

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88033; File No. SR-NYSE-2020-03)

January 24, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Add New Rule 46B to Permit the Appointment of Regulatory Trading Officials and Amend Rules 47 and 75

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 January 14, 2020, 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 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 a new Rule 46B to permit the appointment of Regulatory Trading Officials and corresponding amendments to Rules 47 and 75 to permit Regulatory Trading Officials to review whether a bid or offer was verbalized at the point of sale in time to be eligible for inclusion in 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.

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 a new Rule 46B to permit the appointment of Regulatory Trading Officials and corresponding amendments to Rules 47 and 75 to permit Regulatory Trading Officials to review whether a bid or offer was verbalized at the point of sale in time to be eligible for inclusion in the Closing Auction.

Background

Rule 46 permits the Exchange to appoint active NYSE members⁴ as Floor Officials. Rule 46 also permits the Exchange to appoint “qualified”⁵ ICE employees to act as Floor Governors, one of the more senior types of Floor Officials (“Staff Governors”).⁶ Floor Officials are

⁴ Rule 2(a) states that the term “member,” when referring to a natural person, means a natural person associated with a member organization who has been approved by the Exchange and designated by such member organization to effect transactions on the Exchange Trading Floor or any facility thereof. See also note 7, infra.

⁵ Supplementary Material .10 defines “qualified” employees as “employees of ICE or any of its subsidiaries, excluding employees of NYSE Regulation, Inc., who shall have satisfied any applicable testing or qualification required by the NYSE for all Floor Governors.”

⁶ Pursuant to Rules 46 and 46A, Floor Governors are one of several ranks of the broader category of Floor Officials, including, in order of increasing seniority, Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors and Executive Floor

delegated certain authority from the Board of Directors of the Exchange to supervise and regulate active openings and unusual situations that arise in connection with the making of bids, offers or transactions on the Trading Floor,⁷ and to review and approve certain trading actions.

Currently, only Floor Officials are authorized to act under the Exchange's rules in connection with certain situations involving bids, offers or transactions on the Trading Floor. Specifically, Rule 75 (Disputes as to Bids and Offers) mandates that disputes arising on bids or offers that are not settled by agreement between the interested members shall be settled by a Floor Official. Under Rule 47 (Floor Officials—Unusual Situations), Floor Officials have the authority to “supervise and regulate active openings and unusual situations that may arise in connection with the making of bids, offers or transactions on the Floor.”

Unusual situations may arise that could impede or prevent Floor brokers from representing customer interest before the end of Core Trading Hours.⁸ In the event of such a potentially unusual situation,⁹ a Floor broker may consult with a Floor Official and the Designated Market Maker (“DMM”) in the relevant security regarding whether and how that

Governors. See Securities Exchange Act Release No. 57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR-NYSE-2008-19).

⁷ The term “Trading Floor” is defined in Rule 6A to mean the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the “Main Room” and the “Buttonwood Room.”

⁸ See NYSE Rule 52. Core Trading Hours are defined in Rule 1.1(d) to mean the hours of 9:30 a.m. ET through 4:00 p.m. ET, or such other hours as may be determined by the Exchange, for example, an early scheduled closing time.

⁹ Unusual situations may arise, for example, if the Floor broker hand-held device malfunctions or ceases to work or if a Floor broker is physically impeded, as a result of a crowd condition beyond that of normal traffic flow on the Exchange's trading Floor or some other circumstance beyond the Floor broker's control, in his or her ability to be present at a post before the DMM closes the security. See NYSE Member Education Bulletin 19-01 (June 21, 2019).

customer interest can be represented so that it is eligible to participate in the Closing Auction.¹⁰

The Floor Official's role in this consultation is to provide an impartial professional assessment of the situation consistent with NYSE Rule 47. Currently, the DMM makes the final determination whether to include or exclude Floor broker verbal interest in the Closing Auction.

Proposed Rule Change

The Exchange proposes a new "Regulatory Trading Official" that may be consulted regarding whether a bid or offer was verbalized at the point of sale in time to be eligible for inclusion in the Closing Auction by the DMM.

Under proposed Rule 46B, Regulatory Trading Officials would be an Exchange employee or officer designated by the Chief Regulatory Officer or its designee to perform the functions specified in Exchange rules. As proposed, Regulatory Trading Officials would have the authority to review whether a bid or offer was verbalized at the point of sale in time to be eligible for inclusion in the Closing Auction. The final determination to include or exclude verbal interest from the Closing Auction will be made by the DMM pursuant to Rule 104. Floor Officials would retain the authority to settle disputes arising on bids or offers for all transactions on the Exchange other than the Closing Auction.

The Exchange believes that it is more appropriate for a regulatory employee to consult with a Floor broker and DMM relating to the timely entry of verbal interest in the Closing

¹⁰ Floor broker buy and sell interest is eligible to participate in the Closing Auction if, by the end of Core Trading Hours, such interest is (1) entered into an Exchange system and recorded in accordance with Rule 123(e), and (2) either entered electronically or verbally represented at the point of sale. When verbally representing customer interest, Floor brokers must bid or offer by articulating the following elements: symbol, side (buy or sell), size, and, if the order is a limit order, the price. See Member Education Bulletin 19-01 (June 21, 2019); see generally Rule 123(b) (record of orders must contain the required terms of the order, including the name and amount of the security, the terms of the order and the time when such order was received).

Auction. Whether a bid or offer was verbalized at the point of sale in time to be eligible for inclusion in the Closing Auction will often require assessing whether a Floor broker complied with the rules for entry of verbal interest prior to the Closing Auction.¹¹ The Exchange believes that having a regulatory employee involved in such discussions will emphasize the importance of including verbal interest entered in a timely manner in the closing auction.

To effectuate these changes, the Exchange proposes a new Rule 46B that would provide that a Regulatory Trading Official would be an Exchange employee or officer designated by the Chief Regulatory Officer or its designee to perform those functions specified in Exchange rules.

The Exchange further proposes to amend Rule 47 to specify that, whether a bid or offer was verbalized at the point of sale in time to be eligible for inclusion in the Closing Auction by a DMM, would be governed by Rule 75(b). The proposed changes to Rule 75 would separate the current rule text into two sections. First, the existing text of Rule 75 relating to the authority of Floor Officials to resolve disputes between members arising on bids or offers would be renumbered as new subsection (a)(1) and the existing text of Supplementary Material .10 would be renumbered as new subsection (a)(2). The Exchange proposes no substantive changes to the existing text of Rule 75 or current Supplementary Material .10.

The proposed authority of Regulatory Trading Officials would be set forth in a new subsection (b) to Rule 75. Proposed Rule 75(b) would provide that a Regulatory Trading Official may be consulted regarding whether a bid or offer was verbalized at the point of sale in time to be eligible for inclusion in the Closing Auction by the DMM. The proposed rule would provide that either the Floor broker with the verbal interest or the DMM responsible for the Closing Auction in the relevant security may request Regulatory Trading Official review.

¹¹ See note 10, supra.

Proposed Rule 75(b) would also provide that if such a request has been made, the DMM will not facilitate the Closing Auction until a Regulatory Trading Official has completed his or her review. Finally, the proposed rule would provide, consistent with current rules, that the final determination to include or exclude verbal interest from the Closing Auction will be made by the DMM pursuant to Rule 104.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

In particular, the Exchange believes that creating a new category of trading official to review whether a bid or offer was verbalized in time to be included in the Closing Auction would promote just and equitable principles of trade and remove impediments to a free and open market by providing additional certainty to the Closing Auction when a dispute arises, thereby facilitating fair competition among brokers and dealers and among exchange markets. The Exchange's Closing Auction is a recognized industry reference point,¹⁴ and the Exchange believes that having a regulatory employee review whether verbal interest was correctly and timely entered at the end of the trading day would promote the efficient execution of the Closing

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

Auction, thereby contributing to fair and orderly markets and strengthening investor confidence in the market.

The Exchange believes that assigning responsibility for reviewing whether verbal interest was eligible for inclusion in the Closing Auction to a regulatory employee designated by the Chief Regulatory Officer will contribute to the protection of investors and the public interest. As noted above, the Exchange believes that regulatory employees are appropriately suited to the role of consultation regarding entry of verbal interest in time to participate in the Closing Auction. The Exchange also believes the proposed amendments further the goal of transparency and add clarity to the Exchange's rules, which would not be inconsistent with the public interest and the protection of investors because investors would not be harmed and in fact would benefit from the increased transparency and clarity in the Exchange's rules, thereby reducing potential confusion.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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 designed to address and competitive issues, but rather assign responsibility for reviewing eligibility of verbal interest for inclusion in the Closing Auction to a regulatory employee. Since the proposal does not substantively modify the Closing Auction or system functionality, the proposed changes will not impose any burden on competition.

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 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2020-03 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-2020-03. 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-2020-03 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.¹⁵

J. Matthew DeLesDernier
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).