

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-95301; File No. SR-NYSE-2022-31)

July 18, 2022

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Current Pilot Program Related to Rule 7.10 (Clearly Erroneous Executions)

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 July 13, 2022, 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 extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on October 20, 2022. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on October 20, 2022. The pilot program is currently due to expire on July 20, 2022.

On September 10, 2010, the Commission approved, on a pilot basis, changes to Rule 128 (Clearly Erroneous Executions) that, among other things: (i) provided for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.⁴ In 2013, the Exchange adopted a provision to Rule 128 designed to address the operation of the Plan.⁵ Finally, in 2014, the Exchange adopted two additional provisions to Rule 128 providing that: (i) a series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of an Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer, acting on his or her own motion, shall nullify any transaction that occurs

⁴ See Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR-NYSE-2010-47).

⁵ See Securities Exchange Act Release No. 68804 (Feb. 1, 2013), 78 FR 8677 (Feb. 6, 2013) (SR-NYSE-2013-11).

after a trading halt has been declared by the primary listing market for a security and before such trading halt has officially ended according to the primary listing market.⁶ Rule 128 is no longer applicable to any securities that trade on the Exchange and has been replaced with Rule 7.10, which is substantively identical to Rule 128.⁷

These changes were originally scheduled to operate for a pilot period to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility (the “Limit Up-Limit Down Plan” or “LULD Plan”),⁸ including any extensions to the pilot period for the LULD Plan.⁹ In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.¹⁰ In light of that change, the Exchange amended Rules 7.10 and 128 to untie the pilot program’s effectiveness from that of the LULD Plan and to extend the pilot’s effectiveness to the close of business on October 18, 2019.¹¹ The Exchange later amended Rule 7.10 to extend the pilot’s effectiveness to the close of business on April 20,

⁶ See Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (SR-NYSE-2014-22).

⁷ See Securities Exchange Act Release Nos. 82945 (March 26, 2019), 83 FR 13553, 13565 (March 29, 2019) (SR-NYSE-2017-36) (Approval Order) and 85962 (May 29, 2019), 84 FR 26188, 26189 n.13 (June 5, 2019) (SR-NYSE-2019-05) (Approval Order).

⁸ See Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the “Limit Up-Limit Down Release”).

⁹ See Securities Exchange Act Release No. 71821 (March 27, 2014), 79 FR 18592 (April 2, 2014) (SR-NYSE-2014-17).

¹⁰ See Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (approving Eighteenth Amendment to LULD Plan).

¹¹ See Securities Exchange Act Release No. 85523 (April 5, 2019), 84 FR 14706 (April 11, 2019) (SR-NYSE-2019-17).

2020,¹² October 20, 2020,¹³ April 20, 2021,¹⁴ October 20, 2021,¹⁵ April 20, 2022,¹⁶ and July 20, 2022.¹⁷

The Exchange now proposes to amend Rule 7.10 to extend the pilot program's effectiveness for a further three months until the close of business on October 20, 2022 while the Commission considers a proposal to make the pilot program permanent that has been filed by Cboe BZX.¹⁸ If the pilot period is not either extended, replaced or approved as permanent, the prior versions of paragraphs (c), (e)(2), (f), and (g) shall be in effect, and the provisions of paragraphs (i) through (k) shall be null and void.¹⁹ In such an event, the remaining sections of Rules 7.10 would continue to apply to all transactions executed on the Exchange. The Exchange understands that the other national securities exchanges and Financial Industry Regulatory Authority ("FINRA") will also file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to Rule 7.10.

¹² See Securities Exchange Act Release No. 87353 (October 18, 2019), 84 FR 57087 (October 24, 2019) (SR-NYSE-2019-56).

¹³ See Securities Exchange Act Release No. 88580 (April 7, 2020), 85 FR 20551 (April 13, 2020) (SR-NYSE-2020-24).

¹⁴ See Securities Exchange Act Release No. 90151 (October 9, 2020), 85 FR 65458 (October 15, 2020) (SR-NYSE-2020-83).

¹⁵ See Securities Exchange Act Release No. 91553 (April 14, 2021), 86 FR 20552 (April 20, 2021) (SR-NYSE-2021-24).

¹⁶ See Securities Exchange Act Release No. 93354 (October 15, 2021), 86 FR 58354 (October 21, 2021) (SR-NYSE-2021-59).

¹⁷ See Securities Exchange Act Release No. 94642 (April 7, 2021), 87 FR 21984 (April 13, 2022) (SR-NYSE-2022-19).

¹⁸ See SR-CboeBZX-2022-37 (July 8, 2022).

¹⁹ See supra notes 4 – 6. The prior versions of paragraphs (c), (e)(2), (f), and (g) generally provided greater discretion to the Exchange with respect to breaking erroneous trades.

The Exchange does not propose any additional changes to Rule 7.10. Extending the effectiveness of Rule 7.10 for an additional three months will provide the Exchange and other self-regulatory organizations additional time to consider whether further amendments to the clearly erroneous execution rules are appropriate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the requirements of Section 6(b) of the Act,²⁰ in general, and Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest and not to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning review of transactions as clearly erroneous. The Exchange believes that extending the clearly erroneous execution pilot under Rule 7.10 for an additional three months would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed rule change would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the amended clearly erroneous executions rule should continue

²⁰ 15 U.S.C. § 78f(b).

²¹ 15 U.S.C. § 78f(b)(5).

to be in effect on a pilot basis while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposal would ensure the continued, uninterrupted operation of harmonized clearly erroneous execution rules across the U.S. equities markets while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. The Exchange understands that the other national securities exchanges and FINRA will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating 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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²² and Rule 19b-4(f)(6) thereunder.²³ 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

²² 15 U.S.C. 78s(b)(3)(A)(iii).

²³ 17 CFR 240.19b-4(f)(6).

pursuant to Section 19(b)(3)(A)(iii) of the Act²⁴ and subparagraph (f)(6) of Rule 19b-4 thereunder.²⁵

A proposed rule change filed under Rule 19b-4(f)(6)²⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would extend the protections provided by the current pilot program, without any changes, while a permanent proposal for clearly erroneous execution reviews is being considered.²⁸ For this reason, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.²⁹

At any time within 60 days of the filing of the 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

²⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its 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.

²⁶ 17 CFR 240.19b-4(f)(6).

²⁷ 17 CFR 240.19b-4(f)(6)(iii).

²⁸ See SR-CboeBZX-2022-37 (July 8, 2022).

²⁹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission shall institute proceedings to determine whether the proposed rule 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-2022-31 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-2022-31. 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 such 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-2022-31 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.³⁰

J. Matthew DeLesDernier
Deputy Secretary

³⁰ 17 CFR 200.30-3(a)(12).