only be trading Aggregate-Price Coupled Orders in the Off-Hours Trading Facility, the Exchange proposes that Rule 7.39(b) would not include definitions for “closing price,” “closing-price order,” or “guaranteed price coupled order,” which are defined in current Rule 900(e)(ii) – (iv).

Proposed Rule 7.39(c) would establish that only such NMS Stocks, as the Exchange may specify, including Exchange-listed securities and UTP Securities, would be eligible to trade in the Off-Hours Trading Facility. The proposed rule text is based on NYSE American Rule 7.39E(c) without difference.

Proposed Rule 7.39(d) would establish the procedures for entering Aggregate-Price Coupled Orders into the Off-Hours Trading Facility. As proposed, a member organization may only enter into the Off-Hours Trading Facility an Aggregate-Price Coupled Order to buy (sell) that is matched with an Aggregate-Price Coupled Order to sell (buy) the same quantities of the same securities, including in odd lot and mixed lot quantities. The proposed rule text is based on NYSE American Rule 7.39E(d) with a non-substantive difference to use the term “member organization” instead of “ETP Holder.”

Proposed Rule 7.39(d)(i) would provide that transactions effected through the Off-Hours Trading Facility pursuant to Aggregate-Price Coupled Orders may be for delivery at such time as the parties entering the orders may agree. The proposed rule text is identical to NYSE American Rule 7.39E(d)(i).

Proposed Rule 7.39(d)(ii) would provide that member organizations would mark all sell orders as “long” as appropriate. The proposed rule text is based on NYSE American Rule 7.39E(d)(ii) with a non-substantive difference to use the term “member organization” instead of “ETP Holder.”

Proposed Rule 7.39(d)(iii) would provide that each side of an Aggregate-Price Coupled Order entered on a matched basis would be traded on entry against the other side without regard to the priority of other orders entered into the Off-Hours Trading Facility. The proposed rule text would be identical to NYSE American Rule 7.39E(d)(iii).

Proposed Rule 7.39(d)(iv) would provide that a transaction described in the Rule would be an Exchange contract that is binding in all respects and without limit on the member organization that enters any of the transaction’s component orders and that the member organization would be fully responsible for the Exchange contract. The proposed rule text is identical to NYSE American Rule 7.39E(d)(iv) with non-substantive differences to use the term “member organization” instead of “ETP Holder.”

Proposed Rule 7.39(e) would provide that each member organization would report to the Exchange such information, in such manner, and at such times, as the Exchange may from time to time prescribe in respect of Off-Hours Trading, including reports relating to Off-Hours Trading orders, proprietary or agency activity and activity in related instruments. This proposed rule text is based on NYSE American Rule 7.39E(e) with a non-substantive difference to use the

term “member organization” instead of “ETP Holder.”

Proposed Rule 7.39(f) would provide that each member organization would maintain and preserve such records, in such manner, and for such period of time, as the Exchange may from time to time prescribe in respect of Off-Hours Trading, including, but not limited to, records relating to orders, cancellations, executions and trading volume, proprietary trading activity, activity in related instruments and securities and other records necessary to allow the member organization to comply with the reporting provisions of proposed paragraph (e) of proposed Rule 7.39. The proposed rule text is based on NYSE American Rule 7.39E(f) with non-substantive differences to use the term “member organization” instead of “ETP Holder.”

Proposed Rule 7.39(g) would provide that notwithstanding a trading halt in any security (other than a trading halt pursuant to Rule 7.12 (Trading Halts Due to Extraordinary Market Volatility)) or a corporate development, member organizations may enter Aggregate-Price Coupled Orders into the Off-Hours Trading Facility under this Rule. The proposed rule text is based on NYSE American Rule 7.39E(g) with non-substantive differences to cross-reference Rule 7.12 instead of Rule 7.12E and to use the term “member organizations” instead of “ETP Holders.”

The Exchange notes that, like its affiliate, the Exchange would not include rule text from Rule 903(d)(ii) and Rule 906(b) in proposed Rule 7.39E because these provisions relate to Floor-based use of the Off-Hours Trading Facility, which the Exchange proposes would not be available once the new rule is operative. In addition, the Exchange proposes that proposed Rule 7.39 would not include any provisions from Rule 907, which describes now obsolete crossing session functionality.

Finally, the Exchange will announce the implementation date by Trader Update.

Although the Exchange is not proposing any new or different functionality for its the Off-Hours Trading Facility, the Exchange wants to provide member organizations utilizing the Off-Hours Trading Facility with sufficient time to transition to the new rule set. The Exchange anticipates that the proposed change will be implemented on September 1, 2022.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5),¹⁰ 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.

Specifically, the Exchange believes that proposed Rule 7.39 would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would permit member organizations to continue using the Exchange's off-hours trading facility pursuant to a streamlined and updated rule that reflects current Pillar terminology. As noted, the Exchange proposes to adopt NYSE American's streamlined rule for off-hours trading utilizing Pillar terminology to permit entry into the Off-Hours Trading Facility of Aggregate-Price Coupled Orders, defined as orders to buy or sell a group of securities, which group includes no fewer than 15 Exchange-listed or traded securities having a total market value of \$1 million or more. The Exchange believes that using text based on NYSE American Rule 7.39E would remove impediments and perfect the mechanism of a free and open market and a national market

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

system because, as described in the NYSE American Notice, NYSE American Rule 7.39E is based on former NYSE American Rule 900 - Equities through Rule 907 - Equities, which in turn were based on NYSE Rules 900-907. The proposed rule, like the NYSE American rule on which it is based, would permit member organizations to enter Aggregate-Price Coupled Orders while deleting obsolete text and references and updating the rule language to reflect trading on the Pillar trading platform. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

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 rules would promote competition by providing a streamlined and modernized rule governing off-hours trading on the Exchange based on the version adopted by the Exchange's affiliate without substantive differences. The Exchange believes that the proposed rules would not impose any burden on competition that is not necessary or appropriate because the proposed rules are designed to provide member organizations with continuity in utilizing the after-hours facility by offering the ability to enter Aggregate-Price Coupled Orders as currently provided for under the Rule 900 Series while deleting obsolete text and references and updating the rule language to reflect trading on the Pillar trading platform.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)(iii) thereunder.¹⁴

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ 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 on September 1, 2022.

The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because it will allow member organizations to

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 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, along with a brief description and 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. The Exchange has satisfied this requirement.

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

continue to utilize the Exchange's current off-hours trading facility without interruption.

Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative on September 1, 2022.¹⁷

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)¹⁸ 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 email to rule-comments@sec.gov. Please include File Number SR-NYSE-2022-37 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.

¹⁷ 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).

¹⁸ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSE-2022-37. This file number should be included on the subject line if email 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-2022-37 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.¹⁹

J. Matthew DeLesDernier
Deputy Secretary

¹⁹ 17 CFR 200.30-3(a)(12).