

### 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-CboeEDGX-2020-036. This file number should be included on the subject line if email 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeEDGX-2020-036 and should be submitted on or before September 2, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89500; File No. SR-NYSE-2020-66]

#### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Amend Rule 122

August 6, 2020.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") <sup>2</sup> and Rule 19b-4 thereunder, <sup>3</sup> notice is hereby given that, on August 3, 2020, 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 122 (Orders with More than One Broker). The proposed rule change is available on the Exchange's website at [www.nyse.com](http://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 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

Currently, Rule 122 (Orders with More than One Floor Broker) provides that a member organization may not maintain orders with more than one Floor broker to purchase the same

security at the same price. Because each Floor broker is a separate Participant in a parity allocation, <sup>4</sup> Rule 122 prevents member organizations from circumventing the parity allocation rules to obtain preferential execution by splitting a single order among multiple Floor brokers.

Rule 122 currently contains an exception and the main purpose of the proposed amendment is to clarify this exception. The exception is: If the orders are not for the account of the same principal, then it is permissible for the member organization to maintain such orders with different Floor brokers. This exception reflects the Exchange's understanding that some member organizations, or customers of member organizations, have multiple trading desks that do not coordinate trading strategies and are separated by information barriers. In such circumstances, because there is no coordination between such trading desks, maintaining those separate orders with more than one Floor broker would not be circumventing the parity allocation rules. The proposed amendment to Rule 122 would add Commentary to add specificity about this exception with respect to both member organizations' proprietary orders and orders that member organizations represent on an agency basis for customers.

Both member organizations and the customers of member organizations may consist of multiple trading units that are separated by information barriers that restrict the trading units from coordinating trading strategies, sharing capital, and sharing profits and losses. The proposed amended rule would provide that, if a member organization has knowledge and can verify that it or its customer is organized in this way, the member organization may route orders for the same security at the same price from its independent units to more than one Floor broker in a manner that is consistent with Rule 122.

In addition, the Exchange proposes to amend the text of Rule 122 to remove certain obsolete language and to provide greater specificity to the rule text, without changing its meaning.

###### 2. Proposed Changes to Text of Rule 122

The Exchange proposes to amend Rule 122 to remove certain obsolete language and to provide greater specificity to the rule text, without changing its meaning.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> See Rule 7.36(a)(5) (defining the term "Floor Broker Participant" to mean a Floor Broker trading license).

<sup>19</sup> 17 CFR 200.30-3(a)(12).

Because the text of current Rule 122 addresses two distinct topics, the Exchange proposes to reorganize the existing rule text into new subsections (a) and (b), which the Exchange believes will enhance comprehension of the rule.

The Exchange proposes that new subsection (a) would include the current first sentence of Rule 122. Because the term “member” refers to the natural person associated with a member organization who has been designated by such member organizations to effect transactions on the Floor of the Exchange, *e.g.*, a Floor broker,<sup>5</sup> and Floor brokers do not originate orders,<sup>6</sup> and because the term “allied member” no longer exists in Exchange rules,<sup>7</sup> the Exchange proposes to delete the extraneous language “member” and “or any allied member therein.”

The Exchange further proposes to amend new subsection (a) to specify that the rule applies both to orders “sent to”—as well as those “maintained with”—more than one Floor broker, and to insert the word “Floor” before “broker” to enhance the clarity of the sentence. The Exchange also proposes to replace the phrase “market orders or orders at the same price” in new subsection (a) with the phrase “orders that may execute at the same price,” to specify that the rule applies to multiple orders of any resting order type that may execute at the same price.

The Exchange proposes that new subsection (b) would include the current second and third sentences of Rule 122, relating to how a Floor broker can represent an order that already has a portion transmitted to the Exchange Book. Because this text addresses a different topic than proposed Rule 122(a), the Exchange proposes to delete the extraneous “However” at the start of the first sentence of this new subsection. The Exchange also proposes to delete from new subsection (b) several phrases—including “manually or from a hand-held terminal,” “in the auction market or via the Floor broker agency interest file,” and “as part of an auction market transaction or automatic execution”—because they are extraneous, use obsolete text, and are not necessary to a clear understanding of the rule. The Exchange believes that making these deletions will have no substantive effect on the meaning of subsection (b).

Finally, the Exchange proposes to delete from new subsection (b) several

references to the “Display Book® system,” which is an obsolete system formerly used by the Exchange, and to replace them with references to the Exchange’s current “Exchange Book.”<sup>8</sup>

### 3. Proposed Rule Commentary

In addition to the proposed amendments to the rule text listed above, the Exchange proposes to amend Rule 122 by adding new Rule Commentary to provide greater specificity as to the rule’s application and to enhance comprehension of the rule.

The Exchange proposes to add Rule Commentary .01 to specify that, for the purposes of Rule 122, sending to, maintaining with, or using “more than one Floor broker” would mean more than one Floor broker member organization, or two different individual Floor brokers at the same Floor broker member organization. This proposed rule text is not intended to add new functionality, but rather to add clarity regarding the current Rule text.

The Exchange proposes to add Rule Commentary .02 to provide more specificity as to when a member organization’s own orders are not presumed to be for the account of the same principal. As proposed, for purposes of Rule 122, when a member organization uses more than one Floor broker, multiple orders originating from the member organization would be presumed not to be for the account of the same principal if each order is from a separate trading unit that is separated by information barriers or other barriers that restrict the trading unit from coordinating trading strategies, sharing capital, and sharing profits and losses with other trading units (an “Independent Unit”), as defined in proposed Commentary .02(a). Proposed Rule Commentary .02(b) would require a member organization to have supervisory systems and written policies and procedures reasonably designed to ensure that it is not using more than one Floor broker for its orders that are for the account of the same principal.

Proposed Rule Commentary .03 would apply the same concepts to circumstances when a member organization uses more than one Floor broker for multiple orders that it represents on an agency basis. Proposed Rule Commentary .03(a) would specify that orders that the member organization represents on an agency basis from a single customer are presumed not to be for the account of the same principal if the member

organization’s customer maintains Independent Units and the orders are from Independent Units. Proposed Rule Commentary .03(b) would specify that if a member organization is representing a customer on an agency basis and uses more than one Floor broker for such customer, the member organization’s written policies and procedures must be reasonably designed to ensure that the orders it receives from the customer are from Independent Units of the customer. The proposed Rule Commentary would specify that the member organization must: (1) Use reasonable diligence to know and retain the essential facts relating to the operation and supervision of its customer’s information barriers to ensure there is a prohibition against the coordination of trading strategies and that there is in fact no coordination of trading strategies, and that the orders are from Independent Units (*see* proposed Rule Commentary .03(b)(1)); (2) review and document such reviews that the orders received from its customers originated from Independent Units (*see* proposed Rule Commentary .03(b)(2)); and (3) obtain an annual written representation, in a form acceptable to the Exchange, from each customer that such orders originate from Independent Units (*see* proposed Rule Commentary .03(b)(3)). The Exchange believes that, taken together, these measures will provide the member organization and the Exchange with reasonable assurance that the orders are not for the account of the same principal, and member organizations are operating in compliance with Rule 122.

The requirements of proposed Commentary .03(b) are not the first time that the Exchange has imposed obligations on its member organizations with respect to orders that they represent on an agency basis on behalf of their customers. For example, Rule 7.44(b)(6), relating to the Exchange’s Retail Liquidity Program, provides that if the Retail Member Organization does not itself conduct a retail business but instead routes Retail Orders on behalf of another broker-dealer, the Retail Member Organization’s supervisory procedures must be reasonably designed to ensure that the orders it receives from such other broker-dealer meet the definition of a Retail Order. That Rule further provides that to fulfill this supervisory requirement, the Retail Member Organization must obtain an annual written representation, in a form acceptable to the Exchange, from the broker-dealer sending the orders that the orders comply with Rule 7.44, and by monitoring whether Retail Order flow

<sup>5</sup> See Rule 2(a) (definition of the term “member”).

<sup>6</sup> See Rule 112(a).

<sup>7</sup> See Securities Exchange Act Release No. 58549 (September 15, 2008), 73 FR 54444 (September 19, 2008) (SR-NYSE-2008-80) (Approval order).

<sup>8</sup> See Rule 1.1(k).

routed on behalf of such other broker-dealer meets the applicable requirements. Here, the proposed amended rule would require a similar supervisory obligation for member organizations to ensure that orders placed by their customers in fact originate from Independent Units.

Proposed Rule Commentary .04 would add that notwithstanding Commentary .02(a) and .03(a), that there is a presumption that orders are for the account of the same principal (*i.e.*, not from Independent Units) if the trading strategies are run by the same desk, group, employee(s), or portfolio manager(s); are otherwise overseen or supervised by the same desk, group, employee(s), or portfolio managers; or share capital or roll up to the same profit and loss center.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>9</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>10</sup> 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 mechanism 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.

Specifically, the Exchange believes that the proposed rule will remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed Rule Commentary provides greater specificity around the “account of the same principal” exception already contained within Rule 122, by clarifying the meaning of “sending to more than one Floor broker” and defining the term “Independent Units.” In addition, by extending that exception to orders from Independent Units of a member organization’s customers, the Exchange believes that the proposed rule change would address the reality of how such customers may be organized, thereby removing impediments to such firms’ trading in the national market system.

Finally, the Exchange’s proposal to make various non-substantive changes to the rule text—by adding subsection numbering, removing extraneous language, and removing references to the obsolete “Display Book® system”—adds clarity and transparency to the Exchange’s Rules and reduces potential investor confusion, which would remove impediments to and perfect the mechanism of a free and open market and a national market system.

### *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, because it merely provides greater specificity for the “account of the same principal” exception already contained in Rule 122, and extends that exception to member organizations’ customers that are organized into Independent Units. The Exchange believes that the proposal would have a positive effect on competition, by removing the current requirement that such member organizations’ customers must use only one Floor broker for orders for the same security that may execute at the same price, even though such orders do not threaten to circumvent the Exchange’s parity allocation rules when they originate from Independent Units.

### *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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NYSE–2020–66 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.

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For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

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<sup>9</sup> 15 U.S.C. 78f(b).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

<sup>11</sup> 17 CFR 200.30–3(a)(12).