

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93849; File No. SR-NYSE-2021-74)

December 22, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Proposes to Amend the Provisions of Rule 7.35B

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 December 14, 2021, 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 the provisions of Rule 7.35B relating to the cancellation of MOC, LOC, and Closing IO Orders before 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 received on the proposed rule change. The text of those statements may be examined at the

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 7.35B (DMM-Facilitated Closing Auctions). Specifically, the Exchange proposes to modify 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, and make conforming changes to Rule 7.35B(j)(2)(B).

Rule 7.35B(f) provides that the Auction Imbalance Freeze for the Closing Auction will begin at the Closing Auction Imbalance Freeze Time and specifies how order entry and cancellation will be processed during the Closing Auction Imbalance Freeze.⁴ Rule 7.35B(f)(2)(A) currently provides that, between the beginning of the Auction Imbalance Freeze and two minutes before the scheduled end of the Core Trading Hours, MOC, LOC, and Closing

⁴ The “Auction Imbalance Freeze” is the period that begins before the scheduled time for an Auction. See Rule 7.35(a)(3). “Auction” means the process for the opening, reopening, or closing of the trading of Auction-Eligible Securities on the Exchange, and an “Auction-Eligible Security” is a security for which the Exchange is the primary listing market. See Rules 7.35(a)(1) and 7.35(a)(2). The “Closing Auction” is the Auction that closes trading at the end of the Core Trading Session, and the “Closing Auction Imbalance Freeze Time” is 10 minutes before the scheduled end of Core Trading Hours. See Rules 7.35(a)(1)(C) and 7.35(a)(8).

IO Orders⁵ may be cancelled or reduced in size only to correct a Legitimate Error.⁶ Rule 7.35B(f)(2)(B) currently specifies that, except as provided for in Rule 7.35B(j)(2)(B),⁷ 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.

The Exchange proposes to modify 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 are entered between the beginning of the Auction Imbalance Freeze and the scheduled end of Core Trading Hours would be rejected. That is, requests to cancel, replace, and/or reduce in size a MOC, LOC, or Closing IO Order must be received prior to 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. To facilitate this change, the Exchange proposes to delete current Rule 7.35B(f)(2)(A) and modify current Rule 7.35B(f)(2)(B) to replace the reference to “two minutes or less before” with “from the beginning of the Auction Imbalance Freeze until,” in relation to the scheduled end of Core Trading Hours. The Exchange also proposes to renumber current Rule 7.35B(f)(2)(B) as Rule 7.35B(f)(2).⁸

⁵ A “MOC Order” or “Market-on-Close Order” is a Market Order that is to be traded only during a closing auction. See 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 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 Rule 7.31(c)(2)(D).

⁶ “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 Rule 7.35(a)(13).

⁷ 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.

⁸ The Exchange also proposes a non-substantive formatting change to italicize the heading of Rule 7.35B(f)(2).

The Exchange proposes conforming changes to Rule 7.35B(j)(2)(B) to reflect the proposed changes to Rule 7.35B(f)(2), described above. Rule 7.35B(j)(2)(B) currently provides that the Exchange may temporarily suspend the prohibition on cancelling an MOC or LOC Order after two minutes before the scheduled end of Core Trading Hours when (1) the cancellation is necessary to correct a Legitimate Error, or (2) the execution of such an MOC or LOC Order would cause significant price dislocation at the close. To make Rule 7.35B(j)(2)(B) consistent with the proposed changes to Rule 7.35B(f)(2), the Exchange proposes to (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, Rule 7.35B(j)(2)(B), as amended, will 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 will be set forth in Rule 7.35B(f)(2), as amended).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934,⁹ in general, and furthers the objectives of Section 6(b)(5),¹⁰ 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.

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest because it would streamline the Exchange's processing of MOC, LOC, and Closing IO Orders in connection with the Auction Imbalance Freeze. Specifically, rather than permitting MOC, LOC, and Closing IO Orders to be cancelled, replaced, and/or reduced in size for the limited purpose of correcting a Legitimate Error up until two minutes before the scheduled end of Core Trading Hours, the Exchange proposes to modify Rule 7.35B(f)(2) to provide that requests to cancel, cancel and replace, or reduce in size such orders would be rejected after the beginning of the Auction Imbalance Freeze. The Exchange notes that, since August 2021, it has not received any requests to cancel, cancel and replace, or reduce in size an 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. Accordingly, the Exchange believes that the proposed rule change would also remove impediments to and perfect the mechanism of a free and open market by providing greater determinism of the Closing Auction Imbalance Information because MOC, LOC, and Closing IO Orders would not be eligible to be cancelled once the Auction Imbalance Freeze begins for any reason. The proposed change would also eliminate a provision in Exchange rules that is not used by Members, thereby simplifying the Exchange's rules and better aligning its rules with the behavior of its Members.

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 would apply to the processing of all MOC, LOC, and Closing IO Orders

during the Auction Imbalance Freeze and thus would not create any undue burden on competition. Moreover, as described above, 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 since August 2021 and thus believes that modifying Rule 7.35B(f)(2) and making conforming changes to Rule 7.35B(j)(2)(B) to permit such requests only up until the beginning of the Auction Imbalance Freeze would 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 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-2021-74 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-2021-74. 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-2021-74 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.¹¹

J. Matthew DeLesDernier
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).