

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81176; File No. SR-NYSE-2017-33)

July 20, 2017

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate Non-Regular Way Trading on the Exchange

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on July 10, 2017, 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 eliminate non-regular way trading on the Exchange. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 to eliminate non-regular way trading on the Exchange.

To effect this change, the Exchange proposes to amend or delete the following rules:

- Rule 12 (“Business Day”);
- Rule 14 (Non-Regular Way Settlement Instructions for Orders);
- Rule 14T (Non-Regular Way Settlement Instructions for Orders);
- Dealings and Settlements (Rules 45—299C)
- Rule 64 (Bonds, Rights and 100-Share-Unit Stocks);
- Rule 64T (Bonds, Rights and 100-Share-Unit Stocks);
- Rule 66 (U.S. Government Securities);
- Rule 73 (Seller’s Option);
- Rule 123 (Record of Orders);
- Rule 130 (Overnight Comparison of Exchange Transactions);
- Rule 132 (Comparison and Settlement of Transactions Through A Fully-Interfaced or Qualified Clearing Agency);
- Rule 137 (Written Contracts);
- Rule 137A (Samples of Written Contracts);
- Rule 177 (Delivery Time— “Cash” Contracts);
- Rule 179 (“Seller’s Option”);

- Rule 189 (Unit of Delivery);
- Rule 235 (Ex-Dividend, Ex-Rights);
- Rule 235T (Ex-Dividend, Ex-Rights);
- Rule 236 (Ex-Warrants);
- Rule 236T (Ex-Warrants);
- Rule 241 (Interest—Added to Contract Price);
- Rule 257 (Deliveries After “Ex” Date);
- Rule 257T (Deliveries After “Ex” Date); and
- Rule 282 (Buy-in Procedures).

Background and Proposed Rule Change

The current standard trade settlement cycle for most securities transactions is three business days after trade date (“T+3”).⁴ The standard settlement cycle is referred to as “regular way” settlement. Settlement cycles that are longer or shorter than the standard cycle are referred to as “non-regular way” settlement instructions. Rule 14(a)(i) defines non-regular way settlement instructions as instructions allowing for settlement other than regular way. Non-regular way settlement instructions are (1) cash; (2) next

⁴ See SEC Rule 15c6-1(a), 17 CFR 240.15c6-1(a). SEC Rule 15c6-1(a) has been amended to shorten the settlement cycle to two business days (“T+2”), which will be operative on September 5, 2017 (the “T+2 regular way settlement initiative”). See Securities Exchange Act Release No. 80295, 82 FR 15564 (May 30, 2017) (File No. S7-22-16). The Exchange has also amended its rules to reflect the T+2 regular way settlement initiative. See Securities Exchange Act Release No. 80021 (February 10, 2017), 82 FR 10931 (February 16, 2017) (SR-NYSE-2016-87) (“Release No. 80021”).

day; and (3) seller's option.⁵ Currently, the Exchange only offers non-regular way settlement instructions for orders manually represented by Floor brokers.⁶

Because non-regular way settlement instructions are infrequently used by market participants,⁷ the Exchange proposes to eliminate non-regular way settlement instructions.

To effect this change, the Exchange proposes to amend or delete the following Rules:

⁵ See Rule 14(b). Orders indicating cash settlement instructions require delivery of the securities on the same day as the trade date. Next day settlement instructions require delivery of the securities on the first business day following the trade date. Orders that have settlement instructions of seller's option afford the seller the right to deliver the security at any time within a specified period, ranging from not less than two business days to not more than sixty days for securities and not less than two business days and no more than sixty days for U.S. government securities.

⁶ In March 2009, the Exchange amended its rules to require that all orders submitted to Exchange be submitted for regular way settlement. See Securities and Exchange Act Release No. 59446 (February 25, 2009), 74 FR 9323 (March 3, 2009)(SR-NYSE-2009-17) ("Release No. 58446"). In July 2009, in response to certain customer needs, the Exchange adopted Rule 14 to allow orders containing non-regular way settlement instructions to be transmitted directly to a Floor broker for manual order handling. See Securities and Exchange Act Release No. 60216 (July 1, 2009), 74 FR 33283 (July 10, 2009)(SR-NYSE-2009-59).

⁷ For example, in 2016, the Exchange and its affiliate NYSE MKT LLC combined received a total of 5 orders with non-regular way instructions, 2 of which were later reversed. All 5 orders were received in the last two trading months of the year. No orders with non-regular way instructions have been received on either market to date in 2017. In contrast, at the time the Exchange eliminated non-regular way settlement instructions in 2009, the Exchange was receiving, on average, 28 cash orders, 48 next day orders, and 2 seller's option orders each day. See Release No. 58446, *supra* note 5, 74 FR at 9324 (based on a review of orders received during one week in May 2008). During the last five trading days of 2007, when the most cash, next day and seller's options orders were received, the average daily submissions were 123 for cash, 199 for next day, and 10 for seller's option. See *id.*

- Rule 12 defines the term “Business Day” and provides that on any business day that the banks, transfer agencies and depositories for securities in New York State are closed, except for orders containing non-regular way settlement instructions pursuant to Rule 14, deliveries or payments ordinarily due on such a day shall be due on the following business day. As discussed below, Rule 14 is being amended to delete non-regular way settlement. The Exchange accordingly proposes to delete the clause “Except for orders containing non-regular way settlement instructions pursuant to Rule 14,” in Rule 12(1). The Exchange also proposes to delete the clause “other than “cash” contracts made on such a day” in Rule 12(3).
- As noted, Rule 14 provides for non-regular way settlement instructions. The Exchange proposes to amend Rule 14 to provide that all bids and offers will be deemed regular way. To effect this change, the Exchange proposes to delete (i) the heading of current Rule 14 and replace it with “Bid or Offer Deemed Regular Way,” and (ii) the preamble to current Rule 14, the text of subsections (a) through (e), and the subsection heading “(f).” The Exchange further proposes to replace the rule text with the following text: “Bids and offers will be considered to be ‘regular way.’” This proposed rule is based on NYSE Arca Equities, Inc. Rule 7.8.

- Rule 14T was adopted in 2016 to reflect the upcoming transition to T+2 to reflect two day settlement.⁸ In light of the proposed changes to Rule 14, the Exchange proposes to delete Rule 14T in its entirety as moot.
- Current Dealings and Settlements (Rules 45—299C) sets forth delivery dates for cash, regular way, seller’s option and when issued and when distributed contracts for the sale of securities (Rule 64, 65). The Exchange proposes to delete all references to the cash and seller’s options. The Exchange proposes the same changes to Current Dealings and Settlements (Rules 45—299C). In the chart addressing contracts for sale of U.S. government bonds (Rule 66), the Exchange similarly proposes to delete all references to the cash and seller’s options.
- Rule 64 governs settlement instructions for bonds, rights and 100-share-unit stocks. The Exchange proposes to delete the preamble and all references to non-regular way settlement instructions from this Rule. Specifically, the Exchange would delete “(a) (i) Except as provided in (ii) below, b” and capitalize the “b” in bids in the first sentence. The Exchange proposes to insert a period after “regular way” and delete the clause “i.e., for delivery on the third business day following the day of the contract.” The Exchange further proposes to delete the last sentence of current subsection (a)(i) referring to non-regular way settlement instructions along with the parentheses. Subsections (a)(ii) and (b) through (c) would also be deleted.

⁸ In 2016, the Exchange also adopted, among other rules, Current Dealings and Settlements (Rules 45—299C), Rule 64T, Rule 235T, Rule 236T, and Rule 257T, and added preambles to the current version of each amended rule and to the rules designated with a T. See Release No. 80021, supra note 3, 82 FR at 10932.

- In light of the changes to Rule 64, the Exchange proposes to delete Rule 64T in its entirety as moot.
- Rule 66 governs settlement instructions for U.S. Government securities. The Exchange proposes to insert a period following “regular way” and delete the clause “for that security i.e., for delivery on the business day following the day of the trade.” The Exchange also proposes to delete the final sentence of the rule referring to non-regular way settlement instructions along with the parentheses.
- Rule 73 governs seller’s option. The heading and rule text would be deleted in their entirety. “Reserved” would replace “Seller’s Option” in the heading.
- Rule 123 sets forth certain record keeping requirements for orders. Subsection (f) governs order execution reports and specifies the data elements for such reports. The Exchange proposes to delete data element 14, which relates to non-regular way settlement instructions, and re-number the remaining elements.
- Rule 130 governs overnight comparison of Exchange transactions. The Exchange proposes to delete the phrase “contracts for ‘regular way’, ‘next day’ and ‘seller’s option’ settlement, as prescribed in Rule 14, in stocks, rights, warrants,” in subsection (c).
- Rule 132 governs comparison and settlement of transactions through a fully-interfaced or qualified clearing agency (as defined therein). Supplementary Material .30 of the Rule sets forth the necessary trade data elements that clearing member organizations must submit to a fully-interfaced or qualified clearing agency for the comparison and/or settlement of a round-lot regular way contract. The last paragraph of Supplementary Material .30 provides that clearing member

organizations that are a party to a round lot non-regular way contract shall submit the same trade data elements. The Exchange proposes to delete the last paragraph.

- Rule 137 addresses various aspect of written contracts for, among other things, seller's option in stocks and bonds for more than seven days, that are not submitted to the Exchange or to a qualified clearing agency for comparison. The Exchange proposes to delete the clause “‘seller's option' transactions in stocks, on 'seller's option' transactions in bonds for more than seven days, as prescribed in Rule 14 and on” in the first paragraph of the Rule.
- Rule 137A sets forth examples of written contracts. Supplementary Material .20 of the Rule provides a model for a seller's option contract for stock. The Exchange proposes to delete Supplementary Material .20 in its entirety and that current Supplementary Material .30 become Supplementary Material .20.
- Rule 177 specifies the time for delivery of transactions made for cash. The Exchange proposes to delete the rule text in its entirety and mark it “Reserved.”
- Rule 179 specifies the delivery and notice requirements for securities sold seller's option. The Exchange proposes to delete the rule text in its entirety and mark it “Reserved.”
- Rule 189 provides that buyers shall accept any portion of a lot of securities contracted for if tendered in lots of one trading unit or multiples thereof, and may buy in the undelivered portion as provided in Rule 284, except for sale made seller's option. The Exchange proposes to delete the last clause of the rule addressing the seller's option exception.

- Current Rule 235 provides that transactions in stocks, except those made for cash as prescribed in Rule 14, shall be ex-dividend or ex-rights on the second business day preceding the record date fixed by the corporation or the date of the closing of transfer books. The Exchange proposes to delete the references to transactions made for cash. The same changes are proposed for Rule 235T.
- Current Rule 236 provides that transactions in securities that have subscription warrants attached, except those made for cash as prescribed in Rule 14, will begin on the second business day preceding the date of expiration of the warrants, except that when expiration occurs on a non-business day, in which case it will begin on the third business day preceding date of expiration. The Rule further provides that transactions in securities made for “cash” shall be ex-warrants on the business day following the date of expiration of the warrants. The Exchange proposes to delete the references to transactions made for cash. The same changes are proposed for Rule 236T.
- Rule 241 governs computation of interest on the principal amount in bonds, except that in the case of contracts made seller’s option such interest shall be computed only up to but not including the day when delivery would have been due if the contract had been made regular way. The Exchange proposes to delete the last clause in the rule containing the exception for contracts made seller’s option.
- Rule 257 governs deliveries after a security is sold before it is ex-dividend or ex-rights. The Exchange proposes to delete the clause referring to securities sold

thereafter to and including the record date for cash. The same change is proposed for Rule 257T.

- Rule 282A sets forth the procedures for a buyer to close out a contract in securities, except one where its close-out is governed by the rules of a Qualified Clearing Agency, which has not been completed by the seller in accordance with its terms. Subsection (d) provides that where the buyer is a customer (i.e., other than another member organization), upon failure of a defaulting member organization to effect delivery in accordance with a “buy-in” notice, among the ways the contract may be closed-out is by purchasing for cash as prescribed in Rule 14 in the best available market. The Exchange proposes to eliminate this clause in Rule 282A(d). Further, the Exchange proposes to delete references to contracts made for cash in Supplemental Material .70.

The Exchange will announce the operative date of the elimination of non-regular way settlement instructions by Trader Update, which the Exchange anticipates will be before the September 5, 2017 implementation of the T+2 regular way settlement initiative.

2. Statutory Basis

The Exchange believes that 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) of the Act,¹⁰ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and 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 eliminating non-regular way trading on the Exchange removes impediments to and perfects a national market system by eliminating little-used order instructions that involve manual handling by Floor traders, thereby furthering the immediate and automatic execution of orders on the Exchange in the most efficient manner. The Exchange believes that eliminating these order instructions would be consistent with the public interest and the protection of investors because investors will not be harmed by the removal of little-used order instructions that are remnants of a time when the Exchange functioned as a manual auction market.¹¹ The Exchange further believes that deleting corresponding references to delete non-regular way order instructions also removes impediments to and perfects the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange's rulebook and reduce potential confusion that may result from having such references in the Exchange's rulebook. Removing such obsolete cross references would also further the goal of transparency and add clarity 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 imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the

¹¹ See Release No. 59446, supra note 8, 74 FR at 9323.

Act. The proposed change is not designed to address any competitive issue but rather would remove little used, anachronistic order instructions, thereby reducing confusion and making the Exchange's rules easier to understand and navigate.

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 Act¹² and Rule 19b-4(f)(6) thereunder.¹³ 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)(iii) of the Act¹⁴ and subparagraph (f)(6) Rule 19b-4 thereunder.¹⁵

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

¹² 15 U.S.C. 78s(b)(3)(A)(iii).

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

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)¹⁶ 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 e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2017-33 on the subject line.

Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2017-33. 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

¹⁶ 15 U.S.C. 78s(b)(2)(B).

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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2017-33 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.¹⁷

Eduardo A. Aleman
Assistant Secretary

¹⁷ 17 CFR 200.30-3(a)(12).