

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91449; File No. SR-NYSE-2021-21)

April 1, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.37

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on March 25, 2021, 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, 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 7.37 to specify when the Exchange may adjust its calculation of the PBBO. The proposed rule change is available on the Exchange’s website at www.nys e.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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 7.37 to specify when the Exchange may adjust its calculation of the PBBO.⁴

Generally, the Exchange updates both the PBBO and NBBO based on quote updates received from data feeds from Away Markets, which are disclosed in Rule 7.37(e). In 2015, the Exchange described in a rule filing that when it routes interest to a protected quotation, the Exchange adjusts the PBBO.⁵ The Exchange proposes to amend its rules to include that description in Rule 7.37 and provide additional specificity of when it may adjust its calculation of the PBBO.

As proposed, new paragraph (e)(1) of Rule 7.37 would provide:

The Exchange may adjust its calculation of the PBBO based on information about orders it sends to Away Markets with protected quotations, execution reports received from those Away Markets, and certain orders received by the Exchange.

⁴ The term “PBBO” is defined in Rule 1.1 to mean the Best Protected Bid and the Best Protected Offer, which in turn mean the highest Protected Bid and the lowest Protected Offer, which refer to quotations in an NMS stock that is (i) displayed by an Automated Trading Center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an Automated Quotation that is the best bid or best offer of a national securities exchange or the best bid or best offer of a national securities association. The term NBBO is defined to mean the national best bid and offer. The Exchange notes that the NBBO may differ from the PBBO because the NBBO includes Manual Quotations, which are defined as any quotation other than an automated quotation. 17 CFR 242.600(b)(37).

⁵ See Securities Exchange Act Release No. 74410 (March 2, 2015), 80 FR 12240 (March 6, 2015) (SR-NYSE-2015-09) (Notice of filing and immediate effectiveness of proposed rule change) (“Data Feed Filing”).

This proposed rule text is consistent with the Exchange’s disclosure in the Data Feed Filing and adds specificity that the Exchange may adjust its calculation of the PBBO based on execution reports received from Away Markets and certain orders received by the Exchange.⁶

Proposed Rule 7.37(e)(1) is based on MEMX LLC (“MEMX”) Rule 13.4(b) with two non-substantive differences.⁷ First, the Exchange proposes to use the term “PBBO,” which is the term used in the Exchange’s rules for the best-priced protected quotations, instead of “NBBO.” Second, the Exchange proposes to refer to “Away Markets,” which is a defined term in Rule 1.1, instead of “other venues.”

MEMX has not disclosed circumstances when “certain orders received by the Exchange” would result in an adjustment to its calculation of the PBBO, but the Exchange believes that when MEMX receives an ISO with a Day time in force (“Day ISO”), it adjusts its calculation of the PBBO. The Exchange proposes that it would also adjust its calculation of the PBBO based on receipt of a Day ISO, which is consistent with how Nasdaq Stock Market LLC (“Nasdaq”)⁸ and Cboe BZX Exchange, Inc. (“BZX”)⁹ function.

⁶ The Exchange does not adjust its calculation of the NBBO based on information about orders sent to Away Markets, execution reports from Away Markets, or certain orders received by the Exchange.

⁷ MEMX Rule 13.4(b) provides: “The Exchange may adjust its calculation of the NBBO based on information about orders sent to other venues with protected quotations, execution reports received from those venues, and certain orders received by the Exchange.”

⁸ See Nasdaq Rule 4703(j) (“Upon receipt of an ISO, the System will consider the stated price of the ISO to be available for other Orders to be entered at that price, unless the ISO is not itself accepted at that price level (for example, a Post-Only Order that has its price adjusted to avoid executing against an Order on the Nasdaq Book) or the ISO is not Displayed.”) and Securities Exchange Act Release No. 74558 (March 20, 2015) 80 FR 16050, 16068 (March 26, 2015) (SR-Nasdaq-2015-024) (Notice).

⁹ See Securities Exchange Act Release No. 74074 (January 15, 2015), 80 FR 3679, 3680 (January 23, 2015) (SR-BATS-2015-04) (Notice of filing and immediate effectiveness of proposed rule change to clarify the use of certain data feeds) (“The Exchange’s [matching engine] will update the NBBO upon receipt of a Day ISO. When a Day ISO is posted on

Specifically, the Exchange proposes that it would adjust its calculation of the PBBO upon receipt of a Day ISO Order that the Exchange displays. As described in Rule 7.37(f)(3)(C), a Day ISO is eligible for the exception to locking or crossing a protected quotation because the member organization simultaneously routes an ISO to execute against the full size of any locked or crossed protection quotations, i.e., the member organization routes ISOs to trade with contra-side protected quotations on Away Markets that are priced equal to or better than the arriving Day ISO on the Exchange. Because receipt of a Day ISO informs the Exchange that the member organization has routed ISOs to trade with Away Market contra-side protected quotations priced equal to or better than the Day ISO, upon receipt and displaying of a Day ISO, the Exchange proposes to adjust its calculation of the PBBO to exclude any contra-side protected quotations that are priced equal to or better than the Day ISO.

- For example, if the best protected bid is 10.00, Exchange A is displaying a protected offer at 10.05, and Exchange B is displaying a protected offer at 10.09, the Exchange's calculation of the PBBO would be 10.00 x 10.05. If the Exchange receives a Day ISO for 100 shares to buy priced at 10.05 that is displayed on the Exchange at 10.05, the Exchange would adjust its calculation of the PBBO to be 10.05 x 10.09 and would use this updated PBBO for execution, routing, and re-pricing determinations.

the BATS Book, the [matching engine] uses the receipt of a Day ISO as evidence that the protected quotes have been cleared, and the ME does not check away markets for equal or better-priced protected quotes. . . . In determining whether to route an order and to which venue(s) it should be routed, the [routing engine] makes its own calculation of the NBBO. . . . The [routing engine] does not utilize Day ISO Feedback in constructing the NBBO; however, because all orders initially flow through the [matching engine], to the extent Day ISO Feedback has updated the [matching engine's] calculation of the NBBO, all orders processed by the [routing engine] do take Day ISO Feedback into account.”) (“BZX Filing”).

If a Day ISO is displayed on the Exchange at a price less aggressive than its limit price (e.g., a Day ISO ALO that, if displayed at its limit price, would lock displayed interest on the Exchange), the Day ISO still informs the Exchange that the member organization has routed ISOs to trade with contra-side protected quotations on Away Markets that are priced equal to or better than the *limit price* of arriving Day ISO on the Exchange. The Exchange would therefore use the limit price of the Day ISO ALO to determine how to adjust its calculation of the contra-side Away Market PBBO, provided that contra-side displayed interest on the Exchange equal to the limit price of the Day ISO ALO would not be considered cleared. The price at which the arriving Day ISO ALO would be displayed would be the price that informs the Exchange's calculation of the same-side PBBO.

For example, when the best protected bid is 10.00 and Exchange A is displaying a protected offer at 10.05 and the Exchange's best displayed offer is 10.07, the Exchange's calculation of the PBBO would be 10.00 x 10.05, then:

- If the Exchange receives ALO "1" to buy at 10.06, it would be displayed at 10.04 and be assigned a working price of 10.05, which is the PBO (displayed on Exchange A),¹⁰ and the Exchange would adjust the PBBO to be 10.04 x 10.05.
- If next, the Exchange receives Day ISO ALO "2" to buy at 10.07, the Exchange would be permitted to display that order at a price that crosses Exchange A's PBO because it is a Day ISO. However, because it locks the Exchange's best displayed offer, due to its ALO modifier, the Exchange would display Day ISO ALO "2" at 10.06 and it would have a working price of 10.06.¹¹ In this scenario, the

¹⁰ See Rule 7.31(e)(2)(B)(i).

¹¹ See Rule 7.31(e)(3)(D)(ii). Currently, the Exchange would display such Day ISO ALO "2" at 10.06 and would adjust its calculation of the same-side PBBO and reprice same-

Exchange proposes to adjust its calculation of the PBBO to be 10.06 x 10.07 and use this updated PBBO for execution, routing, and re-pricing determinations, including repricing the ALO “1” to buy to both work and display at its limit price of 10.06.

The Exchange believes that adjusting the PBBO in this manner is consistent with Regulation NMS because the member organization that submitted the Day ISO ALO to buy priced at 10.07 has represented that it has sent ISOs to trade with protected offers on other exchanges priced at 10.07 or lower. The only reason that such order would not be displayed at 10.07 on the Exchange is because it has an ALO modifier and cannot trade with the Exchange’s displayed offer of 10.07. However, there is no restriction on that Day ISO ALO being displayed at 10.06, which crosses the Away Market PBO of 10.05. The Exchange believes in this circumstance, it is consistent with Regulation NMS for the Exchange to consider that any Away Market protected offers priced 10.07 or below have been cleared and therefore adjust its calculation of the contra-side Away Market PBBO for purposes of execution, routing, and repricing determinations based on the limit price of the Day ISO ALO.

The Exchange believes that the proposed amendments to Rule 7.37(e) would promote clarity and transparency in the Exchange’s rules regarding circumstances when the Exchange may adjust its calculation of the PBBO. The Exchange does not believe this proposed rule change is novel. Rather, the Exchange believes that other equity exchanges that accept Day ISOs similarly adjust their calculation of the best protected bid and best protected offer for purposes of making execution, routing, and repricing determinations based on the receipt of Day

side resting orders to the Day ISO price, but would not adjust its calculation of the contra-side PBBO for purposes of routing and execution determinations of new orders.

ISOs, as described above. The Exchange anticipates that it will implement the technology change to how it calculates the PBBO in May 2021.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(5) of the Act,¹³ 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it is designed to promote clarity and transparency in Exchange rules of when the Exchange may adjust its calculation of the PBBO. The Exchange believes that adjusting its calculation of the PBBO based on receipt of a Day ISO is consistent with Regulation NMS because the member organization that entered such Day ISO has also sent ISOs to Away Markets to trade with contra-side protected quotations priced equal to or better than the Day ISO. For the same reasons that displaying a Day ISO at a price that locks or crosses the PBBO is consistent with Regulation NMS, the Exchange believes that adjusting its calculation of the PBBO based on receipt and display of a Day ISO for purposes of making execution, routing, and repricing determinations for

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

other orders is also consistent with Regulation NMS. The Exchange further notes that the proposed rule text is not novel and is based on MEMX Rule 13.4(b) and is consistent with Nasdaq rules and the BZX Filing.

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

In accordance with Section 6(b)(8) of the Act,¹⁴ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes are designed to promote transparency and clarity in Exchange rules regarding when the Exchange may adjust its calculation of the PBBO. The Exchange believes that the proposed rule change would promote competition because the Exchange proposes to adjust its calculation of the PBBO under similar circumstances that other equity exchanges adjust their calculation of the PBBO, including MEMX, Nasdaq, and BZX.

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

¹⁴ 15 U.S.C. 78f(b)(8).

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6).

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.

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 Commission shall institute proceedings under Section 19(b)(2)(B)¹⁷ 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-2021-21 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-2021-21. 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

¹⁷ 15 U.S.C. 78s(b)(2)(B).

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-2021-21, 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.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ 17 CFR 200.30-3(a)(12).