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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89499; File No. SR-NYSE-2020-55]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change to amend Rules 7.36 and 7.37 Relating to Setter Priority and Allocation

August 6, 2020.

I. Introduction

On June 24, 2020, New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 amend NYSE Rules 7.36 and 7.37 relating to Setter Priority and Allocation. The proposed rule change was published for comment in the Federal Register on June 30, 2020.[3] The Commission has received no comments on the proposed rule changes. The Commission is approving the proposed rule changes.

II. Description of the Proposed Rule Change

The Exchange proposes to modify the current operation of Setter Priority on the Exchange by changing the definition of orders eligible for Setter Priority and by changing the allocation that orders Setting Priority of contra-side Aggressing Orders.[4]

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 See Securities Exchange Act Release No. 89205 (June 30, 2020), 85 FR 40715 (June 30, 2020) ("Notice").

4 An "Aggressing Order" is defined as a buy (sell) order that is or becomes marketable against a sell (buy) interest on the Exchange Book. See NYSE Rule 7.36(a)(6).

Currently, NYSE Rule 7.36(h) provides that an order may be assigned Setter Priority by (1) setting a new Best Bid or Offer ("BBO") on the Exchange and (2) joining or setting the National Best Bid or Offer ("NBBO"), provided that such an order will not be eligible for Setter Priority if there is an odd-lot sized order with Setter Priority at that price.[5] Proposed NYSE Rule 7.36(h) would be amended to provide that an order is eligible for Setter Priority only if it sets a new NBBO.[6]

Currently, under NYSE Rule 7.37(b)(1), an order with Setter Priority equal to the BBO is eligible for a 15% allocation of an Aggressing Order (rounded up to the next round lot size, or the full quantity of the Aggressing Order). Proposed NYSE Rule 7.37(b)(1) would be amended to provide that an order with Setter Priority equal to the BBO would be eligible to trade in full with the contra-side Aggressing Order.[7] The Exchange also represents that under the proposal, (1) if an Aggressing Order is greater in size than an order with Setter Priority, the order with Setter Priority would be executed in full and the remainder of the Aggressing Order would be allocated pursuant to NYSE Rule 7.37; and (2) if an Aggressing Order is smaller in size than an order with Setter Priority, the Aggressing Order would be executed in full, and the remainder of the order with Setter Priority would retain its Setter Priority status.[8]

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5 See Notice, supra note 3, 85 FR at 40716.

6 See id. at 40715-16.

7 The Exchange also proposes to delete existing text in NYSE Rule 7.37(b)(1)(C) pertaining to allocation when there are remaining quantities of an Aggressing Order and an order with Setter Priority. Under the proposal, either the order with Setter Priority, the Aggressing Order, or both orders would execute in full; thus, such an order book scenario would no longer be possible. See id. at 40716.

8 See id. at 40715-16.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission finds that the Exchange's proposed rule change is consistent with Section 6(b)(5) of the Act,[9] which requires that the rules of an exchange be designed, among other things, 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange asserts that assigning Setter Priority only to orders that establish a new NBBO, and allowing such orders to execute in full against incoming Aggressing Orders, would allow orders with Setter Priority to operate similarly to top-of-book orders at national securities exchanges with a price-time priority execution model and would thereby incentivize member organizations to route price-forming, liquidity-providing orders to the Exchange to the benefit of all market participants.[10] Because the Exchange's proposal would, unlike the current rule, require Setter Priority orders to set a new NBBO to be eligible for Setter Priority, and because the proposal would reward Setter Priority orders with a greater opportunity to trade against Aggressing Orders, the Commission believes that the proposed rule change is reasonably designed to incentivize member organizations to quote aggressively and improve the NBBO.

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9 17 U.S.C. 78f(b)(5).

10 See Notice, supra note 3, at 40717.

Based on the foregoing, the Commission therefore finds that the proposed rule change is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR-NYSE-2020-55) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,
Assistant Secretary.

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11 15 U.S.C. 78s(b)(2).

12 17 CFR 200.30-3(a)(12).