

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88765; File No. SR-NYSE-2020-03)

April 29, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Add New Exchange Rule 46B to Permit the Appointment of Regulatory Trading Officials and Amend Exchange Rule 47 to Permit Regulatory Trading Officials to Review Whether a Bid or Offer is Eligible for Inclusion in the Closing Auction

I. Introduction

On January 14, 2020, New York Stock Exchange LLC (“Exchange” or “NYSE”) 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 add new Exchange 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 was published for comment in the Federal Register on January 30, 2020.³ On March 11, 2020, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission has received no comment letters on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 88033 (Jan. 24, 2020), 85 FR 5511 (Jan. 30, 2020) (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 88357 (Mar. 11, 2020), 85 FR 15241 (Mar. 17, 2020). The Commission designated April 29, 2020, as the date by which the Commission

proposal. On April 7, 2020, the Exchange filed Amendment No. 1 to the proposed rule change,⁶ which replaced and superseded the proposed rule change as originally filed, and is described in Items II and III below, which Items have been prepared by the self-regulatory organization.⁷ The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. 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 Rule 47 to permit Regulatory Trading Officials to review whether a bid or offer is eligible for inclusion in the Closing Auction. This Amendment No. 1 to SR-NYSE-2020-03 replaces SR-NYSE-2020-03 as originally filed and supersedes such filing in its entirety. This 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.

should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ See Sections II and III for a description of Amendment No. 1. In Amendment No. 1, the Exchange no longer proposes changes to Exchange rule 75.

⁷ The proposed rule change, as modified by Amendment No. 1, is available at: <https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-filings/filings/2020/SR-NYSE-2020-03,%20Am.%201.pdf>.

III. 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 Rule 47 to permit Regulatory Trading Officials to review whether a bid or offer is eligible for inclusion in the Closing Auction.

Background

Rule 46 permits the Exchange to appoint active NYSE members⁸ as Floor Officials. Rule 46 also permits the Exchange to appoint “qualified”⁹ ICE employees to act as Floor Governors, one of the more senior types of Floor Officials (“Staff Governors”).¹⁰ Floor Officials are

⁸ 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 11, infra.

⁹ 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.”

¹⁰ 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,¹¹ 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, 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.¹² 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.¹³ In the event of such a potentially unusual situation, a Floor broker may consult with a Floor Official and the Designated Market Maker (“DMM”) in the relevant security regarding whether and how that customer interest can be represented so that it is eligible to participate in the Closing

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

¹¹ 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.”

¹² 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.

¹³ See NYSE Member Education Bulletin 19-01 (June 21, 2019).

Auction.¹⁴ 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" who would perform the functions currently performed by Floor Officials regarding whether a bid or offer is eligible for inclusion in the Closing Auction by the DMM. Floor Officials would continue to supervise and regulate all other unusual situations not enumerated for the Regulatory Trading Official to perform.

To effectuate this change, 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 the functions specified in Exchange rules. The Exchange further proposes to amend Rule 47 to specify the functions that would be performed by the Regulatory Trading Official.

¹⁴ 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).

First, the existing rule text of Rule 47 would be designated subsection (a) and would be amended to specify that whether a verbal bid or verbal offer is eligible for inclusion in the Closing Auction by a DMM would be governed by new subsection (b) to Rule 47. This amendment therefore carves out the Floor Official's specific function with respect to unusual situations that would no longer be performed by Floor Officials.

Second, proposed new Rule 47(b) would set forth the authority of Regulatory Trading Officials. As proposed, subsection (b) would provide that situations regarding whether a verbal bid or verbal offer is eligible for inclusion in the Closing Auction by the DMM shall be supervised and regulated as follows in the proposed rule. Under the proposed rule, a Floor broker with the interest to be included in the Closing Auction or the DMM responsible for the Closing Auction in the relevant security may consult a Regulatory Trading Official regarding whether a bid or offer is eligible for inclusion in the Closing Auction by the DMM. Proposed Rule 47(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. The proposed rule would also provide, consistent with current rules, that the final determination to include or exclude interest from the Closing Auction will be made by the DMM pursuant to Rule 104. Finally, proposed Rule 47(b) would specify that the Regulatory Trading Official's review will be documented in Exchange systems no later than one business day following the review.

The Exchange believes that it is more appropriate for a regulatory employee to review the eligibility of Floor broker interest in the Closing Auction. Whether a bid or offer is eligible for inclusion in the Closing Auction, including whether such a bid or offer was verbalized at the point of sale in time to be eligible for the Closing Auction, will often require assessing whether a

Floor broker complied with the rules for entry of its interest prior to the Closing Auction.¹⁵ The Exchange believes that having a regulatory employee involved in such discussions will emphasize the importance of including all eligible Floor broker interest in the Closing Auction.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁷ 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 perform the functions currently performed by Floor Officials in reviewing whether a bid or offer is eligible for inclusion in the Closing Auction would promote just and equitable principles of trade and remove impediments to a free and open market by continuing to provide certainty to the Closing Auction when a dispute arises at the point of sale regarding whether a bid or offer can participate in the Closing Auction, thereby facilitating fair competition among brokers and dealers and among exchange markets. The Exchange's Closing Auction is a recognized industry reference point,¹⁸ and the Exchange believes that maintaining the current process with a regulatory employee would continue to promote the efficient execution of the Closing Auction,

¹⁵ See note 14, supra.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

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

The Exchange believes that assigning responsibility for reviewing whether Floor broker 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 the eligibility of Floor broker interest, including verbal interest, 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 such 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.

IV. Solicitation of Comments on the Proposed Rule Change, as Modified by Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, 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, D.C. 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].

V. Commission's Findings and Discussion

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁹ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act²⁰ 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

¹⁹ In approving this proposed rule change, as modified by Amendment No. 1, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ 15 U.S.C. 78f(b)(5).

The Exchange proposes to permit the appointment of a new “Regulatory Trading Official”²¹ whose primary responsibility would be to conduct reviews of unusual situations involving the eligibility of verbal interest for inclusion in the Closing Auction by the DMM. The proposal would also provide that if a request for such a review by a Regulatory Trading Official has been made, the DMM will not facilitate the Closing Auction until a Regulatory Trading Official has completed his or her review. As proposed, the final determination to include or exclude interest from the Closing Auction would continue to be made by the DMM pursuant to Exchange Rule 104. Finally, the proposal would specify that the Regulatory Trading Official’s review will be documented in Exchange systems no later than one business day following the review.

The Commission notes that the proposal would shift one regulatory function—the review, in cases involving unusual situations, of whether a verbal bid or verbal offer is eligible for inclusion in the Closing Auction by the DMM—from Floor Officials to the newly proposed Regulatory Trading Officials without substantive change.²² The new proposed Regulatory Trading Officials would be Exchange employees or officers who would perform this discrete consultative function at the close. The Commission further notes that, as proposed, and consistent with current rules, the final determination as to whether to include or exclude interest in the Closing Auction would continue to be made by the DMM pursuant to Rule 104.

The Exchange represented that Floor Officials currently review cases involving unusual situations that may arise with regard to whether a verbal bid or verbal offer is eligible for

²¹ As proposed, a Regulatory Trading Employee would be an Exchange employee or officer designated by the Chief Regulatory Officer or its designee to perform those functions specified in Exchange rules. See supra, Section III.A.1.

²² See id.

inclusion in the Closing Auction by the DMM. The Commission believes that a Regulatory Trading Official whose sole responsibility would be to perform this specific function currently performed by Floor Officials and who is a regulatory employee is appropriately suited to the role of consultation regarding the eligibility of Floor broker interest. The Commission believes that the proposal should promote just and equitable principles of trade by continuing to provide Floor brokers with the ability to consult with and obtain a review from a third party in cases involving unusual situations relating to the eligibility of the Floor broker's verbal interest to participate in the close.

For the reasons discussed above, the Commission finds the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of Section 6(b)(5) of the Act and the rules and regulations thereunder applicable to a national securities exchange.

VI. Accelerated Approval of Proposed Rule Change, as Modified By Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the Federal Register. In Amendment No. 1, the Exchange moved the substance of the proposal from Rule 75 commentary into the text of Rule 47 without substantive change. Accordingly, the Commission believes the proposal, as modified by Amendment No. 1 raises no novel or significant issues, and therefore finds good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposal, as modified by Amendment No. 1, on an accelerated basis.

VII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act²³, that the proposed rule change (SR- NYSE-2020-03), as modified by Amendment No. 1 be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

J. Matthew DeLesDernier
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12).