

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84804; File No. SR-NYSE-2018-58)

December 12, 2018

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Rule 123C to Extend the Cut-Off Times for Order Entry and Cancellation for Participation in the Closing Auction and When the Exchange Will Begin Disseminating Order Imbalance Information for the Closing Auction

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 November 30, 2018, New York Stock Exchange LLC (“NYSE” or “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 Rule 123C (The Closing Procedures) to extend the cut-off times for order entry and cancellation for participation in the closing auction and when the Exchange will begin disseminating Order Imbalance Information for the closing auction. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 to amend Rule 123C (The Closing Procedures) to extend the cut-off times for order entry and cancellation for participation in the closing auction and when the Exchange would begin disseminating Order Imbalance Information⁴ for the closing auction from 3:45 p.m. to 3:50 p.m. Eastern Time.⁵ The Exchange also proposes non-substantive amendments to Rule 123C.

Proposed Amendment to Change 3:45 p.m. to 3:50 p.m. in Rule 123C

Rule 123C sets forth the closing procedures on the Exchange. Among other things, Rule 123C specifies the time by which by which Market-on-Close (“MOC”) Orders,⁶ Limit-on-Close (“LOC”) Orders,⁷ and Closing Offset (“CO”) Orders⁸ may be entered or cancelled. Until 3:45

⁴ Order Imbalance Information is described under Rule 123C(6)(a)(i) and (ii).

⁵ Unless otherwise noted, all times listed in this proposal are Eastern Time.

⁶ An MOC Order is a Market Order in a security that, by its terms, is to be executed in its entirety at the closing price. See Rule 13(c)(4).

⁷ An LOC Order is a Limit Order in a security that is entered for execution at the closing price of the security on the Exchange provided that the closing price is at or within the specified limit. See [sic] 13(c)(2).

⁸ A CO Order is a day Limit Order to buy or sell as part of the closing transaction where the eligibility to participate in the closing transaction is contingent upon: (i) an imbalance in the security on the opposite side of the market from the CO Order; (ii) after taking into account all other types of interest eligible for execution at the closing price, there is still an imbalance in the security on the opposite side of the market from the CO Order; and (iii) the limit price of the CO Order being at or within the price of the closing transaction. See Rule 13(c)(1).

p.m., these orders can be entered or cancelled without restriction.⁹ At 3:45 p.m., if there is a significant imbalance of buy MOC and marketable LOC Orders against sell MOC and marketable LOC Orders, the Exchange will publish a Mandatory MOC/LOC Imbalance Publication.¹⁰ After 3:45 p.m., MOC and LOC Orders may be entered only to offset a Mandatory MOC/LOC Imbalance Publication.¹¹ In addition, between 3:45 p.m. and 3:58 p.m., MOC, LOC, and CO Orders may be cancelled or reduced in size only to correct a legitimate error.¹² In addition, as provided for in Rule 123C(6), at 3:45 p.m., the Exchange begins disseminating an Order Imbalance Information Data Feed for the close. Supplemental Material .40 to Rule 123C further provides that if not otherwise specified, if the scheduled close of trading is before 4:00 p.m., the times specified in Rule 123C shall be adjusted based on the early scheduled time, and references to 3:45 p.m. shall mean 15 minutes before the early scheduled close.

The Exchange proposes to amend Rule 123C to change all references to 3:45 p.m. in the Rule to 3:50 p.m.¹³ The Exchange also proposes to amend Supplementary Material .40 to Rule

⁹ See Rule 123C(2)(a).

¹⁰ A Mandatory MOC/LOC Imbalance Publication is the dissemination of information that indicates a disparity between MOC and marketable LOC interest to buy and MOC and marketable LOC interest to sell, measured at 3:45 p.m. See Rule 123C(1)(d). Rule 123C(4) sets forth how the MOC and LOC Imbalance is to be calculated and Rule 123C(5) sets forth the circumstances of when a Mandatory MOC/LOC Imbalance Publication would be published.

¹¹ See Rules 123C(2)(b)(i) and (ii).

¹² See Rule 123C(3)(b). A “legitimate error” means an error in any term of an MOC or LOC Order, such as price, number of shares, side of the transaction (buy or sell) or identification of the security. See Rule 123C(1)(c). After 3:58 p.m., MOC, LOC, and CO Orders may not be cancelled for any reason. Rule 123(c)(3)[sic].

¹³ To effect this change, the Exchange proposes to amend Rules 123C(1)(b), (d), (d)(ii), and (f); 123C(2)(a), (a)(i), (b), (b)(ii), (c)(i), (c)(ii), and (c)(iii); 123C(3)(a), (b); 123C(4)(a)(i); Rule 123C(5)(a), (b), (b)(i), (b)(ii), (c); and Rule 123C(6)(a)(iv), (a)(v), and (b).

123C to provide that references to 3:50 p.m. shall mean 10 minutes before the early scheduled close. This proposed rule change would have the substantive effect of changing: (1) the publication time for the Mandatory MOC/LOC Imbalance Publication; (2) the cut-off time for unrestricted entry and cancellation of MOC Orders and LOC Orders; (3) cancellation of CO Orders; and (4) the time when the Exchange would begin disseminating Order Imbalance Information for the close.

As the equities markets continue to evolve and become more efficient and automated, the Exchange believes that the current cut-off times can be extended and still serve the same purpose. The Exchange believes that the proposed changes would give member organizations greater control over their MOC, LOC, and CO Orders while continuing to provide market participants enough time at the end of the trading day to react to and offset closing order imbalances. Shortening the time frame for order entry and cancellation restrictions and when Order Imbalance Information would be disseminated is also consistent with the related cut-off times available on other equity exchanges.¹⁴

Non-Substantive Amendments to Rule 123C

The Exchange proposes to amend Rule 123C(1)(c) to include CO Orders in the definition of “legitimate error”. This change would harmonize the definition of “legitimate error” with Rule 123C(3)(B), which sets forth the cut-off time for when an MOC, LOC, and CO Order may

¹⁴ The Commission recently approved a proposed rule change by the Nasdaq Stock Market LLC (“Nasdaq”) to move the cut-off times for the entry of MOC and LOC Orders from 3:50 p.m. to 3:55 p.m. See Securities Exchange Act Release No. 84454 (October 19, 2018), 83 FR 53923 (October 25, 2018) (SR-Nasdaq-2018-68) (Approval Order). In addition, Cboe BZX Exchange, Inc. (“BZX”) offers “Late-Limit-On-Close Order” and accepts this order until 4:00 p.m. and BZX uses a 3:55 p.m. cut-off for regular MOC and LOC Order entry in its closing auction. See BZX Rules 11.23(a)(11) and (c)(1)(A). Finally, the Exchange’s affiliate, NYSE Arca, Inc. (“NYSE Arca”) initiates its “Closing Auction Imbalance Freeze” for all MOC and LOC Orders at 3:59 p.m. See NYSE Arca Rule 7.35-E(d)(2).

be cancelled or reduced in size to correct a legitimate error.

The Exchange also proposes the following non-substantive changes to Rule 123C: (i) remove the period from the titles of the sections (1), (2), (3), and (5) to conform to the punctuation in other sections the Rule; and (ii) capitalize the word “Orders” in the title of section (3). The Exchange proposes a non-substantive correction to add a “.” at the end of the Rules 123C(4)(a)(i) and Rule 123(1)(b) [sic]. Finally, the Exchange proposes a non-substantive amendment to Rule 123C(5)(c) to capitalize the term “Trading Halt” as that is a defined term under Rule 123C(1)(g).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5),¹⁶ 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.

The Exchange believes that extending the cut-off times for entry and cancellation of MOC and LOC Orders, cancellation of CO Orders, as well as when the Exchange would begin disseminating Order Imbalance Information for the close would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would allow market participants to retain control over their orders for a longer period of time, and thereby assist those market participants in managing their trading at the close. As the equities markets continue to evolve and become more efficient and automated, the Exchange believes

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

that the current 3:45 p.m. cut-off time is no longer necessary for market participants to respond to offset auction imbalances. The Exchange believes that the proposed 3:50 p.m. cut-off time reflects the efficiency and more automated nature of trading in today's market, while also retaining sufficient time for market participants to react to and offset any order imbalances leading into the close. The proposed rule change should also improve price discovery by facilitating additional participation in the closing auction.

The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of free and open market and a national market system because it would more closely align the Exchange's cut-off times with those of other equity exchanges. For example, the Commission recently approved a proposed rule change by Nasdaq to move the cut-off times for the entry of MOC and LOC Orders from 3:50 p.m. to 3:55 p.m.¹⁷ In addition, BZX offers "Late-Limit-On-Close Order" and accepts this order until 4:00 p.m. and also uses a 3:55 p.m. cut-off for regular MOC and LOC Order entry in its closing auction.¹⁸ Finally, the Exchange's affiliate, NYSE Arca, initiates its "Closing Auction Imbalance Freeze" for all MOC and LOC Orders at 3:59 p.m.¹⁹ The Exchange, therefore, believes that there is ample precedent in the industry for extending the order entry cut-off time to 3:50 p.m. as proposed.

The Exchange also believes the proposal would promote just and equitable principles of trade because the proposed rule change would not alter the basic operations of the Exchange's closing procedures. Rather, the proposed rule change would provide more time for unrestricted order entry and cancellation leading into the close, while maintaining existing requirements for how to determine whether to publish a Mandatory MOC/LOC Imbalance Publication, the order

¹⁷ See supra note 14.

¹⁸ Id.

¹⁹ Id.

entry and cancellation requirements in the Rule, and the content of Order Imbalance Information. Finally, the Exchange believes that the proposed non-substantive amendments to Rule 123C would promote clarity and consistency in Exchange rules.

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, but rather will serve to improve competition for order flow at the close of trading. The Commission recently approved a proposed rule change by Nasdaq to move the cut-off times for the entry of MOC and LOC Orders from 3:50 to 3:55 p.m.²⁰ In addition, other exchanges operate closing auctions with later cut-off times than proposed by the Exchange. The Exchange believes that market participants that trade in the Exchange's closing auction would similarly benefit from a later cut-off time, while also continuing to have a period to enter orders to offset a published imbalance. The proposed cut-off time would apply equally to all market participants and reflects the current market environment where trading is increasingly more automated and efficient. The non-substantive amendments to Rule 123C are not designed to address any competitive issues.

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 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:

²⁰ See supra note 14.

- (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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2018-58 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-2018-58. 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, 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-2018-58 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.²¹

Eduardo A. Aleman
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).