



Martha Redding
Associate General Counsel
Assistant Secretary

March 25, 2021

VIA E-MAIL

Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: Securities Exchange Act Rel. 34-90776 (SR-NYSE-2020-105)

Dear Secretary:

NYSE LLC, Inc. filed the attached Amendment No. 1 to the above-referenced filing on March 25, 2021.

Sincerely,

A handwritten signature in blue ink, appearing to be "37" or a similar stylized mark.

(Encl. Amendment No. 1 to (SR-NYSE-2020-105))

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 54

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR - 2020 - * 105

Amendment No. (req. for Amendments *) 1

Filing by New York Stock Exchange LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial *

☐

Amendment *

☒

Withdrawal

☐

Section 19(b)(2) *

☒

Section 19(b)(3)(A) *

☐

Section 19(b)(3)(B) *

☐

Rule

Pilot

☐Extension of Time Period
for Commission Action *☐

Date Expires *

☐ 19b-4(f)(1)☐ 19b-4(f)(4)☐ 19b-4(f)(2)☐ 19b-4(f)(5)☐ 19b-4(f)(3)☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Security-Based Swap Submission pursuant
to the Securities Exchange Act of 1934

Section 806(e)(1) *

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Section 806(e)(2) *

☐

Section 3C(b)(2) *

☐

Exhibit 2 Sent As Paper Document

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Exhibit 3 Sent As Paper Document

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Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

Proposed revisions to Rules 46 and 46A to permit the appointment of Trading Officials and to make conforming changes to certain Exchange rules related to Floor Official duties and responsibilities

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * David

Last Name * De Gregorio

Title * Associate General Counsel, NYSE Group Inc.

E-mail *

Telephone *

Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 03/25/2021

Associate General Counsel

By Clare Saperstein

(Name *)

Clare Saperstein,

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² New York Stock Exchange LLC (“NYSE” or the “Exchange”) proposes revisions to Rules 46 and 46A to permit the appointment of Trading Officials and to make conforming changes to certain Exchange rules related to Floor Official duties and responsibilities. This Amendment No. 1 to SR-NYSE-2020-105 replaces and supersedes the original filing in its entirety.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

David De Gregorio
Associate General Counsel
NYSE Group, Inc.
(212) 656-4166

3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

- (a) Purpose

The Exchange proposes revisions to Rules 46 and 46A to permit the appointment of Trading Officials and to make conforming changes to certain Exchange rules related to Floor Official duties and responsibilities.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Background

Rule 46 (Floor Officials—Appointment) and Rule 46A (Executive Floor Governors) currently set forth the process for the Exchange to appoint active NYSE members³ as Floor Officials. In addition, Rule 46 permits the Exchange to appoint qualified ICE employees to act as Floor Governors, a more senior type of Floor Official.⁴

The role of the Floor Official evolved out of the self-regulatory scheme of the Securities Exchange Act of 1934, as amended (the “Act”).⁵ Floor Officials are delegated authority from the Exchange’s Board of Directors (the “Board”) 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,⁶ and to review and approve certain trading actions. A number of Exchange Rules specify involvement in the marketplace by Floor Officials, senior-level Floor Officials (i.e., Floor Governors, Executive Floor Officials, Senior Floor Officials and Executive Floor Governors), or both.

Exchange members appointed as Floor Officials serve in a volunteer capacity in addition to their regular obligations as either brokers or Designated Market Makers (“DMM”). In 2008, the Exchange amended Rule 46 to permit qualified ICE employees to be appointed as Floor Governors (“Staff Governors”).⁷ Staff Governors are not regulatory employees and do not report to the Chief Regulatory Officer (“CRO”). In fact, under Rule 46.10, regulatory employees are ineligible

³ 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 6, infra.

⁴ The title “Floor Official” includes a broad category of titles that include, in order of increasing seniority, Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors and Executive Floor Governors. See Rules 46 and 46A (defining Floor Official, Floor Governor, Executive Floor Official, Senior Floor Official and Executive Floor Governors).

⁵ See 15 U.S.C. 78f.

⁶ 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.”

⁷ See Securities Exchange Act Release No. 57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR-NYSE-2008-19) (“Release No. 57627”).

to be appointed as Staff Governors.⁸ In light of this, and the Staff Governors' role in supervising trading operations of the Exchange, Staff Governors appointed by the Board pursuant to Rule 46 report to the Head of Equities or that person's designee.

At the same time, as a result of the evolution of the equities markets away from manual executions and manual enforcement of rules toward an electronic market that automates executions and in many cases hard codes the rule requirements into the execution logic, many of the trading procedures and situations originally requiring Floor Official involvement have been automated; in other cases, Floor Official approval has become pro forma rather than substantive.⁹ More recently, the Exchange introduced Regulatory Trading Officials ("RTOs") to perform the functions performed by Floor Officials regarding whether a bid or offer is eligible for inclusion in the Closing Auction by the DMM.¹⁰ As described below, the Exchange has now determined to delegate the remaining duties and responsibilities of Floor Officials to the proposed Trading Officials.

Proposed Rule Change

The Exchange proposes to eliminate member and non-member employee Floor Officials and transition the duties and responsibilities of Floor Officials to newly created Trading Officials, who would be Exchange employees appointed by the NYSE CEO or his or her designee. The Exchange anticipates that the current Staff Governors, who are not regulatory employees and report to the Head of Equities, would be appointed as Trading Officials and would retain the same reporting structure. The Exchange believes that retaining the Staff Governors' current reporting structure when they are appointed Trading Officials is appropriate given that Trading Officials will continue to have the same role in supervising trading on the Exchange and that, as proposed, Trading Officials will

⁸ The prohibition was designed to avoid potential conflicts of interest insofar as the process for qualifying Floor Officials, including Floor Governors, was performed by regulatory employees. See Securities Exchange Act Release No. 34-57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR-NYSE-2007-2).

⁹ See, e.g., Securities Exchange Act Release No. 75695 (August 13, 2015), 80 FR 50365 (August 19, 2015) (SR-NYSE-2015-33) (deletion of Rule 79A.20 requiring prior Floor Official approval for certain DMM dealer trades more than one or two dollars away from the last sale as moot).

¹⁰ See Securities Exchange Act Release No. 88765 (April 29, 2020), 85 FR 26771 (May 5, 2020) (SR-NYSE-2020-03). The Exchange has filed a separate proposed rule change to make permanent that Floor Broker Interest would not be eligible to participate in the Closing Auction and in that filing, has also proposed to delete Rule 46B because RTOs would no longer have a role under Exchange rules. See Securities Exchange Act Release No. 90495 (November 24, 2020), 85 FR 77304 (December 1, 2020) (SR-NYSE-2020-95) (Notice) ("NYSE Close Proposal").

not have any regulatory role or responsibility. As discussed below, Trading Officials will not be involved in determinations to reallocate securities under Rules 103.10 and 103B(G).

As proposed, Trading Officials would be the only persons authorized to perform the delegated functions under the Exchange rules on the Floor that member Floor Officials and Staff Governors currently perform. The various seniority-based gradations of Floor Official (Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors and Executive Floor Governors) also would be eliminated. As a practical matter, the current Staff Governors would become the new Trading Officials. Active Exchange members would not be eligible for appointment as Trading Officials.

Under current Rules 46 and 46A, Floor Officials are appointed by the Board and re-appointed annually. Floor Officials must also complete a mandatory education program and pass a qualifications exam. These requirements were developed for member Floor Officials, and the Exchange does not propose to retain them for Trading Officials. Like the current Staff Governors, Exchange staff would be appointed as Trading Officials based on experience and necessary business and rule knowledge that would enable them to participate in and supervise various trading situations on the Floor. Once appointed, Trading Officials would be trained and supervised by the Exchange in the same manner as the current Staff Governors.

In order to effectuate the proposed changes, the Exchange proposes to delete current Rules 46 and 46A in their entirety and define a Trading Official in new Rule 46 as an Exchange staff person designated by the CEO of the Exchange or his or her designee to perform those functions specified in Exchange rules.

In addition, the Exchange proposes certain technical and conforming changes to replace references to Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors and/or Executive Floor Governors with Trading Official in the following rules:

- Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions) sets forth the responsibility of DMMs to ensure that registered securities open as close to the beginning of Core Trading Hours as possible or reopen at the end of the halt or pause.
 - Subsection (a)(4) provides for Floor Official participation in the opening and reopening process to provide an impartial professional assessment of unusual situations, as well as to provide guidance with respect to pricing when a significant disparity in supply and demand exists. The rule also contemplates DMMs consultations with Floor Officials under certain specific circumstances. References to Floor Official in Rule 7.35A(a)(4) and (a)(5) would

be replaced with Trading Official.

- Rule 7.35A(d) governs pre-opening indications. Subsection (d)(4) describes the procedures for publishing pre-opening indications and specifies when publication of a pre-opening indication requires supervision and approval of a Floor Governor. References to Floor Governor in Rule 7.35A(d)(4)(A) and (F)(i) would be replaced with Trading Official.
- Rule 7.35B (DMM-Facilitated Closing Auctions) describes the responsibility of each DMM to ensure that registered securities close as soon after the end of Core Trading Hours as possible.
 - Rule 7.35B(a)(1)(C) provides that electronically-entered Floor Broker Interest cannot be reduced in size or replaced except that DMMs can accept a full cancellation of electronically-entered Floor Broker Interest to correct a Legitimate Error subject to Floor Official approval. Floor Official would be replaced with Trading Official in Rule 7.35B(a)(1).¹¹
 - Rule 7.35B(d) governs closing imbalances. Subsection (d)(1)(A) describes the circumstances when a DMM may disseminate a Regulatory Closing Imbalance with prior Floor Official approval. Subsection (d)(2) provides that DMMs may disseminate a Manual Closing Imbalance only with prior Floor Official approval beginning one hour before the scheduled end of Core Trading Hours up to the Closing Auction Imbalance Freeze Time. In both subsections, references to Floor Official would be replaced with Trading Official.
 - Rule 7.35B(j) governs temporary rule suspensions. Subsection (j)(3) provides that a determination to declare a temporary suspension as well as any entry or cancellation of orders or closing of a security under subsection (j)(2) must be supervised and approved by an Executive Floor Governor and supervised by an Exchange Officer. The Exchange proposes that supervision and approval of these determinations must be supervised and approved by a Trading Official.
- Rule 18(d) (Compensation in Relation to Exchange System Failure) sets forth the process for member organizations to seek reimbursement for losses resulting from system failures. Subsection (d) establishes a Compensation Review Panel consisting of three Floor Governors and three Exchange employees to determine the eligibility of a claim for

¹¹ The Exchange has separately proposed to delete Rule 7.35B(a)(1)(C). See id.

payment. Since the proposed elimination of Floor Governors would leave Exchange employees as the sole members of the Compensation Review Panel, the Exchange proposes to eliminate the Compensation Review Panel. The proposed rule would accordingly provide that the Exchange will perform will review claims submitted pursuant to the rule and determine eligibility of a claim for payment.

- Rule 37 (Visitors) provides that visitors shall not be admitted to the Floor except by permission of Exchange officer, a Senior Floor Official, Executive Floor Official, a Floor Governor, or an Executive Floor Governor. The Exchange proposes that admission of visitors to the Floor be by permission of the Exchange.
- As noted, the text of Rules 46 and 46A would be deleted. The heading of Rule 46 would be changed to “Trading Officials”.
- Under current Rule 47 (Floor Officials—Unusual Situations), Floor Officials have the power 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. References to Floor Official would be changed to Trading Officials and the heading would be changed to “Unusual Situations on the Floor.” Current Rule 49 would become new Rule 48.
- Rule 75 (Disputes as to Bids and Offers) mandates that disputes arising on bids or offers that are not settled by agreement between the interested members shall be settled by a Floor Official. The Exchange proposes that disputes arising on bids or offers be settled by a Trading Official and would amend the rule text and Supplementary Material .10 accordingly. The rule currently provides that, if both parties to a dispute involving either a monetary difference of \$10,000 or more or a questioned trade, the matter may be referred for resolution to a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof (“3 Floor Official Panel”), whose decision shall be binding on the parties. As an alternative to the 3 Floor Official Panel, members may proceed to resolve a dispute through long-standing arbitration procedures established under the Exchange’s rules. The Exchange proposes to eliminate the 3 Floor Official Panel. Disputes involving either a monetary difference of \$10,000 or more or a questioned trade would thus be resolved exclusively through arbitration.

Rule 75 codifies a form of expedited arbitration to timely resolve disputes between Floor-based members regarding verbal bids and offers. The Exchange believes that having a Trading Official initially resolve certain types of minor Floor disputes would continue to efficiently resolve those disputes. However, the Exchange does not believe that a panel of

Exchange employees should be providing binding decisions in significant disputes between members (i.e., where the dispute involves a monetary difference of \$10,000 or more or a questioned trade), which would put the Exchange in the position of adjudicating significant competing claims among members. Rule 75 contemplates a process for members to resolve disputes, and especially significant disputes, amongst themselves, not for Exchange employees to arbitrate those disputes on the Trading Floor. For these reasons, the Exchange proposes that matters involving a dispute involving either a monetary difference of \$10,000 or more or a questioned trade proceed to arbitration.

- Rule 91.50 (Taking or Supplying Securities Named in Order) provides that if there is a continued pattern of rejection of a DMM's principal transactions, a Floor Official may be called upon and require the broker to review his actions. Floor Official would be changed to Trading Official in Rule 91.50.
- Rule 93(b) (Trading for Joint Account) provides that no member while on the Floor shall initiate the purchase or sale on the Exchange of a stock for any account in which the member, the member's member organization or any other member or allied member therein is directly or indirectly interested with any person other than such member organization or any other member or allied member therein, without the prior approval of a Floor Official. The reference to Floor Official would be changed to Trading Official.
- Rule 103.10 (Registration and Capital Requirements of DMMs and DMM Units) governs the temporary reallocation of securities and provides that the CRO or his or her designee and two non-DMM Executive Floor Governors or, if only one or no non-DMM Executive Floor Governors is present on the Floor, the most senior non-DMM Floor Governor or Governors based on length of consecutive service as a Floor Governor at the time of any action covered by this rule, acting by a majority, shall have the power to reallocate temporarily any security on an emergency basis whenever such reallocation would be in the public interest. The Exchange proposes that only the CRO or his or her designee would have the power to reallocate temporarily any security on an emergency basis. The rule reflects the current process whereby determinations to temporarily reallocate securities in the public interest are determined by the CRO and the most senior and experienced members of the Floor community. In the absence of such senior Floor member representatives, the Exchange believes that determinations involving the public interest should be made exclusively by the CRO. Given that reallocating securities in the public interest largely raise regulatory concerns, the Exchange believes that such determinations are best left to regulatory staff without the involvement of Trading Officials.

- Rule 103A (Member Education) provides for the Exchange to develop procedures and standards for qualification and performance of members active on the Floor of the Exchange. The rule currently exempts Executive Floor Governors from the requirement to complete educational modules, which the Exchange proposes to eliminate. The Exchange also proposes the non-substantive change of deleting the superfluous “(I)” at the beginning of the rule.
- Rule 103B(G) (Security Allocation and Reallocation) describes the allocation freeze policy and provides that, following allocation probation, a second six month period will begin during which a DMM unit may apply for new listings, provided that the unit demonstrates relevant efforts taken to resolve the circumstances that triggered the allocation prohibition. Currently, the determination as to whether a unit may apply for new listings is made by Exchange regulatory staff in consultation with the Executive Floor Governors, the most senior and experienced Floor Officials. The Exchange proposes that regulatory staff continue to make these determinations under the rule in the absence of Executive Floor Governors. The Exchange is not proposing that Regulatory staff consult with Trading Officials because Regulatory staff do not need the input or involvement of business side staff to make these determinations.
- Rule 104 (Dealings and Responsibilities of DMMs) governs dealings and responsibilities of DMMs. Subsection (i) provides for temporary DMMs and permits a Floor Governor to authorize a member of the Exchange who is not registered as a DMM in such stock or stocks, to act as a temporary DMM under specific circumstances. The Exchange proposes that Trading Officials would perform this function under the amended rule.
- Rule 112(a)(i) (Orders initiated “Off the Floor”) provides that all orders in stocks for the account of a member organization or any member, principal executive, approved person, officer, or employee of such organization or a discretionary account serviced by the member or member organization must be sent to the Floor through a clearing firm’s order room or other facilities regularly used for transmission of public customers’ orders to the Floor, except for orders, among others, when a Floor Official expressly invites a member or members to participate in a difficult market situation. The Exchange would replace Trading Official for Floor Official in Rule 112(a)(i).
- Rule 124(e) (Midday Auction) provides that, when there is a significant imbalance in a Midday Auction Stock at the end of the Midday Auction Pause, the Midday Auction Pause may be converted to an order imbalance halt with the approval of a Floor Governor or two Floor Officials. The Exchange proposes that the approval would be given by a Trading

Official.

- Rule 128B (Publication of Changes, Corrections, Cancellations or Omissions and Verification of Transactions) governs changes and corrections to the Consolidated Tape.
 - Rule 128B.10 (Publication on the tape or in the “sales sheet”) provides that publication of a change or a correction in a transaction which previously appeared on the tape may be made on the tape on the day of the transaction provided that both buying and selling members or member organizations agree to the change in the transaction(s) and receive approval from a Floor Governor, Executive Floor Official, Senior Floor Official or Executive Floor Governor. In the event such publication is not made on the tape on the day of the transaction, it may be published on the tape at least ten minutes prior to the opening of business on the following business day or in the sales sheet within three business days of the transaction with the approval of both the buying and selling members and a Floor Official, provided the price of the transaction does not affect the high, low, opening or closing price of the security on the day of the transaction. The Exchange proposes that Trading Officials provide the approvals required under Rule 128B.10.
 - Rule 128B.13 (Other errors) provides that a correction in the amount of a transaction reported erroneously to the tape by a party to the transaction, may be published on the tape on the day of the transaction, on the tape at least ten minutes prior to the opening on the following business day, or on the “sales sheet” within three business days of the transaction with the approval of a Floor Governor, Executive Floor Official, Senior Floor Official or Executive Floor Governor. The Exchange proposes that Trading Officials provide the approvals required under Rule 128B.13.
- Rule 308(g) (Acceptability Proceedings) provides that any person whose application has been disapproved by an Acceptability Committee, or any member of the Board, any member of the Committee for Review (“CFR”), any Executive Floor Governor, and the Division of the Exchange initiating the proceedings may require a review by the Board of any determination of an Acceptability Committee. The Exchange proposes to delete Executive Floor Governors from the rule. The Exchange believes that the proposed change would not affect the procedural safeguards of the call for review process since there would still be interested parties that could call a matter for Board review. Specifically, directors and members of the CFR, including the person whose application was disapproved, would continue to be able to call disapproved membership applications for review, thereby

ensuring the independence, integrity and fairness of the membership process. The Exchange does not believe that Trading Officials, who are not members and have no role in the member application process, should not have the ability to call matters involving membership applications for review.

- Rule 903(d)(ii) (Off-Hours Transactions) provides that a closing price order to buy (sell) a security for the account of the DMM registered in such security and approved by a Floor Official, coupled with a closing price order to sell (buy) to offset all or part of a market-on-close imbalance in the stock prior to the close, shall be executed upon entry. The Exchange proposes that a Trading Official would provide the required approval under the rule.
- Rule 906 (Impact of Trading Halts on Off-Hours Trading) provides that a closing price order to buy (sell) a security for the account of the DMM registered in such security and approved by a Floor Official coupled with a closing price order to sell (buy) to offset all or part of any market-on-close imbalance in the stock prior to the close, shall not be so canceled or precluded from entry as result of corporate developments during the Off-Hours Trading Session. The Exchange proposes that a Trading Official would provide the required approval under the rule.
- Finally, NYSE Listed Company Manual Section 202.04 (Exchange Market Surveillance) provides that a listed issue may be placed under special initial margin and capital requirements, which indicates a determination by the Exchange's Floor Officials that the market in the issue has assumed a speculative tenor and has become volatile due to the influence of credit, which, if ignored, may lead to unfair and disorderly trading. The reference to Floor Officials would be updated to Trading Officials.

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5),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 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.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

In particular, the Exchange believes that creating a new category of Trading Official to replace member Floor Officials would promote just and equitable principles of trade and remove impediments to a free and open market by streamlining and modernizing the role of a Trading Official on the Floor. The volunteer member Floor Official is a self-regulatory vestige developed for manual trading. As noted, the Exchange introduced Staff Governors several years ago to address the shortfall in experienced members following the consolidation of trading space on the Exchange.¹⁴ More recently, RTOs were introduced to perform certain functions performed by Floor Officials in connection with the Closing Auction.¹⁵ The proposed rule change would complete the evolution of member Floor Officials to Trading Officials that are Exchange-trained and supervised staff, which is similar to how trading officials function on the options markets run by the Exchange's affiliates.¹⁶ By replacing the variety and hierarchy of Floor Officials based on seniority with a single Trading Official appointed by the NYSE CEO, the Exchange would significantly simplify the appointment and retention of individuals with responsibility under the Exchange's rules to supervise and review trading on the Floor. Further, the proposal would contribute to the protection of investors and the public interest by ensuring that qualified Exchange staff continue to perform the formal roles prescribed by Exchange rules and provide a level of oversight to the marketplace on a day-to-day basis, thereby contributing to the maintenance of a fair and orderly marketplace on the Exchange. The Exchange believes that the substantive operation of those rules where the current Floor Official role would not be assumed by a Trading Official would remain unaffected, thereby contributing to the protection of investors and the public interest. As described above, claims under Rule 18(d) would continue to be validated and reviewed by Exchange employees; retention of the current Compensation Review Panel is unnecessary given that elimination of Floor Officials, which would leave the panels composed solely of Exchange employees. Similarly, disputes between members under Rule 75 involving a monetary difference of \$10,000 or more or a questioned trade would continue to be afforded an expedited resolution; as noted, the Exchange believes that potentially significant disputes are more appropriate for resolution by traditional arbitration rather than an expedited process involving a panel of Exchange employees. Further, the primarily regulatory determinations under Rules 103.10 and 103B(G) would continue to be made by regulatory staff; the Exchange does not believe that consultation with a Trading Official is either necessary or appropriate in situations involving temporarily reallocation of securities. Similarly, the procedural safeguards of the call for review process in Rule 308(g) would not be affected by elimination of Executive Floor Governors because directors and members of the CFR, including persons whose application are disapproved, would continue to be able to call disapproved membership applications for Board review under the rule, thereby preserving the safeguard of Board review of disputed disapprovals.

¹⁴ See Release No. 57627, 73 FR at 19920.

Finally, the Exchange believes that the conforming and technical changes would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed non-substantive changes would add clarity, transparency and consistency to the Exchange's rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules.

4. 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 intended to address competitive issues but is rather concerned with transferring Floor Official duties and responsibilities under Exchange rules to staff Trading Officials. The Exchange believes the proposed rule changes would streamline and modernize the role of the trading official on the Floor, thereby contributing to the maintenance of a fair and orderly marketplace on the Exchange to the benefit of all members and member organizations and the investing public. Moreover, since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2)¹⁷ of the Exchange Act.

¹⁵ As noted above, the Exchange has separately proposed to delete Rule 46B because RTOs would no longer have a role under Exchange rules. See NYSE Close Proposal, supra note 9.

¹⁶ See NYSE American LLC ("NYSE American") Rule 900.2NY(82) and NYSE Arca, Inc. ("NYSE Arca") Rule 6.1-O(b)(34).

¹⁷ 15 U.S.C. 78s(b)(2).

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed change to Rule 46 to appoint Exchange staff as Trading Officials is based in part on NYSE American Rule 900.2NY(82) and NYSE Arca Rule 6.1-O(b)(34).

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of Proposed Rule Change

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NYSE-2020-105, Amendment 1)

[Date]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Revising Rules 46 and 46A to Permit the Appointment of Trading Officials

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 revisions to Rules 46 and 46A to permit the appointment of Trading Officials and to make conforming changes to certain Exchange rules related to Floor Official duties and responsibilities. This Amendment No. 1 to SR-NYSE-2020-105 replaces and supersedes the original filing in its entirety. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

The Exchange proposes revisions to Rules 46 and 46A to permit the appointment of Trading Officials and to make conforming changes to certain Exchange rules related to Floor Official duties and responsibilities.

Background

Rule 46 (Floor Officials—Appointment) and Rule 46A (Executive Floor Governors) currently set forth the process for the Exchange to appoint active NYSE members⁴ as Floor Officials. In addition, Rule 46 permits the Exchange to appoint qualified ICE employees to as act as Floor Governors, a more senior type of Floor Official.⁵

⁴ 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 7, infra.

⁵ The title “Floor Official” includes a broad category of titles that include, in order of increasing seniority, Floor Officials, Senior Floor Officials, Executive Floor

The role of the Floor Official evolved out of the self-regulatory scheme of the Securities Exchange Act of 1934, as amended (the “Act”).⁶ Floor Officials are delegated authority from the Exchange’s Board of Directors (the “Board”) 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,⁷ and to review and approve certain trading actions. A number of Exchange Rules specify involvement in the marketplace by Floor Officials, senior-level Floor Officials (i.e., Floor Governors, Executive Floor Officials, Senior Floor Officials and Executive Floor Governors), or both.

Exchange members appointed as Floor Officials serve in a volunteer capacity in addition to their regular obligations as either brokers or Designated Market Makers (“DMM”). In 2008, the Exchange amended Rule 46 to permit qualified ICE employees to be appointed as Floor Governors (“Staff Governors”).⁸ Staff Governors are not regulatory employees and do not report to the Chief Regulatory Officer (“CRO”). In fact, under Rule 46.10, regulatory employees are ineligible to be appointed as Staff Governors.⁹ In light of this, and the Staff Governors’ role in supervising trading

Officials, Floor Governors and Executive Floor Governors. See Rules 46 and 46A (defining Floor Official, Floor Governor, Executive Floor Official, Senior Floor Official and Executive Floor Governors).

⁶ See 15 U.S.C. 78f.

⁷ 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.”

⁸ See Securities Exchange Act Release No. 57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR-NYSE-2008-19) (“Release No. 57627”).

⁹ The prohibition was designed to avoid potential conflicts of interest insofar as the process for qualifying Floor Officials, including Floor Governors, was performed by regulatory employees. See Securities Exchange Act Release No. 34-57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR-NYSE-2007-2).

operations of the Exchange, Staff Governors appointed by the Board pursuant to Rule 46 report to the Head of Equities or that person's designee.

At the same time, as a result of the evolution of the equities markets away from manual executions and manual enforcement of rules toward an electronic market that automates executions and in many cases hard codes the rule requirements into the execution logic, many of the trading procedures and situations originally requiring Floor Official involvement have been automated; in other cases, Floor Official approval has become pro forma rather than substantive.¹⁰ More recently, the Exchange introduced Regulatory Trading Officials ("RTOs") to perform the functions performed by Floor Officials regarding whether a bid or offer is eligible for inclusion in the Closing Auction by the DMM.¹¹ As described below, the Exchange has now determined to delegate the remaining duties and responsibilities of Floor Officials to the proposed Trading Officials.

Proposed Rule Change

The Exchange proposes to eliminate member and non-member employee Floor Officials and transition the duties and responsibilities of Floor Officials to newly created Trading Officials, who would be Exchange employees appointed by the NYSE CEO or his or her designee. The Exchange anticipates that the current Staff Governors, who are

¹⁰ See, e.g., Securities Exchange Act Release No. 75695 (August 13, 2015), 80 FR 50365 (August 19, 2015) (SR-NYSE-2015-33) (deletion of Rule 79A.20 requiring prior Floor Official approval for certain DMM dealer trades more than one or two dollars away from the last sale as moot).

¹¹ See Securities Exchange Act Release No. 88765 (April 29, 2020), 85 FR 26771 (May 5, 2020) (SR-NYSE-2020-03). The Exchange has filed a separate proposed rule change to make permanent that Floor Broker Interest would not be eligible to participate in the Closing Auction and in that filing, has also proposed to delete Rule 46B because RTOs would no longer have a role under Exchange rules. See Securities Exchange Act Release No. 90495 (November 24, 2020), 85 FR 77304 (December 1, 2020) (SR-NYSE-2020-95) (Notice) ("NYSE Close Proposal").

not regulatory employees and report to the Head of Equities, would be appointed as Trading Officials and would retain the same reporting structure. The Exchange believes that retaining the Staff Governors' current reporting structure when they are appointed Trading Officials is appropriate given that Trading Officials will continue to have the same role in supervising trading on the Exchange and that, as proposed, Trading Officials will not have any regulatory role or responsibility. As discussed below, Trading Officials will not be involved in determinations to reallocate securities under Rules 103.10 and 103B(G).

As proposed, Trading Officials would be the only persons authorized to perform the delegated functions under the Exchange rules on the Floor that member Floor Officials and Staff Governors currently perform. The various seniority-based gradations of Floor Official (Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors and Executive Floor Governors) also would be eliminated. As a practical matter, the current Staff Governors would become the new Trading Officials. Active Exchange members would not be eligible for appointment as Trading Officials.

Under current Rules 46 and 46A, Floor Officials are appointed by the Board and re-appointed annually. Floor Officials must also complete a mandatory education program and pass a qualifications exam. These requirements were developed for member Floor Officials, and the Exchange does not propose to retain them for Trading Officials. Like the current Staff Governors, Exchange staff would be appointed as Trading Officials based on experience and necessary business and rule knowledge that would enable them to participate in and supervise various trading situations on the Floor. Once appointed, Trading Officials would be trained and supervised by the Exchange in the same manner

as the current Staff Governors.

In order to effectuate the proposed changes, the Exchange proposes to delete current Rules 46 and 46A in their entirety and define a Trading Official in new Rule 46 as an Exchange staff person designated by the CEO of the Exchange or his or her designee to perform those functions specified in Exchange rules.

In addition, the Exchange proposes certain technical and conforming changes to replace references to Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors and/or Executive Floor Governors with Trading Official in the following rules:

- Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions) sets forth the responsibility of DMMs to ensure that registered securities open as close to the beginning of Core Trading Hours as possible or reopen at the end of the halt or pause.
 - Subsection (a)(4) provides for Floor Official participation in the opening and reopening process to provide an impartial professional assessment of unusual situations, as well as to provide guidance with respect to pricing when a significant disparity in supply and demand exists. The rule also contemplates DMMs consultations with Floor Officials under certain specific circumstances. References to Floor Official in Rule 7.35A(a)(4) and (a)(5) would be replaced with Trading Official.
 - Rule 7.35A(d) governs pre-opening indications. Subsection (d)(4) describes the procedures for publishing pre-opening indications

and specifies when publication of a pre-opening indication requires supervision and approval of a Floor Governor. References to Floor Governor in Rule 7.35A(d)(4)(A) and (F)(i) would be replaced with Trading Official.

- Rule 7.35B (DMM-Facilitated Closing Auctions) describes the responsibility of each DMM to ensure that registered securities close as soon after the end of Core Trading Hours as possible.
 - Rule 7.35B(a)(1)(C) provides that electronically-entered Floor Broker Interest cannot be reduced in size or replaced except that DMMs can accept a full cancellation of electronically-entered Floor Broker Interest to correct a Legitimate Error subject to Floor Official approval. Floor Official would be replaced with Trading Official in Rule 7.35B(a)(1).¹²
 - Rule 7.35B(d) governs closing imbalances. Subsection (d)(1)(A) describes the circumstances when a DMM may disseminate a Regulatory Closing Imbalance with prior Floor Official approval. Subsection (d)(2) provides that DMMs may disseminate a Manual Closing Imbalance only with prior Floor Official approval beginning one hour before the scheduled end of Core Trading Hours up to the Closing Auction Imbalance Freeze Time. In both subsections, references to Floor Official would be replaced with Trading Official.

¹² The Exchange has separately proposed to delete Rule 7.35B(a)(1)(C). See id.

- Rule 7.35B(j) governs temporary rule suspensions. Subsection (j)(3) provides that a determination to declare a temporary suspension as well as any entry or cancellation of orders or closing of a security under subsection (j)(2) must be supervised and approved by an Executive Floor Governor and supervised by an Exchange Officer. The Exchange proposes that supervision and approval of these determinations must be supervised and approved by a Trading Official.
- Rule 18(d) (Compensation in Relation to Exchange System Failure) sets forth the process for member organizations to seek reimbursement for losses resulting from system failures. Subsection (d) establishes a Compensation Review Panel consisting of three Floor Governors and three Exchange employees to determine the eligibility of a claim for payment. Since the proposed elimination of Floor Governors would leave Exchange employees as the sole members of the Compensation Review Panel, the Exchange proposes to eliminate the Compensation Review Panel. The proposed rule would accordingly provide that the Exchange will perform will review claims submitted pursuant to the rule and determine eligibility of a claim for payment.
- Rule 37 (Visitors) provides that visitors shall not be admitted to the Floor except by permission of Exchange officer, a Senior Floor Official, Executive Floor Official, a Floor Governor, or an Executive Floor Governor. The Exchange proposes that admission of visitors to the Floor

be by permission of the Exchange.

- As noted, the text of Rules 46 and 46A would be deleted. The heading of Rule 46 would be changed to “Trading Officials”.
- Under current Rule 47 (Floor Officials—Unusual Situations), Floor Officials have the power 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. References to Floor Official would be changed to Trading Officials and the heading would be changed to “Unusual Situations on the Floor.” Current Rule 49 would become new Rule 48.
- Rule 75 (Disputes as to Bids and Offers) mandates that disputes arising on bids or offers that are not settled by agreement between the interested members shall be settled by a Floor Official. The Exchange proposes that disputes arising on bids or offers be settled by a Trading Official and would amend the rule text and Supplementary Material .10 accordingly. The rule currently provides that, if both parties to a dispute involving either a monetary difference of \$10,000 or more or a questioned trade, the matter may be referred for resolution to a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof (“3 Floor Official Panel”), whose decision shall be binding on the parties. As an alternative to the 3 Floor Official Panel, members may proceed to resolve a dispute through long-standing arbitration procedures established under the Exchange’s rules. The Exchange proposes to

eliminate the 3 Floor Official Panel. Disputes involving either a monetary difference of \$10,000 or more or a questioned trade would thus be resolved exclusively through arbitration.

Rule 75 codifies a form of expedited arbitration to timely resolve disputes between Floor-based members regarding verbal bids and offers. The Exchange believes that having a Trading Official initially resolve certain types of minor Floor disputes would continue to efficiently resolve those disputes. However, the Exchange does not believe that a panel of Exchange employees should be providing binding decisions in significant disputes between members (i.e., where the dispute involves a monetary difference of \$10,000 or more or a questioned trade), which would put the Exchange in the position of adjudicating significant competing claims among members. Rule 75 contemplates a process for members to resolve disputes, and especially significant disputes, amongst themselves, not for Exchange employees to arbitrate those disputes on the Trading Floor. For these reasons, the Exchange proposes that matters involving a dispute involving either a monetary difference of \$10,000 or more or a questioned trade proceed to arbitration.

- Rule 91.50 (Taking or Supplying Securities Named in Order) provides that if there is a continued pattern of rejection of a DMM's principal transactions, a Floor Official may be called upon and require the broker to review his actions. Floor Official would be changed to Trading Official in Rule 91.50.

- Rule 93(b) (Trading for Joint Account) provides that no member while on the Floor shall initiate the purchase or sale on the Exchange of a stock for any account in which the member, the member's member organization or any other member or allied member therein is directly or indirectly interested with any person other than such member organization or any other member or allied member therein, without the prior approval of a Floor Official. The reference to Floor Official would be changed to Trading Official.
- Rule 103.10 (Registration and Capital Requirements of DMMs and DMM Units) governs the temporary reallocation of securities and provides that the CRO or his or her designee and two non-DMM Executive Floor Governors or, if only one or no non-DMM Executive Floor Governors is present on the Floor, the most senior non-DMM Floor Governor or Governors based on length of consecutive service as a Floor Governor at the time of any action covered by this rule, acting by a majority, shall have the power to reallocate temporarily any security on an emergency basis whenever such reallocation would be in the public interest. The Exchange proposes that only the CRO or his or her designee would have the power to reallocate temporarily any security on an emergency basis. The rule reflects the current process whereby determinations to temporarily reallocate securities in the public interest are determined by the CRO and the most senior and experienced members of the Floor community. In the absence of such senior Floor member representatives, the Exchange

believes that determinations involving the public interest should be made exclusively by the CRO. Given that reallocating securities in the public interest largely raise regulatory concerns, the Exchange believes that such determinations are best left to regulatory staff without the involvement of Trading Officials.

- Rule 103A (Member Education) provides for the Exchange to develop procedures and standards for qualification and performance of members active on the Floor of the Exchange. The rule currently exempts Executive Floor Governors from the requirement to complete educational modules, which the Exchange proposes to eliminate. The Exchange also proposes the non-substantive change of deleting the superfluous “(I)” at the beginning of the rule.
- Rule 103B(G) (Security Allocation and Reallocation) describes the allocation freeze policy and provides that, following allocation probation, a second six month period will begin during which a DMM unit may apply for new listings, provided that the unit demonstrates relevant efforts taken to resolve the circumstances that triggered the allocation prohibition. Currently, the determination as to whether a unit may apply for new listings is made by Exchange regulatory staff in consultation with the Executive Floor Governors, the most senior and experienced Floor Officials. The Exchange proposes that regulatory staff continue to make these determinations under the rule in the absence of Executive Floor Governors. The Exchange is not proposing that Regulatory staff

consult with Trading Officials because Regulatory staff do not need the input or involvement of business side staff to make these determinations.

- Rule 104 (Dealings and Responsibilities of DMMs) governs dealings and responsibilities of DMMs. Subsection (i) provides for temporary DMMs and permits a Floor Governor to authorize a member of the Exchange who is not registered as a DMM in such stock or stocks, to act as a temporary DMM under specific circumstances. The Exchange proposes that Trading Officials would perform this function under the amended rule.
- Rule 112(a)(i) (Orders initiated “Off the Floor”) provides that all orders in stocks for the account of a member organization or any member, principal executive, approved person, officer, or employee of such organization or a discretionary account serviced by the member or member organization must be sent to the Floor through a clearing firm’s order room or other facilities regularly used for transmission of public customers’ orders to the Floor, except for orders, among others, when a Floor Official expressly invites a member or members to participate in a difficult market situation. The Exchange would replace Trading Official for Floor Official in Rule 112(a)(i).
- Rule 124(e) (Midday Auction) provides that, when there is a significant imbalance in a Midday Auction Stock at the end of the Midday Auction Pause, the Midday Auction Pause may be converted to an order imbalance halt with the approval of a Floor Governor or two Floor Officials. The Exchange proposes that the approval would be given by a Trading

Official.

- Rule 128B (Publication of Changes, Corrections, Cancellations or Omissions and Verification of Transactions) governs changes and corrections to the Consolidated Tape.
 - Rule 128B.10 (Publication on the tape or in the “sales sheet”) provides that publication of a change or a correction in a transaction which previously appeared on the tape may be made on the tape on the day of the transaction provided that both buying and selling members or member organizations agree to the change in the transaction(s) and receive approval from a Floor Governor, Executive Floor Official, Senior Floor Official or Executive Floor Governor. In the event such publication is not made on the tape on the day of the transaction, it may be published on the tape at least ten minutes prior to the opening of business on the following business day or in the sales sheet within three business days of the transaction with the approval of both the buying and selling members and a Floor Official, provided the price of the transaction does not affect the high, low, opening or closing price of the security on the day of the transaction. The Exchange proposes that Trading Officials provide the approvals required under Rule 128B.10.
 - Rule 128B.13 (Other errors) provides that a correction in the amount of a transaction reported erroneously to the tape by a party

to the transaction, may be published on the tape on the day of the transaction, on the tape at least ten minutes prior to the opening on the following business day, or on the “sales sheet” within three business days of the transaction with the approval of a Floor Governor, Executive Floor Official, Senior Floor Official or Executive Floor Governor. The Exchange proposes that Trading Officials provide the approvals required under Rule 128B.13.

- Rule 308(g) (Acceptability Proceedings) provides that any person whose application has been disapproved by an Acceptability Committee, or any member of the Board, any member of the Committee for Review (“CFR”), any Executive Floor Governor, and the Division of the Exchange initiating the proceedings may require a review by the Board of any determination of an Acceptability Committee. The Exchange proposes to delete Executive Floor Governors from the rule. The Exchange believes that the proposed change would not affect the procedural safeguards of the call for review process since there would still be interested parties that could call a matter for Board review. Specifically, directors and members of the CFR, including the person whose application was disapproved, would continue to be able to call disapproved membership applications for review, thereby ensuring the independence, integrity and fairness of the membership process. The Exchange does not believe that Trading Officials, who are not members and have no role in the member application process, should not have the ability to call matters involving membership applications for

review.

- Rule 903(d)(ii) (Off-Hours Transactions) provides that a closing price order to buy (sell) a security for the account of the DMM registered in such security and approved by a Floor Official, coupled with a closing price order to sell (buy) to offset all or part of a market-on-close imbalance in the stock prior to the close, shall be executed upon entry. The Exchange proposes that a Trading Official would provide the required approval under the rule.
- Rule 906 (Impact of Trading Halts on Off-Hours Trading) provides that a closing price order to buy (sell) a security for the account of the DMM registered in such security and approved by a Floor Official coupled with a closing price order to sell (buy) to offset all or part of any market-on-close imbalance in the stock prior to the close, shall not be so canceled or precluded from entry as result of corporate developments during the Off-Hours Trading Session. The Exchange proposes that a Trading Official would provide the required approval under the rule.
- Finally, NYSE Listed Company Manual Section 202.04 (Exchange Market Surveillance) provides that a listed issue may be placed under special initial margin and capital requirements, which indicates a determination by the Exchange's Floor Officials that the market in the issue has assumed a speculative tenor and has become volatile due to the influence of credit, which, if ignored, may lead to unfair and disorderly trading. The reference to Floor Officials would be updated to Trading

Officials.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5),¹⁴ 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.

In particular, the Exchange believes that creating a new category of Trading Official to replace member Floor Officials would promote just and equitable principles of trade and remove impediments to a free and open market by streamlining and modernizing the role of a Trading Official on the Floor. The volunteer member Floor Official is a self-regulatory vestige developed for manual trading. As noted, the Exchange introduced Staff Governors several years ago to address the shortfall in experienced members following the consolidation of trading space on the Exchange.¹⁵ More recently, RTOs were introduced to perform certain functions performed by Floor Officials in connection with the Closing Auction.¹⁶ The proposed rule change would complete the evolution of member Floor Officials to Trading Officials that are Exchange-

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ See Release No. 57627, 73 FR at 19920.

¹⁶ As noted above, the Exchange has separately proposed to delete Rule 46B because RTOs would no longer have a role under Exchange rules. See NYSE Close Proposal, supra note 10.

trained and supervised staff, which is similar to how trading officials function on the options markets run by the Exchange's affiliates.¹⁷ By replacing the variety and hierarchy of Floor Officials based on seniority with a single Trading Official appointed by the NYSE CEO, the Exchange would significantly simplify the appointment and retention of individuals with responsibility under the Exchange's rules to supervise and review trading on the Floor. Further, the proposal would contribute to the protection of investors and the public interest by ensuring that qualified Exchange staff continue to perform the formal roles prescribed by Exchange rules and provide a level of oversight to the marketplace on a day-to-day basis, thereby contributing to the maintenance of a fair and orderly marketplace on the Exchange. The Exchange believes that the substantive operation of those rules where the current Floor Official role would not be assumed by a Trading Official would remain unaffected, thereby contributing to the protection of investors and the public interest. As described above, claims under Rule 18(d) would continue to be validated and reviewed by Exchange employees; retention of the current Compensation Review Panel is unnecessary given that elimination of Floor Officials, which would leave the panels composed solely of Exchange employees. Similarly, disputes between members under Rule 75 involving a monetary difference of \$10,000 or more or a questioned trade would continue to be afforded an expedited resolution; as noted, the Exchange believes that potentially significant disputes are more appropriate for resolution by traditional arbitration rather than an expedited process involving a panel of Exchange employees. Further, the primarily regulatory determinations under Rules 103.10 and 103B(G) would continue to be made by regulatory staff; the Exchange does

¹⁷ See NYSE American LLC ("NYSE American") Rule 900.2NY(82) and NYSE Arca, Inc. ("NYSE Arca") Rule 6.1-O(b)(34).

not believe that consultation with a Trading Official is either necessary or appropriate in situations involving temporarily reallocation of securities. Similarly, the procedural safeguards of the call for review process in Rule 308(g) would not be affected by elimination of Executive Floor Governors because directors and members of the CFR, including persons whose application are disapproved, would continue to be able to call disapproved membership applications for Board review under the rule, thereby preserving the safeguard of Board review of disputed disapprovals.

Finally, the Exchange believes that the conforming and technical changes would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed non-substantive changes would add clarity, transparency and consistency to the Exchange's rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules.

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 intended to address competitive issues but is rather concerned with transferring Floor Official duties and responsibilities under Exchange rules to staff Trading Officials. The Exchange believes the proposed rule changes would streamline and modernize the role of the trading official on the Floor, thereby contributing to the maintenance of a fair and orderly marketplace on the

Exchange to the benefit of all members and member organizations and the investing public. Moreover, since the proposal does not substantively modify system functionality or processes on the Exchange, 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.

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-2020-105 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-2020-105. 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-2020-105 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

Eduardo A. Aleman
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).

Additions: Underlined
Deletions: [Bracketed]

Rules of New York Stock Exchange LLC

* * * * *

Rule 7.35A. DMM-Facilitated Core Open and Trading Halt Auctions

(a) *DMM and Floor Broker Responsibilities.* It is the responsibility of each DMM to ensure that registered securities open as close to the beginning of Core Trading Hours as possible or reopen at the end of the halt or pause, while at the same time not unduly hasty, particularly when at a price disparity from the Consolidated Last Sale Price.

1.-.3 No Change

4. [Floor]Trading Officials participate in the opening and reopening process to provide an impartial professional assessment of unusual situations, as well as to provide guidance with respect to pricing when a significant disparity in supply and demand exists. DMMs should consult with a [Floor]Trading Official under the following circumstances:
 - A. if a security will be opened more than 30 minutes after the scheduled beginning of Core Trading Hours (a “Delayed Opening”);
 - B. if it is anticipated that the opening or reopening price will be at a significant disparity from the Consolidated Last Sale Price for such security;
 - C. if there is a significant imbalance; and
 - D. in unusual situations.
5. In determining when to open or reopen a security in circumstances described under paragraph (a)(4) of this Rule, a DMM should make every effort to balance timeliness with the opportunity for customer reaction and participation. When the DMM and [Floor]Trading Official agree that all participants have had a reasonable opportunity to participate, the DMM should open or reopen the security. The DMM has ultimate responsibility for opening or reopening a security and while a [Floor]Trading Official’s approval may be a mitigating factor, it will not exonerate the DMM if performance has been deemed not satisfactory. In unusual market situations, the DMM should consider the following as indicative of poor DMM performance:

- A. an opening or reopening price change that is not in proportion to the size of an imbalance;
- B. absence of a pre-opening indication before a large Auction Price change;
- C. inadequate support after a large Auction Price change, i.e., lack of sufficient continuity and depth in the aftermarket;
- D. absence of trading without good cause or [Floor]Trading Official approval (or an unjustified or unreasonably delayed opening or halt in trading); and
- E. not obtaining appropriate [Floor]Trading Official approvals for opening delays.

(b) - (c) No Change

(d) *Pre-Opening Indications*. A pre-opening indication will include the security and the price range within which the Auction Price is anticipated to occur. A pre-opening indication will be published via the securities information processor and proprietary data feeds.

1.-3. No Change

4. *Procedures for publishing a pre-opening indication*: The DMM will use the following procedures when publishing a pre-opening indication.
 - A. Publication of a pre-opening indication requires the supervision and approval of a [Floor Governor]Trading Official.
 - B. A pre-opening indication must be updated if the Core Open or Trading Halt Auction Price would be outside of a published pre-opening indication.
 - C. If the pre-opening indication is a spread wider than \$1.00, the DMM should undertake best efforts to publish an updated pre-opening indication of \$1.00 or less before opening or reopening the security, as may be appropriate for the specific security.
 - D. After publishing a pre-opening indication, the DMM must wait for the following minimum specified periods before opening a security:
 - i. When using the Applicable Price Range specified in paragraph (d)(3)(A) of this Rule, a minimum of three minutes must elapse

between publication of the first indication and a security's opening or reopening. If more than one indication has been published, a security may be opened or reopened one minute after the last published indication provided that at least three minutes have elapsed from the dissemination of the first indication. However, the DMM may open or reopen a security less than the required minimum times after the publication of a pre-opening indication if the Auction Price would be at a price within the Applicable Price Range.

- ii. When using the Applicable Price Range specified in paragraph (d)(3)(B) of this Rule, a minimum of one minute must elapse between publication of the first indication and a security's opening or reopening. If more than one indication has been published, a security may be opened or reopened without waiting any additional time.

E. If trading is halted for a non-regulatory order imbalance, a pre-opening indication must be published as soon as practicable after the security is halted.

F. When reopening a security following a trading pause under Rule 7.11:

- i. a pre-opening indication may be published without prior [Floor Governor]Trading Official approval;
- ii. a pre-opening indication does not need to be updated before reopening the security, and the security may be reopened outside of any prior indication; and
- iii. the reopening is not subject to the minimum waiting time requirements in paragraph (d)(4)(D) of this Rule.

G. Except as provided in paragraph (d)(4)(F)(ii) of this Rule, if a pre-opening indication has been published, the Exchange will not permit the DMM to open or reopen the security outside of the last-published pre-opening indication range.

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Rule 7.35B. DMM-Facilitated Closing Auctions

(a) *DMM and Floor Broker Responsibilities.* It is the responsibility of each DMM to ensure that registered securities close as soon after the end of Core Trading Hours as

possible, while at the same time not unduly hasty, particularly when at a price disparity from the Exchange Last Sale Price.

1. *Floor Broker Interest*: Floor Broker Interest is eligible to participate in the Closing Auction provided that the Floor broker has electronically entered such interest before the Auction Processing Period for the Closing Auction begins.
 - A. For such interest to be eligible to participate in the Closing Auction, a Floor broker must:
 - i. first, by the end of, but not after, Core Trading Hours, orally represent Floor Broker Interest at the point of sale, including symbol, side, size, and limit price.
 - ii. then, electronically enter such interest after the end of Core Trading Hours. The electronic entry of Floor Broker Interest will not be subject to Limit Order Price Protection.
 - B. Before Floor Broker Interest is ranked for the Closing Auction, it must be electronically accepted by the DMM. Once accepted, Floor Broker Interest will be processed as an order ranked Priority 2 - Display Orders from a Floor Broker Participant for purposes of inclusion in Closing Auction Imbalance Information and ranking and allocation in the Closing Auction.
 - C. After the end of Core Trading Hours, electronically-entered Floor Broker Interest cannot be reduced in size or replaced, provided that, subject to [Floor]Trading Official approval, a DMM can accept a full cancellation of electronically-entered Floor Broker Interest to correct a Legitimate Error.
2. *DMM Interest*: A DMM may enter or cancel DMM Interest after the end of Core Trading Hours in order to supply liquidity as needed to meet the DMM's obligation to facilitate the Closing Auction in a fair and orderly manner. The entry of DMM Interest after the end of Core Trading Hours will not be subject to Limit Order Price Protection.

(b) - (c) No Change

(d) *Closing Imbalance*. A Closing Imbalance publication will include the Imbalance and the Side of the Imbalance. The Imbalance Reference Price for a Closing Imbalance is the Exchange Last Sale Price. The Exchange will not disseminate a Closing Imbalance if there is no Exchange Last Sale Price. A Closing Imbalance is disseminated to the securities information processor and a Regulatory Closing Imbalance is also disseminated to proprietary data feeds.

1. *Publication of Regulatory Closing Imbalance.* At the Closing Auction Imbalance Freeze Time, if the Closing Imbalance is 500 round lots or more, the Exchange will disseminate a Regulatory Closing Imbalance.
 - A. If, at the Closing Auction Imbalance Freeze Time, the Closing Imbalance is less than 500 round lots, but is otherwise significant in relation to the average daily trading volume in the security, a DMM may disseminate a Regulatory Closing Imbalance only with prior [Floor]Trading Official approval.
 - B. A Regulatory Closing Imbalance is a one-time publication that should not be updated.
 - C. A Regulatory Closing Imbalance will be disseminated at the Closing Auction Imbalance Freeze Time regardless of whether the security has not opened or is halted or paused at that time.
2. *Publication of Manual Closing Imbalance.* Beginning one hour before the scheduled end of Core Trading Hours up to the Closing Auction Imbalance Freeze Time, a DMM may disseminate a Manual Closing Imbalance only with prior [Floor]Trading Official approval. Only a DMM can update a Manual Closing Imbalance publication.
 - A. If a DMM disseminates a Manual Closing Imbalance, such publication must be updated at the Closing Auction Imbalance Freeze Time with either:
 - i. a Regulatory Closing Imbalance, if the conditions specified in paragraph (d)(1) of this Rule are met; or
 - ii. a “No Imbalance” publication if the conditions specified in paragraph (d)(1) of this Rule are no longer met.

(e) - (i) No Change

(j) *Temporary Rule Suspensions.*

1.-2 No Change

3. Only the DMM assigned to a particular security may request a temporary suspension under paragraph (j)(2) of this Rule. A determination to declare such a temporary suspension may be made after the scheduled end of Core Trading Hours and will be made on a security-by-security basis. Such determination, as

well as any entry or cancellation of orders or closing of a security under paragraph (j)(2) of this Rule, must be supervised and approved by an Trading Official [Executive Floor Governor and supervised by an Exchange Officer]. Factors that may be considered when making such a determination include, but are not limited to, when the order(s) that impacted the Imbalance were entered into Exchange systems or orally represented to the DMM, the impact of such order(s) on the closing price of the security, the volatility of the security during the trading session, and the ability of the DMM to commit capital to dampen the price dislocation.

4. A temporary suspension under paragraph (j)(2) of this Rule is in effect only for the particular security for which such suspension has been granted and for that trading day.

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Rule 18. Compensation in Relation to Exchange System Failure

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(d) [An]The Exchange[-designated panel ("Compensation Review Panel") consisting of 3 Floor Governors and 3 Exchange employees]will review claims submitted pursuant to this rule and determine the eligibility of a claim for payment. The [Compensation Review Panel in its review]Exchange will determine whether the amount claimed should be reduced based on the actions or inactions of the claiming member organization, including whether the member organization made appropriate efforts to mitigate its loss.

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Rule 37. Visitors

Visitors shall not be admitted to the Floor of the Exchange except by permission of [an Officer of]the Exchange[, a Senior Floor Official, Executive Floor Official, a Floor Governor, or an Executive Floor Governor].

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Rule 46. [Floor]Trading Officials[—Appointment]

A Trading Official is Exchange staff designated by the CEO of the Exchange or his or her designee to perform those functions specified in Exchange rules.[(a) Each Executive Floor Governor shall be approved as a Floor Official and shall be empowered to perform any duty, make any decision or take any action assigned to or required of a Floor Governor.

(b) The Exchange Chairman, in consultation with the Executive Floor Governors and the Exchange's Regulatory Oversight Committee and with the approval of the Exchange

Board, shall, at the annual meeting of the Exchange Board of Directors or at such other time as may be deemed necessary:

(i) designate as Floor Officials such other members as he may determine, who shall perform such duties as are prescribed by the Rules of the Exchange to serve at the pleasure of the Exchange Board of Directors or until the next annual meeting of the Exchange Board of Directors at which time successors Floor Officials are appointed and take office.

(ii) designate such number of other members as Floor Governors as he may determine, who shall be empowered to perform any duty, make any decision or take any action assigned to or required of an Executive Floor Governor as are prescribed by the Rules of the Exchange or as may be designated by the Exchange Board.

For purposes of this rule, a Floor Governor, by virtue of his appointment as such, shall also be deemed to be a Floor Official, and, therefore empowered to perform such duties as are specifically prescribed by the Rules of the Exchange Board or as may be designated by the Exchange Board regarding Floor Officials.

(iii) designate such number of Executive Floor Officials as he may determine from those Floor Governors who have completed their term of service as Floor Governors, who shall be empowered to perform any duty, make any decision or take any action assigned to or required of a Floor Governor as are prescribed by the Rules of the Exchange or as may be designated by the Exchange Board regarding Floor Governors.

(iv) designate such number of Senior Floor Officials as he may determine from Floor Officials who are entering their fifth or sixth year of service, who shall be empowered to perform any duty, make any decision or take any action assigned to or required of a Floor Governor as are prescribed by the Rules of the Exchange or as may be designated by the Exchange Board regarding Floor Governors.

(v) designate such number of qualified ICE employees as he may determine, who shall be empowered to take any action assigned to or required of a Floor Governor as are prescribed by the Rules of the Exchange or as may be designated by the Exchange Board regarding Floor Governors.

(c) Each Floor Official, Floor Governor, Executive Floor Official, Senior Floor Official and Executive Floor Governor so appointed pursuant to Rules 46 and 46A as applicable shall serve at the pleasure of the Exchange Board of Directors or until the next annual meeting of the Exchange and their successors are appointed and take office.

• • • ***Supplementary Material:***

.10 For purposes of this rule, the term "qualified ICE employee" shall mean employees of ICE or any of its subsidiaries, excluding the Exchange's regulatory employees who shall

have satisfied any applicable testing or qualification required by the NYSE for all Floor Governors.

.20 References in any NYSE rule to Floor Official or Floor Governor shall be deemed to refer to qualified ICE employees in addition to other Floor Governors or Floor Officials.

Rule 46A. Executive Floor Governors

(a) The Board of Directors of the Exchange, in consultation with the Exchange's Regulatory Oversight Committee, shall appoint such number of Executive Floor Governors as it deems appropriate, each of whom shall serve for a term of one year, or until the next annual organizational meeting of the Exchange Board, whichever first occurs.

(b) Executive Floor Governors shall comprise (i) at least two registered DMMs, each of whom spends a substantial part of his or her time on the Floor of the Exchange or supervising DMMs; and (ii) at least two Floor brokers, each of whom spends a majority of his or her time on the Floor of the Exchange executing transactions on the Floor of the Exchange for other than his or her own account or the account of his or her member organization or supervising Floor brokers. Executive Floor Governors assist in the administration of the rules regarding trading on the Exchange and any facility thereof.]

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Rule 47. [Floor Officials—]Unusual Situations on the Floor

(a) [Floor]Trading Officials shall have power 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, other than with regard to whether a verbal bid or verbal offer is eligible for inclusion in the Closing Auction by the DMM, which is governed by subsection (b) of this Rule.

(b) 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. A Floor broker with the interest to be included in the Closing Auction or the DMM responsible for the Closing Auction may consult a Regulatory Trading Official regarding whether a bid or offer is eligible for inclusion in the Closing Auction by the DMM. 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 final determination to include or exclude interest from the Closing Auction will be made by the DMM pursuant to Rule 104. The Regulatory Trading Official's review will be documented in Exchange systems no later than one business day following the review.

Rule 48[9]. Exchange Business Continuity and Disaster Recovery Plans and Mandatory Testing

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Rule 75. Disputes as to Bids and Offers

Disputes arising on bids or offers, if not settled by agreement between the members interested, shall be settled by a [Floor]Trading Official. In rendering a decision as to disputes regarding the amount traded, the [Floor]Trading Official shall give primary weight to statements by any member who was not a party to the transaction and shall also take into account the size of orders held by parties to the disputed transaction, and such other facts as he deems relevant. [If both parties to a dispute agree, and the dispute involves either a monetary difference of \$10,000 or more or a questioned trade, the matter may be referred for resolution to a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof, whose decision shall be binding on the parties. As an alternative to a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof, m]Members may also proceed to resolve a dispute through long-standing arbitration procedures established under the Exchange's Rules.

• • • *Supplementary Material:*

.10 Discrepancies as to amount.—When there is no dispute regarding a transaction except as to the amount traded and neither party can produce a witness, the transaction must be considered to have been for the smaller amount; provided, however, that if the member claiming the smaller amount held, at the time of the transaction in dispute, an order or orders totalling the larger amount, the [Floor]Trading Official, in reaching his decision, shall take into consideration that fact and all other facts which he deems relevant.

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Rule 91. Taking or Supplying Securities Named in Order

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.50 Rejection of DMM's principal transactions.—If there is a continued pattern of rejections of a DMM's principal transactions, a [Floor]Trading Official may be called upon and require the broker to review his or her actions. It should be noted, however, that if a customer gives instructions to his or her broker to reject trades with the DMM's name on the other side, this would be a conditional order and should not be entrusted to the DMM for execution.

The foregoing does not compromise the unconditional right of a broker to reject any trade where the DMM trades as principal. In addition, no disciplinary process would be triggered against the broker for exercising his or her right to reject the trade.

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Rule 93. Trading for Joint Account

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(b) No member while on the Floor shall, without the prior approval of a [Floor]Trading Official, initiate the purchase or sale on the Exchange of stock for any account in which he, his member organization or any other member or allied member therein is directly or indirectly interested with any person other than such member organization or any other member or allied member therein.

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Rule 103. Registration and Capital Requirements of DMMs and DMM Units

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• • • *Supplementary Material:*

.10 Temporary Reallocation of Securities.—The Chief Regulatory Officer or his or her designee [and two non- DMM Executive Floor Governors or if only one or no non-DMM Executive Floor Governors is present on the Floor, the most senior non-DMM Floor Governor or Governors based on length of consecutive service as a Floor Governor at the time of any action covered by this rule, acting by a majority] shall have the power to reallocate temporarily any security on an emergency basis to another location on the Floor whenever in their opinion such reallocation would be in the public interest. The member to whom a security has been temporarily reallocated under the provisions of this Rule will be registered as the regular DMM therein until the Chief Regulatory Officer or his or her designee [and two non-DMM Executive Floor Governors]determine that the security may be returned to the original DMM unit or has been reallocated pursuant to Exchange rules.

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Rule 103A. Member Education

[(I)]The Exchange shall develop procedures and standards for qualification and performance of members active on the Floor of the Exchange. All proposed Floor members must complete such educational program as may be prescribed by the Exchange before they will be permitted to act as a member on the Floor of the Exchange. All individuals qualified to act as Floor members, whether a primary or substitute trading license user, must complete such mandatory continuing education program modules as the Exchange may introduce from time to time. Individuals qualified to act as Floor members who fail to complete an educational module within 60 days from the date originally scheduled to participate, or within such different number of days as the Exchange may prescribe in connection with a particular module, will be precluded from

entering on the trading Floor until such time as the member satisfies the requirement to complete the educational module. [The requirement to complete educational modules shall not apply to Executive Floor Governors.]A member required to complete a particular educational module pursuant to this rule may satisfy his or her obligation by substantially assisting the Exchange in the development of such educational module.

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Rule 103B. Security Allocation and Reallocation

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(G) Allocation Freeze Policy

In the event that a DMM unit: (i) loses its registration in a DMM security as a result of proceedings under the Rule 8000 or 9000 Series, as applicable; or (ii) voluntarily withdraws its registration in a DMM security as a result of possible proceedings under those rules, the unit will be ineligible to apply for future allocations for the six month period immediately following the reassignment of the security ("Allocation Prohibition").

Following the Allocation Prohibition, a second six month period will begin during which a DMM unit may apply for new listings, provided that the unit demonstrates to the Exchange relevant efforts taken to resolve the circumstances that triggered the Allocation Prohibition. The determination as to whether a unit may apply for new listings will be made by Exchange regulatory staff[, in consultation with the Executive Floor Governors]. The factors the staff will consider will vary depending on the unit's particular situation, but may include one or more steps such as:

- supplying additional manpower/experience;
- changes in professional staff;
- attaining appropriate dealer participation;
- enhancing back-office staff; and
- implementing more stringent supervision/new procedures.

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Rule 104. Dealings and Responsibilities of DMMs

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(i) Temporary DMMs.

In the event of an emergency, such as the absence of the DMM, or when the volume of business in the particular stock or stocks is so great that it cannot be handled by the DMMs without assistance, a [Floor Governor]Trading Official may authorize a member of the Exchange who is not registered as a DMM in such stock or stocks, to act as temporary DMM for that day only.

A member who acts as a temporary DMM by such authority is required to file with the Exchange, at the end of the day a report showing (a) the name of the stock or stocks in which he so acted, (b) the name of the regular DMM, (c) the time of day when he so acted, and (d) the name of the [Floor Governor]Trading Official who authorized the arrangement. The necessary forms may be obtained at the Information Desk.

The [Floor Governor]Trading Official will not give such authority for the purpose of permitting a member not registered as DMM habitually to relieve another DMM at lunch periods, etc.

If a temporary DMM substitutes for a DMM, and if no DMM is present, the temporary DMM is expected to assume the obligations and responsibilities of DMMs for the maintenance of the market.

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Rule 112. Orders initiated “Off the Floor.”

(a) All orders in stocks for the account of a member organization or any member, principal executive, approved person, officer, or employee of such organization or a discretionary account serviced by the member or member organization must be sent to the Floor through a clearing firm's order room or other facilities regularly used for transmission of public customers' orders to the Floor.

The restrictions of paragraph (a) above shall not apply to an order

(i) when a [Floor]Trading Official expressly invites a member or members to participate in a difficult market situation;

(ii) to facilitate the purchase or sale of a block of stock because the market on the Floor could not readily absorb the block at a particular price or prices;

(iii) to sell stock for an account in which the member organization is directly or indirectly interested if, in facilitating the sale of a large block of stock, the member organization acquired its position on the Floor because the demand was not sufficient to absorb the block at a particular price or prices;

(iv) to effect bona fide arbitrage or to engage in the purchase and sale, or sale and purchase of securities of companies involved in publicly announced merger, acquisition, consolidation, tender, etc.; or

(v) to offset a transaction made in error.

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Rule 124. Midday Auction

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(e) If there is a significant imbalance in a Midday Auction Stock at the end of the Midday Auction Pause, with the approval of a Trading Official[Floor Governor or two Floor Officials], the Midday Auction Pause may be converted to an order imbalance halt. If a Midday Auction Pause is converted to an order imbalance halt, orders re-priced pursuant to section (b)(4) and (5) of this Rule will be re-filed according to the original instructions of the order and the security will be reopened pursuant to the procedures set forth in Rule 123D.

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Rule 128B. Publication of Changes, Corrections, Cancellations or Omissions and Verification of Transactions

Except for manual transactions pursuant to Rule 76, this Rule is not applicable to trading UTP Securities on the Pillar trading platform.

• • • Supplementary Material:

.10 Publication on the tape or in the "sales sheet".—Publication of a change or a correction in a transaction which previously appeared on the tape, or publication of the cancellation of a transaction which previously appeared on the tape and which was properly rescinded, or publication of a transaction omitted from the tape may be made on the tape on the day of the transaction provided both buying and selling members or member organizations agree to the change in the transaction(s) and approval is received from a Trading Official[Floor Governor, Executive Floor Official, Senior Floor Official or Executive Floor Governor]. In the event such publications are not made on the tape on the day of the transaction, they may be published on the tape at least ten minutes prior to the opening of business on the following business day or in the "sales sheet"* within three business days of the date of the transaction with the approval of both the buying and selling members and a [Floor]Trading Official, provided the price of the transaction does not affect the high, low, opening or closing price of the security on the day of the transaction.

.12 Mechanical, system and clerical errors.—Erroneous publications made on the tape due to mechanical or system troubles or to clerical errors may be corrected on the tape on the day of the transaction, or on the tape by at least ten minutes prior to the opening of business on the following business day, or in the "sales sheet"* within three business days

of the date of the transaction under the direction of an authorized NYSE Market employee.

.13 Other errors.—A correction in the amount of a transaction reported erroneously to the tape by a party to the transaction, may be published on the tape on the day of the transaction, or on the tape at least ten minutes prior to the opening of business on the following business day, or on the "sales sheet"* within three business days of the date of the transaction with the approval of a Trading Official[Floor Governor, Executive Floor Official, Senior Floor Official or Executive Floor Governor].

Members who wish to make requests to have publications made on the tape or in the "sales sheet" or to have verifications of transactions made, should first take up the matter as to procedure with a reporter in the Crowd where the security is dealt in or with the section supervisor at the post.

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Rule 308. Acceptability Proceedings

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(g) Any person whose application has been disapproved by an Acceptability Committee, or any member of the Board of Directors of the Exchange, any member of the Committee for Review, [any Executive Floor Governor,]and the Division of the Exchange initiating the proceedings may require a review by the Board of any determination of an Acceptability Committee. A request for review shall be made by filing with the Secretary of the Exchange a written request therefore, within twenty days after notification of the determination of the Acceptability Committee. Upon review, the Board of Directors may sustain any determination, or may modify or reverse any such determination as it deems appropriate. The determination of the Board of Directors shall be final and conclusive action by the Exchange.

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Rule 903. Off-Hours Transactions

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(d) Executions of Orders

(i) Coupled aggregate-price orders shall be executed upon entry.

(ii) A closing price order to buy (sell) a security for the account of the DMM registered in such security and approved by a [Floor]Trading Official, coupled with a closing price order to sell (buy) for the account of any member, member organization or non-member which has agreed to offset all or part of any market-on-close imbalance that existed in the

stock prior to the official closing of the 9:30 a.m. to 4:00 p.m. trading session, shall be executed upon entry.

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Rule 906. Impact of Trading Halts on Off-Hours Trading

(a) Reserved.

(b) Corporate Developments during Off-Hours Trading Session

A closing price order to buy (sell) a security for the account of the DMM registered in such security and approved by a [Floor]Trading Official, coupled with a closing price order to sell (buy) for the account of any member, member organization or non-member which has agreed to offset all or part of any market-on-close imbalance that existed in the stock prior to the official closing of the 9:30 a.m. to 4:00 p.m. trading session, shall not be so canceled or precluded from entry as result of corporate developments during the Off-Hours Trading Session.

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NYSE Listed Company Manual

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202.04 Exchange Market Surveillance

The Exchange maintains a continuous market surveillance program through its Market Surveillance and Evaluation Division. An "on-line" computer system has been developed which monitors the price movement of every listed stock—on a trade-to-trade basis—throughout the trading session. The program is designed to closely review the markets in those securities in which unusual price and volume changes occur or where there is a large unexplained influx of buy or sell orders. If the price movement of a stock exceeds a predetermined guideline, it is immediately "flagged" and review of the situation is immediately undertaken to seek the causes of the exceptional activity. Under these circumstances, the company may be called by the Exchange to inquire about any company developments which have not been publicly announced but which could be responsible for unusual market activity. Where the market appears to reflect undisclosed information, the company will normally be requested to make the information public immediately. Occasionally it may be necessary to carry out a review of the trading after the fact, and the Exchange may request such information from the company as may be necessary to complete the inquiry.

The Listing Agreement provides that a company must furnish the Exchange with such information concerning the company as the Exchange may reasonably require.

Special Initial Margin and Capital Requirements—

Occasionally, a listed issue may be placed under special initial margin and capital requirements. Such a restriction in no way reflects upon the quality of corporate management, but, rather indicates a determination by the [Floor]Trading Officials of the Exchange that the market in the issue has assumed a speculative tenor and has become volatile due to the influence of credit, which, if ignored, may lead to unfair and disorderly trading.

The determination to impose restrictions is based on a careful inspection of the trading for the latest one week period, defined as the previous Friday through subsequent Thursday, matched against various criteria. Other factors, such as the capitalization turnover, the ratio of last year's average weekly volume to the volume for the period considered, arbitrage, stop order bans, short position, earnings and recent corporate news are also reviewed.

The restriction itself is aimed primarily at eliminating the extension of credit to those who buy a security and sell it the same day seeking a short term profit. Such customers must have the full purchase value in the account prior to the entry of an order. Concomitantly, a broader requirement is usually imposed on all other margin customers in that they must put up the full purchase price within five business days, rather than only the percentage

required by the Federal Reserve Board. Cash customers, of course, must in all instances put up 100% of the cost in seven days.

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