

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100327; File No. SR-NYSE-2024-13)

June 13, 2024

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change Amending Rule 7.35 and Rule 7.35B

I. Introduction

On March 1, 2024, New York Stock Exchange LLC (the “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 Rules 7.35 and 7.35B. The proposed rule change was published for comment in the Federal Register on March 18, 2024.³ On April 4, 2024, the Commission designated a longer 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 rule change.⁴ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

As described more fully below, the Exchange proposes to amend NYSE Rule 7.35 (General) and NYSE Rule 7.35B (DMM-Facilitated Closing Auctions) to: (i) align the definition of Imbalance Reference Price for a Closing Imbalance; (ii) replace the Regulatory Closing Imbalance with an enhanced Significant Closing Imbalance; and (iii) include Closing D Orders in the Total Imbalance calculation ten minutes before the scheduled end of Core Trading Hours.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 99719 (Mar. 12, 2024), 89 FR 19370 (Mar. 18, 2024) (“Notice”).

⁴ See Securities Exchange Act Release No. 100027, 89 FR 35288 (May 1, 2024).

A. Background

According to the Exchange, Imbalance information on the Exchange means better-priced orders on one side of the market compared to both better-priced and at-price orders on the other side of the market. The Exchange disseminates two types of Imbalance publications: Total Imbalance and Closing Imbalance. Total Imbalance information is disseminated for all Auctions, and Closing Imbalance information is disseminated for the Closing Auction only.

The Exchange states that, beginning ten minutes before the scheduled end of Core Trading Hours, the Exchange begins disseminating through its proprietary data feed Closing Auction Imbalance Information that is calculated based on the interest eligible to participate in the Closing Auction.⁵ The Closing Auction Imbalance Information includes the Continuous Book Clearing Price, which is the price at which all better-priced orders eligible to trade in the Closing Auction on the Side of the Imbalance can be traded.⁶ The Closing Auction Imbalance Information also includes an Imbalance Reference Price, which is the Exchange Last Sale Price bound by the Exchange BBO.⁷

Currently, according to the Exchange, beginning five minutes before the end of Core Trading Hours, Closing D Orders are included in the Closing Auction Imbalance Information at their undisplayed discretionary price.⁸ The Closing Auction Imbalance Information is updated at least every second, unless there is no change to the information, and is disseminated until the

⁵ See NYSE Rule 7.35B(e)(1)(A). DMM Orders, as defined in NYSE Rule 7.35(a)(9)(B), that have been entered by the DMM in advance of a Closing Auction are currently included in the Closing Auction Imbalance Information.

⁶ See NYSE Rule 7.35(a)(4)(C). In the case of a buy Imbalance, the Continuous Book Clearing Price would be the highest potential Closing Auction Price and in the case of a sell Imbalance, the Continuous Book Clearing Price would be the lowest potential Closing Auction Price.

⁷ See NYSE Rule 7.35B(e)(3).

⁸ See NYSE Rule 7.35(b)(1)(C)(ii).

Closing Auction begins.⁹ In addition, if at the Closing Auction Imbalance Freeze Time (e.g., 3:50 p.m. Eastern Time)¹⁰ the Closing Imbalance¹¹ is 500 round lots or more, the Exchange will disseminate a Regulatory Closing Imbalance to both the securities information processor and proprietary data feeds.¹²

B. Proposed Rule Change

1. Significant Closing Imbalance

The Exchange currently publishes a Regulatory Closing Imbalance at the Closing Auction Imbalance Freeze Time if the Closing Imbalance is 500 round lots or more. The Exchange proposes to retire the Regulatory Closing Imbalance based on a static round-lot trigger and instead publish a Significant Closing Imbalance based on a dynamic formula that would consider the notional size of the imbalance and the recent closing activity of the relevant security. As proposed, unless determined otherwise by the Exchange and announced by Trader Update, a Closing Imbalance would be considered “Significant” if:

- the Closing Imbalance is equal to or greater than 30 percent of the 20-day Average Closing Size for NYSE-listed securities in the S&P 500® Index; 50 percent of the 20-day Average Closing Size for securities in the S&P 400® Index and the S&P 600® Index; or 70 percent of the 20-day Average Closing Size for all other securities,¹³ and

⁹ See NYSE Rule 7.35(c)(1) and (2).

¹⁰ See NYSE Rule 7.35(a)(8) (defining the “Closing Auction Imbalance Freeze Time” to be 10 minutes before the scheduled end of Core Trading Hours).

¹¹ As defined in NYSE Rule 7.35(a)(4)(A)(ii), a “Closing Imbalance” means the Imbalance of MOC and LOC Orders to buy and MOC and LOC Orders to sell. NYSE Rule 7.35(a)(4)(A)(ii) further defines a “Regulatory Closing Imbalance” as a Closing Imbalance disseminated at or after the Closing Auction Imbalance Freeze Time.

¹² See NYSE Rule 7.35B(d)(1).

¹³ See Proposed NYSE Rule 7.35B(d)(1)(A).

- the notional value of the Closing Imbalance, calculated as the product of the imbalance quantity and the reference price, is equal to or greater than \$200,000 for S&P and all other securities.¹⁴

For purposes of calculating the proposed Significant Closing Imbalance, Average Closing Size would be calculated for each symbol based on the most recent 20 trading days where the security closed on a last sale eligible trade. For securities with less than the specified trading data, including but not limited to IPOs, direct listings, and transfers, the Closing Imbalance would be considered Significant if the notional value of the Closing Imbalance, calculated as the product of the imbalance quantity and the reference price, is equal to or greater than \$200,000 for S&P and all other securities or an alternative specified dollar amount as determined by the Exchange and announced by Trader Update. Only trading days with an NYSE close would be considered for purposes of the Significant Closing Imbalance calculation.¹⁵

The Exchange states that it believes that publishing imbalance information where the imbalance is of a size that equals or exceeds a large percentage of a security's average closing size over the most recent 20 trading days and is of a high notional value imparts more valuable information to the marketplace about potential trading anomalies or opportunities than an imbalance publication based solely on an imbalance size of 500 round lots or more.¹⁶ As a result, the Exchange states, it believes that publication of Significant Closing Imbalance information as proposed could facilitate entry of offsetting orders and the price discovery process on the Exchange, to the benefit of the marketplace and public investors.¹⁷ In addition, the Exchange

¹⁴ See id. at (B).

¹⁵ See id. at (C).

¹⁶ See Notice, supra note 3, 89 FR at 19372.

¹⁷ See id.

states that it believes that it would be appropriate to retain flexibility to determine the percentage amounts and notional value in the formula for what constitutes a Significant Closing Imbalance so that the Exchange may timely take into consideration market movements and the changing trading characteristics of different securities.¹⁸

2. Imbalance Reference Price

Currently, the Closing Auction Imbalance Information includes the Continuous Book Clearing Price, which is the price at which all better-priced orders eligible to trade in the Closing Auction on the Side of the Imbalance can be traded.¹⁹ The Closing Auction Imbalance Information also includes an Imbalance Reference Price, which is the Exchange Last Sale Price bound by the Exchange BBO.²⁰ The Imbalance Reference Price for a Closing Imbalance is currently the Exchange Last Sale Price.²¹

The Exchange proposes to align the definition of Imbalance Reference Price for a Closing Imbalance in NYSE Rule 7.35B(d) with the current definition of Imbalance Reference Price for the Closing Auction Imbalance Information in NYSE Rule 7.35B(e)(3). As proposed, the Imbalance Reference Price for a Closing Imbalance would be equal to

- the BB if the Exchange Last Sale Price is lower than the BB;
- the BO if the Exchange Last Sale Price is higher than the BO; or

¹⁸ See id. The Exchange notes that the options markets operated by the Exchange's affiliates have similar flexibility in their rules to specify different parameters based on a Trader Update. See, e.g., NYSE Arca, Inc., Rules 6.62P-O(a)(3)(C) (specifying the thresholds applicable to limit order price protection) & 6.64P-O(c) (specifying interval when Auction Imbalance Information is updated).

¹⁹ See NYSE Rule 7.35(a)(4)(C). In the case of a buy Imbalance, the Continuous Book Clearing Price would be the highest potential Closing Auction Price and in the case of a sell Imbalance, the Continuous Book Clearing Price would be the lowest potential Closing Auction Price.

²⁰ See NYSE Rule 7.35B(e)(3).

²¹ See NYSE Rule 7.35B(d). See NYSE Rule 7.35(a)(12)(B)(defining "Exchange Last Sale Price" to mean the most recent trade on the Exchange of a round lot or more in a security during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security).

- the Exchange Last Sale Price if it is at or between the BBO or if the security was halted or not opened by the Closing Auction Imbalance Freeze Time.²²

The Exchange states that it believes that the proposal will enhance the value of the imbalance publication by providing a more accurate depiction of the market interest available in a security because bounding the Imbalance Reference Price by the BBO keeps the price in line with actual trading in that security.²³

3. Closing D Orders

Finally, the Exchange proposes to include Closing D Orders earlier in the imbalance information provided to the marketplace. The Exchange disseminates two types of Imbalance publications: Total Imbalance and Closing Imbalance. Total Imbalance information is disseminated for all Auctions, and Closing Imbalance information is disseminated for the Closing Auction only.

NYSE Rule 7.35(a)(4)(A)(i) provides that “Total Imbalance” means for the Core Open and Trading Halt Auctions, the Imbalance of all orders eligible to participate in an Auction and for the Closing Auction, the Imbalance of MOC, LOC, and Closing IO Orders, and beginning five minutes before the scheduled end of Core Trading Hours, Closing D Orders.

In addition, for the Closing Auction, the Exchange provides information on the “Paired Quantity,” which is the volume of better-priced and at-priced buy shares that can be paired with better-priced and at-priced sell shares at the Imbalance Reference Price, and “Unpaired Quantity,” meaning the volume of better-priced and at-priced buy shares that cannot be paired with both at-priced and better-priced sell shares at the Imbalance Reference Price. Paired and

²² See Proposed NYSE Rule 7.35B(d).

²³ See Notice, supra note 3, 89 FR at 19372.

Unpaired Quantity as defined in NYSE Rule 7.35(a)(4)(B)(ii) to include MOC, LOC, and Closing IO Orders, and beginning five minutes before the scheduled end of Core Trading Hours, Closing D Orders.

Further, NYSE Rule 7.35(b) sets forth general rules for how different types of orders are ranked for purposes of how they are included in Auction Imbalance Information or for an Auction allocation. NYSE Rule 7.35(b)(1) provides that orders are ranked based on the price at which they would participate in an Auction. The price at which an order would be ranked would be used to determine whether it is a better-priced or an at-priced order. In this regard, beginning five minutes before the end of Core Trading Hours, the ranked price of a Closing D Order is the order's undisplayed discretionary price. In addition, under NYSE Rule 7.35(b)(2), the working time of a Closing D Order would be the later of its entry time or five minutes before the end of Core Trading Hours.

The Exchange proposes to amend these rules. The Exchange states that it believes that earlier inclusion of this order type in the imbalance information published by the Exchange would enhance the information available to the marketplace leading into the Closing Auction.²⁴ The Exchange also states that it believes that including Closing D Orders in its publicly disseminated imbalance information earlier would provide more information to the marketplace about the volume and type of orders going into the Closing Auction as well as additional time for the market to respond to any auction imbalances.²⁵

²⁴ See id.

²⁵ See id., at 19372-73.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁶ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁷ which requires, among other things, that the rules of a national securities exchange be 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 regulating, clearing, settling, processing information with respect to, and 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 Commission believes that the proposed rule change to include Closing D Orders in the Closing Auction Imbalance Information published by the Exchange beginning ten minutes before the scheduled end of Core Trading Hours, rather than the current five minutes, is reasonably designed to enhance the information available to the marketplace leading into the Closing Auction and to provide additional time for the market to respond to auction imbalances. The Commission also believes that the proposal to publish a Significant Closing Imbalance based on a dynamic formula—rather than the current Regulatory Closing Imbalance at the Closing Auction Imbalance Freeze Time if the Closing Imbalance is 500 round lots or more—is reasonably designed to provide meaningful information to market participants about interest in a security and to assist market participants in trading in the Closing Auction in that security.

²⁶ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁷ 15 U.S.C. 78f(b)(5).

Moreover, allowing the Exchange the flexibility to determine the percentage amounts and notional value in the formula for what would constitute a Significant Closing Imbalance is reasonably designed to enable the Exchange to take market movements and the characteristics of different securities into consideration and to update the metrics if needed. Finally, the Commission believes that it is reasonable for the Exchange to determine the Imbalance Reference Price for the Closing Auction in a security in the same way the Exchange currently determines the Imbalance Reference Price for the Closing Auction Imbalance Information, because this change would enhance consistency in the Exchange's rulebook and because bounding the Imbalance Reference Price by the BBO is reasonably designed to keep the Imbalance Reference Price in line with actual trading in that security.

Based on the foregoing, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁸ that the proposed rule change (SR-NYSE-2024-13) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁹

Sherry R. Haywood,

Assistant Secretary.

²⁸ 15 U.S.C. 78s(b)(2).

²⁹ 17 CFR 200.30-3(a)(12).