

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95086; File No. SR-NYSE-2021-74)

June 10, 2022

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change to Amend the Provisions of NYSE Rule 7.35B

I. Introduction

On December 14, 2021, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Rule 7.35B relating to the cancellation of MOC, LOC, and Closing IO Orders before the Closing Auction. The proposed rule change was published for comment in the Federal Register on December 29, 2021.³ On February 8, 2022, pursuant to Section 19(b)(2) of the Act,⁴ the Commission extended the time period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed change.⁵

On March 22, 2022, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change.⁶ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 93849 (Dec. 22, 2021), 86 FR 74204 (Dec. 29, 2021) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 94181 (Feb. 8, 2022), 87 FR 8305 (Feb. 14, 2022).

⁶ See Securities Exchange Act Release No. 94483 (Mar. 22, 2022), 87 FR 17346 (Mar. 28, 2022) (“OIP”).

Commission has received one comment on the proposed rule change.⁷ This Order approves the proposal.

II. Description of the Proposal

The Exchange proposes to modify NYSE Rule 7.35B(f)(2), which sets forth rules pertaining to the cancellation of MOC, LOC, and Closing IO Orders before the Closing Auction Imbalance Freeze,⁸ and to make conforming changes to NYSE Rule 7.35B(j)(2)(B).

NYSE Rule 7.35B(f)(2)(A) currently provides that, between the Closing Auction Imbalance Freeze Time, which is 10 minutes before the scheduled end of Core Trading Hours,⁹ and two minutes before the scheduled end of the Core Trading Hours, MOC, LOC, and Closing IO Orders may be canceled or reduced in size only to correct a Legitimate Error.¹⁰ NYSE Rule 7.35B(f)(2)(B) currently specifies that, except as provided for in NYSE Rule 7.35B(j)(2)(B),¹¹ a request to cancel, cancel and replace, or reduce in size a MOC, LOC, or Closing IO Order entered two minutes or less before the scheduled end of the Core Trading Hours will be rejected.

⁷ See letter to Vanessa Countryman, Secretary, Commission, from Hope M. Jarkowski, General Counsel, New York Stock Exchange LLC (May 24, 2022) (“NYSE Letter”).

⁸ A “MOC Order” or “Market-on-Close Order” is a Market Order that is to be traded only during a closing auction. See NYSE Rule 7.31(c)(2)(B). A “LOC Order” or “Limit-on-Close Order” is a Limit Order that is to be traded only during a closing auction. See NYSE Rule 7.31(c)(2)(A). A “Closing IO Order” or “Closing Imbalance Offset Order” is a Limit Order to buy (sell) an in an Auction-Eligible Security that it to be traded only in a Closing Auction. See NYSE Rule 7.31(c)(2)(D).

⁹ See NYSE Rule 7.35(a)(8).

¹⁰ “Legitimate Error” means an error in any term of an order, such as price, number of shares, side of the transaction (buy or sell), or identification of the security. See NYSE Rule 7.35(a)(13).

¹¹ NYSE Rule 7.35B(j)(2)(B) currently specifies the circumstances under which the Exchange may temporarily suspend the prohibition on canceling an MOC or LOC Order in connection with the Closing Auction.

The Exchange proposes to modify NYSE Rule 7.35B(f)(2) to provide that any requests to cancel, cancel and replace, or reduce in size a MOC, LOC, or Closing IO Order that is entered between the beginning of the Auction Imbalance Freeze and the scheduled end of Core Trading Hours would be rejected. Thus, as proposed, requests to cancel, replace, or reduce in size a MOC, LOC, or Closing IO Order would have to be received before the beginning of the Auction Imbalance Freeze (i.e., 10 minutes prior to the scheduled end of Core Trading Hours), even in the case of a Legitimate Error. The Exchange represents that, since August 2021, the Exchange has not received any requests to cancel, cancel and replace, or reduce in size a MOC, LOC, or Closing IO Order between the beginning of the Auction Imbalance Freeze and two minutes before the scheduled end of Core Trading Hours.¹²

Additionally, NYSE proposes to make the following conforming changes to make NYSE Rule 7.35B(j)(2)(B) consistent with the proposed changes described above: (1) replace the reference to “two minutes before the scheduled end of Core Trading Hours” with “the beginning of the Auction Imbalance Freeze,” and (2) replace the reference to “paragraph (f)(2)(B)” with “paragraph (f)(2).” Thus, NYSE Rule 7.35B(j)(2)(B), as amended, would provide that the Exchange may temporarily suspend the prohibition on cancelling an MOC or LOC Order after the beginning of the Auction Imbalance Freeze (as such prohibition would be set forth in NYSE Rule 7.35B(f)(2), as amended).

III. Discussion and Commission Findings

After careful review of the proposal and the comment letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and

¹² See Notice, supra note 3, 86 FR at 74205.

regulations thereunder applicable to a national securities exchange.¹³ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁴ which requires, among other things, that the rules of a national securities exchange be 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, and that the rules of a national securities exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In the OIP, the Commission noted that the Exchange had separately proposed a different set of changes to its Closing Auction process,¹⁵ and that the Commission was instituting proceedings to allow for additional analysis and input concerning the instant proposed rule change's consistency with requirements of the Act and to evaluate the proposal in light of other pending proposed changes to the Closing Auction.¹⁶ In response to the OIP, the Exchange states that, because the two filings set forth independent proposed changes with distinct purposes, the Commission should approve the proposed rule change.¹⁷ The Exchange states that, while the instant proposal addresses certain orders that participate in the NYSE Closing Auction,

¹³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ See Securities Exchange Act Release No. 93037 (Sept. 16, 2021), 86 FR 52719 (Sept. 22, 2021) (SR-NYSE-2021-44) ("Closing Auction Filing").

¹⁶ See OIP, supra note 8, 87 FR at 17347.

¹⁷ See NYSE Letter, supra note 9 at 2.

the instant proposal is otherwise unrelated to changes proposed under the Closing Auction Filing.¹⁸ The Exchange further states that whereas the Closing Auction Filing proposed to modify how the Closing Auction Price would be determined and how Designated Market Makers would be able to participate in the Closing Auction, the proposed rule change in this instance proposes a discrete change pertaining only to the cancellation of MOC, LOC, and Closing IO Orders after the Auction Imbalance Freeze for the Closing Auction.¹⁹ In addition, the Exchange has withdrawn the Closing Auction Filing.²⁰

The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, because it is reasonably designed to provide greater certainty regarding MOC, LOC, and Closing IO Orders represented in the Exchange's auction imbalance information by requiring that any changes to those orders to correct a Legitimate Error be made by 10 minutes before the scheduled end of Regular Trading, which is the existing deadline for entering a MOC, LOC, or Closing IO Order, and because the restriction will apply equally to all users of MOC, LOC, or Closing IO Orders.

¹⁸ See NYSE Letter, supra note 9 at 1.

¹⁹ See NYSE Letter, supra note 9 at 1-2.

²⁰ See Securities Exchange Act Release No. 94835 (May 3, 2022), 87 FR 27669 (May 9, 2022).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-NYSE-2021-74) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,
Assistant Secretary.

²¹ 15 U.S.C. 78s(b)(2).

²² 17 CFR 200.30-3(a)(12).