

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81880; File No. SR-NYSE-2017-51)

October 16, 2017

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rules 80C, 104, 107B, and 128

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 October 3, 2017, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“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 to amend Rules 80C, 104, 107B, and 128. 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 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 amend Rule 80C(b) (Limit Up-Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility) to conform its rule governing trading pauses to forthcoming changes to be implemented to the Regulation NMS Plan to Address Extraordinary Market Volatility (“Plan”);⁴ Rule 104(a)(1)(B) (Dealings and Responsibilities of DMMs) and Rule 107B (Supplemental Liquidity Providers) to delete obsolete rule cross references; and Rule 128(a) (Clearly Erroneous Executions For NYSE Equities) to exclude executions as a result of a reopening transaction from review as clearly erroneous transactions.

Discussion

Among other things, LULD Amendment 12 would require that trading centers may not resume trading in an NMS Stock following a Trading Pause without Price Bands in such NMS Stock.⁵ Such Price Bands would be based on the Reopening Price reported by a Primary Listing Exchange, unless a Primary Listing Exchange notifies the Processor that it is unable to reopen trading in an NMS Stock due to a systems or technology issue. In such case, the Price Band would be the last effective Price Band that was in a Limit State before the Trading Pause.

⁴ See Securities Exchange Act Release No. 79845 (January 19, 2017), 82 FR 8551 (January 26, 2017) (File No. 4-631) (Order Approving the twelfth amendment to the Plan) (“LULD Amendment 12”). See also Securities Exchange Act Release Nos. 80455 (April 13, 2017), 82 FR 18519 (April 19, 2017) (File No. 4-631) (Order approving the thirteenth amendment to the Plan) and 81720 (September 26, 2017), 82 FR 45922 (October 2, 2017) (File No. 4-631) (Notice of immediate effectiveness of fifteenth amendment to the Plan, which extended the implementation date of LULD Amendment 12).

⁵ Unless otherwise specified, capitalized terms used herein have the same meaning as set forth in the Plan or in Exchange rules.

Accordingly, once LULD Amendment 12 is implemented, trading centers may not resume trading if a Primary Listing Exchange does not report a Reopening Price within ten minutes after the declaration of a Trading Pause. In addition, under LULD Amendment 12, if an NMS Stock is in a Trading Pause during the last ten minutes of trading before the end of Regular Trading Hours, the Primary Listing Exchange shall not reopen trading and shall attempt to execute a closing transaction using its established closing procedures.

In anticipation of the implementation of LULD Amendment 12, the Exchange proposes to amend Rule 80C(b) to delete obsolete text and conform the remaining text to LULD Amendment 12.⁶ First, the Exchange proposes to amend Rule 80C(b) to delete the text following the heading of Rule 80C(b) and delete Rules 80C(b)(1), (b)(1)(A) – (C), and (b)(3). This rule text governed how trading pauses were triggered before the Plan was implemented and is now obsolete. Second, the Exchange proposes that the text currently set forth in Rule 80C(b)(2), (b)(2)(B), and (b)(2)(E) would be moved to be the rule text for Rule 80C(b). In moving this rule text, the Exchange proposes to delete the rule text currently set forth in Rules 80C(b)(2)(C) and (D) as inconsistent with LULD Amendment 12, described above.⁷ Third, the Exchange proposes to re-number current Rule 80C(b)(4) as proposed Rule 80C(b)(1) and amend this paragraph to add that the Exchange would notify the Processor if the Exchange is unable to reopen trading at the end of a Trading pause due to a systems or technology issue, which is

⁶ The proposed amendments to Rule 80C are based on amendments to NYSE Arca, Inc. (“NYSE Arca”) Rule 7.11-E that similarly relate to the implementation of LULD Amendment 12. See Securities Exchange Act Release Nos. 79846 (January 19, 2017), 82 FR 8548 (January 26, 2017) (SR-NYSEArca-2016-130) (Approval Order) (the “NYSE Arca Reopening Filing”).

⁷ The text that the Exchange would delete provides that “[i]n the event of a significant imbalance at the end of a Trading Pause, the Exchange may delay the re-opening of a security” and “[t]he Exchange will issue a notification if it cannot resume trading for a reason other than a significant imbalance.”

consistent with LULD Amendment 12. Fourth, the Exchange proposes to delete Rule 80C(b)(5) as inapplicable to the Exchange application of Rule 80C, which governs trading only in NYSE-listed securities.

Finally, the Exchange proposes to add proposed Rule 80C(b)(2), which would specify how the Exchange would process orders if there is a Trading Pause during the last ten minutes of trading before the end of Regular Trading Hours. As proposed, if the reopening following a Trading Pause would be in the last ten minutes of trading before the end of regular trading hours, the Exchange would not reopen trading in that security and would not transition to continuous trading. As further proposed and consistent with LULD Amendment 12, the Exchange would remain paused and would conduct a closing transaction in such security as provided for in Rule 123C. The proposed rule would further provide that in such circumstances, MOO and LOO Orders entered during the Trading Pause would not participate in the closing auction and would be cancelled.⁸ The Exchange proposes to add this rule text to provide transparency to member organizations of how orders that are designated to participate in a reopening transaction would be handled if the Exchange transitions to a closing auction without first reopening trading.⁹

In addition, the Exchange proposes to amend Rule 104(a)(1)(B)(iii) and (iv) and Rule 107B(d)(1)(B)(iii) and (iv) to remove obsolete cross references and to reflect that the applicable percentages are based on how a security is designated under the Plan.¹⁰ Rules 104(a)(1)(B) and

⁸ This proposed rule text is based on NYSE Arca Rule 7.35-E(e)(10). See Securities Exchange Act Release No. 81603 (September 13, 2017), 82 FR 43609 (September 18, 2017) (SR-NYSEArca-2017-102) (“Arca Filing”).

⁹ The Exchange also proposes non-substantive amendments to changes references from the term “shall” to the term “will.”

¹⁰ The Exchange’s affiliated equities exchanges have made similar change to their rules. See Arca Reopen [sic] Filing, supra note 8 (amending NYSE Arca Rule 7.23-E(a)(1)(B)(iii) and (iv)) and Securities Exchange Act Release No. 80577 (May 2, 2017), 82 FR 21446 (May 8, 2017) (SR-NYSEMKT-2017-04) (Order approving NYSE

107B(d)(1)(B) set forth, among other things, the obligation of DMMs and SLMMs to maintain a bid (offer) not more than the “Designated Percentage” away from the then current National Best Bid (Offer) (“NBBO”) and if the NBBO changes such that the DMM’s or SLMM’s bid/offer is more than the “Defined Limit” away from the NBBO, the DMM or SLMM must enter an updated bid (offer). The Exchange proposes to amend Rule 104(a)(1)(B)(iii) and (iv) and Rule 107B(d)(1)(B)(iii) and (iv) to remove cross-references to Rule 80C and instead use Plan definitions for specifying which securities are subject to which “Designated Percentages” and “Defined Limits.” Accordingly, as proposed, these rules would be amended as follows:

- the phrase “securities subject to Rule 80C(a)(i)” would be replaced with the phrases “Tier 1 NMS Stocks under the Limit Up-Limit Down Plan” or “Tier 1 NMS Stocks;”
- the phrase “securities subject to Rule 80C(a)(ii)” would be replaced with the phrases “Tier 2 NMS Stocks under the Limit Up-Limit Down Plan with a price equal to or greater than \$1.00” or “Tier 2 NMS Stocks with a price equal to or greater than \$1.00;”
- the phrase “securities subject to Rule 80C(a)(iii)” would be replaced with the phrase “Tier 2 NMS Stocks with a price lower than \$1.00;” and
- The phrase “when Rule 80C is not in effect” would be deleted.

Because rights and warrants are not subject to the Plan, but are subject to market maker quoting requirements, the Exchange proposes to provide that for purposes of Rule 104(a)(1)(B)(iii) and (iv) and Rule 107B(d)(1)(B)(iii) and (iv), rights and warrants would be considered Tier 2 NMS Stocks. This proposed rule text is consistent with current practice and

American LLC (“NYSE American”) Rule 7.23E(a)(1)(B)(iii) and (iv)). The proposed rule changes are also based on Bats BZX, Inc. (“BZX”) Rule 11.8(d)(2)(D) and (E).

the now-obsolete cross references to Rule 80C.¹¹

Finally, the Exchange proposes to amend Rule 128(a) to provide that executions as a result of reopening transaction would not be eligible for a request to review as clearly erroneous under paragraph (b) of Rule 128. This proposed rule changes is based on changes approved in the NYSE Arca Reopening Filing for NYSE Arca Rule 7.10-E.¹² The Exchange believes that the proposed rule text would implement the standardized trading practice that reopening auctions would not be eligible for review as a clearly erroneous execution.

Because of the technology changes associated with the proposed amendments to Rule 80C and 128, the Exchange will announce the implementation date of those proposed rule changes by Trader Update, which will be no later than the scheduled implementation date of LULD Amendment 12. The Exchange proposes that the amendments to Rule 104 and 107B would be operative upon the operative date of this proposed rule change.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹³ in general, and furthers the objectives of Section 6(b)(5),¹⁴ 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

¹¹ Securities previously subject to Rule 80C(a)(ii) were all NMS Stocks, other than securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, with a price equal to or greater than \$1 and securities previously subject to Rule 80C(a)(iii) were all NMS Stocks, other than securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products, with a price less than \$1.00. See Securities Exchange Act Release No. 64420 (May 6, 2011), 76 FR 27675 (May 12, 2011) (SR-NYSE-2011-21) (Notice of filing).

¹² See NYSE Arca Reopening Filing, supra note 6.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

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 the proposed changes would 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, because they are designed to conform the Exchange's rules with LULD Amendment 12.

The Exchange believes that the proposed amendments to Rule 80C would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would remove obsolete rule text and amend the remaining rule text to conform to the requirements of LULD Amendment 12, described above. The Exchange further believes that the proposed amendments to Rule 104(a)(1)(B) and Rule 107B(d)(1)(B) would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would remove obsolete rule references and conform the Exchange's rules with those of NYSE American and BZX. Finally, the Exchange believes that the proposed amendments to Rule 128(a) would provide for uniform clearly erroneous rules across all Primary Listing Exchanges, thus providing certainty to member organizations of when a trade would be eligible for review as a clearly erroneous execution

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 rule change is not designed to address any competitive issues, but rather, to eliminate obsolete rule text and conform Exchange rules with changes that

will be implemented with LULD Amendment 12.

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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ 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 Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

Commission shall institute proceedings under Section 19(b)(2)(B)¹⁹ 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-2017-51 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-2017-51. 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,

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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-2017-51 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.²⁰

Eduardo A. Aleman
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).