

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99719; File No. SR-NYSE-2024-13)

March 12, 2024

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change for Amendments to Rule 7.35 and Rule 7.35B

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on March 1, 2024, 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, II, and III 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 amendments to Rule 7.35 (General) and Rule 7.35B (DMM-Facilitated Closing Auctions) to align the definition of Imbalance Reference Price for a Closing Imbalance; replace the Regulatory Closing Imbalance with an enhanced Significant Closing Imbalance; and include Closing D Orders in the Total Imbalance calculation ten minutes before the scheduled end of Core Trading Hours. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 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 amendments to Rule 7.35 (General) and Rule 7.35B (DMM-Facilitated Closing Auctions) to align the definition of Imbalance Reference Price for a Closing Imbalance; replace the Regulatory Closing Imbalance with an enhanced Significant Closing Imbalance; and include Closing D Orders in the Total Imbalance calculation ten minutes before the scheduled end of Core Trading Hours.

The proposed changes would enhance the imbalance information that the Exchange publishes going into the Closing Auction, thereby promoting greater transparency in the Closing Auction process and the Exchange’s marketplace. Specifically, the Exchange would replace the Regulatory Closing Imbalance publication based on static criteria with a “Significant Closing Imbalance” based on elastic criteria based on the recent average close size of the security and the notional value of the imbalance. Similarly, the Exchange would include Closing D Orders in the Closing Auction Imbalance Information at their undisplayed discretionary price ten minutes before the end of Core Trading Hours, five minutes earlier than currently. The proposed change would also be reflected in the definition of Paired and Unpaired Quantity, which for the Closing

Auction would include Closing D Orders ten minutes before the scheduled end of Core Trading Hours.

Finally, the Exchange would align the definition of “Imbalance Reference Price” for a Closing Imbalance with that utilized for Imbalance Reference Price for the Closing Auction Imbalance Information in Rule 7.35B(e)(3).

Background

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.

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.⁴ 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.⁵ The Closing Auction Imbalance Information also includes an Imbalance Reference Price, which is the Exchange Last Sale Price bound by the Exchange BBO.⁶

⁴ See Rule 7.35B(e)(1)(A). DMM Orders, as defined in 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.

⁵ See 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.

⁶ See Rule 7.35B(e)(3).

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.⁷ The Closing Auction Imbalance Information is updated at least every second, unless there is no change to the information, and is disseminated until the Closing Auction begins.⁸ In addition, if at the Closing Auction Imbalance Freeze Time (e.g., 3:50 p.m. Eastern Time)⁹ the Closing Imbalance¹⁰ is 500 round lots or more, the Exchange will disseminate a Regulatory Closing Imbalance to both the securities information processor and proprietary data feeds.¹¹

Proposed Rule Change

The proposed amendments to Rule 7.35 and Rule 7.35B are the latest in a series of enhancements the Exchange has made to the transparency of its marketplace since 2008.¹² As

⁷ See Rule 7.35(b)(1)(C)(ii).

⁸ See Rule 7.35(c)(1) and (2).

⁹ See Rule 7.35(a)(8) (defining the “Closing Auction Imbalance Freeze Time” to be 10 minutes before the scheduled end of Core Trading Hours).

¹⁰ As defined in 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. 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.

¹¹ See Rule 7.35B(d)(1).

¹² In 2010, the Exchange began disseminating Closing Auction Imbalance Information beginning ten minutes before the scheduled end of Core Trading Hours, which provides updated imbalance information and indicative closing prices. See Securities Exchange Act Release No. 61233 (December 23, 2009), 74 FR 69169 (December 30, 2009) (SR-NYSE-2009-111) (Approval Order) (“Closing Filing”). See also Securities Exchange Act Release No. 61616 (March 1, 2010), 75 FR 10533 (March 8, 2010) (SR-NYSE-2010-12) (Notice of Filing of Extension of Implementation Date of the Closing Filing). In 2019, in connection with the transition to the Pillar trading platform, the Exchange amended its rules to include Floor Broker Interest (i.e., interest verbalized in the trading crowd by a Floor broker) in Closing Auction Imbalance Information. In 2020, the Exchange temporarily suspended the availability of Floor Broker Interest to be eligible to participate in the Closing Auction, as defined in Rule 7.35, and in 2021, permanently excluded Floor Broker Interest from the Closing Auction and required all Floor brokers to enter orders for the Closing Auction electronically during Core Trading Hours. See Securities Exchange Act Release No. 92480 (July 23, 2021), 86 FR 40886 (July 29, 2021) (SR-NYSE-2020-95). In 2022, the Exchange made further changes to the Closing Auction, including adding price parameters within which the DMM must select a Closing Auction Price, in order to make the Closing Auction more transparent and deterministic. See Securities Exchange Act Release No. 95691 (September 7, 2022), 87 FR 56099 (September 13, 2022) (SR-NYSE-2022-32).

noted, the proposal would enhance the imbalance information that the Exchange publishes going into the Closing Auction, one of the most critical periods in the trading day. The Exchange's Closing Auction is a recognized industry reference point,¹³ and member organizations and the investing public receive substantial benefits from increased liquidity at the close and high levels of executions at the Exchange's closing price on a daily basis. Indeed, given today's fragmented marketplace,¹⁴ the centralized liquidity available during the Closing Auction is essential for price discovery and the stability and transparency of the marketplace.

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 would 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

¹³ For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

¹⁴ While Regulation NMS has enhanced competition, it has also fostered a "fragmented" market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that "such competition can lead to the fragmentation of order flow in that stock." See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

all other securities,¹⁵ and

- 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.¹⁶

For purposes of calculating the proposed Significant Closing Imbalance, Average Closing Size will 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 will 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 will be considered for purposes of the Significant Closing Imbalance calculation.¹⁷

For example, assume that XYZ is an S&P 400® Index stock with a closing imbalance of 35,000 shares and a reference price of \$10.00. Assuming that the 20-day Average Closing Size for XYZ is 100,000 shares, the imbalance would be considered Significant because the current imbalance of 35,000 shares is greater than 30,000 shares, which represents 30% of the 100,000 shares, and the notional value of \$350,000 (35,000 shares multiplied by \$10.00) is greater than \$200,000. However, if XYZ was a non-S&P Index security, the same imbalance would not be considered significant because the 35,000 share imbalance would be less than 70,000 shares, or 70% of 100,000.

¹⁵ See proposed Rule 7.35B(d)(1)(A).

¹⁶ See *id.* at (B).

¹⁷ See *id.* at (C).

To effectuate these changes, the Exchange would replace “Regulatory” with “Significant” in Rules 7.35 and 7.35B where the phrase “Regulatory Closing Imbalance” appears, i.e., in Rule 7.35(a)(4)(A)(ii) and Rule 7.35B(d), (d)(1), (d)(2), (e)(2), and (f)(1)(A) and (B).

The Exchange would also delete current subsections (A), (B), and (C) of Rule 7.35B(d)(1) governing publication of a Regulatory Closing Imbalance and replace them with new subsections (A), (B), and (C) setting forth the proposed formula for what constitutes a “Significant” imbalance. Current Rule 7.35B(d)(1)(B), providing that a Regulatory Closing Imbalance is a one-time publication that should not be updated, would be retained in proposed Rule 7.35B(d)(1)(D). The information in current Rule 7.35B(d)(1)(C), providing that a Regulatory Closing Imbalance will be disseminated at the Closing Auction Imbalance Freeze Time regardless of whether the security has not opened or is halted or paused at that time, would be retained in proposed Rule 7.35B(d)(1).

The Exchange 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. As a result, the Exchange 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. In addition, the Exchange 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

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

In order to provide the most accurate imbalance information, the Exchange proposes to align the definition of Imbalance Reference Price for a Closing Imbalance in Rule 7.35B(d) with the current definition of Imbalance Reference Price for the Closing Auction Imbalance Information in 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 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 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 Rule 7.35B(e)(3).

²¹ See Rule 7.35B(d). See 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 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.

Closing D Orders

Finally, the Exchange proposes to include Closing D Orders earlier in the imbalance information provided to the marketplace.

As noted above, 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.

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 Unpaired Quantity as defined in Rule 7.35(a)(4)(B)(ii) to include MOC, LOC, and Closing IO

²² See proposed Rule 7.35B(d).

Orders, and beginning five minutes before the scheduled end of Core Trading Hours, Closing D Orders.

Further, 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. 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 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 to reflect the inclusion of Closing D Orders beginning ten minutes before the scheduled end of Core Trading Hours. The Exchange 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. Closing D Orders -- Limit Orders with an instruction to exercise discretion in the Closing Auction up (down) to a designated undisplayed price²³ -- are an extremely versatile order type, and the Exchange has observed that an increasing proportion of the Closing Auction is comprised of Closing D Orders.²⁴ The Exchange believes that including Closing D Orders in its publicly disseminated imbalance information earlier would provide more information to the

²³ See Rule 7.31(c)(2)(C).

²⁴ For instance, in the third quarter of 2021, D Orders constituted 36.6% of volume in the Closing Auction. As of the third quarter of 2023, D Orders comprised 42.7% of Closing Auction volume, more than any other order type. See <https://www.nyse.com/data-insights/nyse-closing-auction-dynamics-2023>.

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.

Because of the technology changes associated with the proposed changes, the Exchange proposes that, subject to approval of the proposed rule change, the Exchange will announce the implementation date of the proposed rule changes by Trader Update. Subject to approval of this proposed rule change, the Exchange anticipates that such changes will be implemented before the end of the fourth quarter of 2024.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁶ 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, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to Rule 7.35 and Rule 7.35B relating to publication of a Significant Closing Imbalance and inclusion of Closing D Orders in the Exchange's published imbalance five minutes earlier would enhance the imbalance information that the Exchange publishes and the total "mix" of information available to the marketplace leading into the Closing Auction, thereby promoting transparency and removing impediments to and perfecting

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(5).

the mechanisms of a free and open market and a national market system.

As noted above, the Exchange would retire a Regulatory Closing Imbalance based on a static round-lot trigger in favor of a Significant Closing Imbalance based on a dynamic formula that would take into account the notional size of the imbalance and the recent closing activity of the impacted security. The Exchange believes that triggering an imbalance publication based on whether the Closing Imbalance equals or exceeds a percentage of the recent 20-day average closing size and a high notional value would provide investors with a more meaningful depiction of the market interest in a security that would assist them in trading the imbalance and the Closing Auction in that security. Further, including Closing D Orders in the Total Imbalance calculation ten minutes before the scheduled end of Core Trading Hours would similarly enhance the information available to investors going into the Closing Auction and could also attract additional contra-side interest, thereby decreasing volatility and ultimately contributing to the maintenance of a fair and orderly market consistent with the protection of investors and the public interest under Section 6(b)(5) of the Act.²⁷

Allowing the Exchange the flexibility to determine the percentage amounts and notional value in the formula for what constitutes a Significant Closing Imbalance permits the Exchange to take market movements and the characteristics of different securities into consideration in real-time and update the metrics as needed. The proposal is also consistent with discretion to announce different parameters as circumstances warrant by Trader Update that is available on other exchanges.²⁸

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ See note 18, supra.

Finally, the Exchange believes that determining the Imbalance Reference Price for a Closing Auction in the same way the Exchange currently determines the Imbalance Reference Price for the Closing Auction Imbalance Information would provide a more updated depiction of the market interest available in a security when the Imbalance Reference Price is published because bounding the Imbalance Reference Price by the BBO keeps the price in line with actual trading in that security. The proposal would also promote consistency in the Exchange's rulebook, thereby removing impediments to and perfecting 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 proposed rule change is not intended to address competitive issues but rather is concerned solely with enhancing the quality of the imbalance information the Exchange publishes going into the Closing Auction, thereby promoting transparency in the Closing Auction process and the Exchange's marketplace.

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 within 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSE-2024-13 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-2024-13. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2024-13 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

Sherry R. Haywood,

Assistant Secretary.

²⁹ 17 CFR 200.30-3(a)(12).