

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88933; File No. SR-NYSE-2020-47)

May 22, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Temporary Period for Specified Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on May 20, 2020, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary period for specified Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 to extend the temporary period for specified Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020. The current temporary period that these Rules are in effect ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 22, 2020.

Background

To slow the spread of COVID-19 through social-distancing measures, on March 18, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.⁴ On May 14, 2020, the CEO of the Exchange made a determination under Rule 7.31(c)(3) to reopen the Trading Floor on a limited basis on May 26, 2020 to a subset of Floor brokers, subject to safety measures designed to prevent the spread of COVID-19.⁵

⁴ Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination. The Exchange’s current rules establish how the Exchange will function fully-electronically. The CEO also closed the NYSE American Options Trading Floor, which is located at the same 11 Wall Street facilities, and the NYSE Arca Options Trading Floor, which is located in San Francisco, CA. See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110>.

⁵ See Trader Update, available here: <https://www.nyse.com/trader->

With this partial reopening, beginning May 26, 2020, Floor brokers present on the Trading Floor will have access to Floor-based trading systems and, thus, be able to enter orders on behalf of their customers as provided for under Exchange rules, including D Orders,⁶ Opening and Closing D Orders,⁷ Pegged Orders,⁸ and orders with a Yielding Modifier,⁹ and have access to Closing Auction Imbalance Information, as provided for in Rule 7.35B(e)(1)(B).

DMMs will continue to be provided access to the Trading Floor on trading days when an IPO Auction or Core Open Auction for a post-IPO public offering is scheduled.¹⁰ Floor brokers present on the Trading Floor will be able to interact with DMMs in connection with such Auctions. DMMs will continue to otherwise be absent from the Trading Floor and, thus, all intra-day trading and other Auctions will be conducted remotely by the DMM¹¹ and Floor

[update/history#110000251588](#). Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination. All Floor broker firms are being provided the opportunity for a subset of their staff to return to the Trading Floor.

⁶ See Rule 7.31(d)(4).

⁷ See Rules 7.31(c)(1)(C) and (c)(2)(C).

⁸ See Rule 7.31(h).

⁹ See Rule 7.31(i)(5).

¹⁰ On March 25, 2020, the CEO of the Exchange made a determination to partially reopen the Trading Floor on trading days when there is an IPO Auction to allow a DMM on the Trading Floor for the limited purpose of effecting such IPO Auction manually. See Securities Exchange Act Release Nos. 88488 (March 26, 2020), 85 FR 18286 (April 1, 2020) (SR-NYSE-2020-23) (Notice of filing and immediate effectiveness of proposed rule change). On April 1, 2020, the CEO of the Exchange made a determination to partially reopen the Trading Floor on trading days when a Core Open Auction is scheduled in connection with a listed company's post-IPO public offering to allow a DMM on the Trading Floor for the limited purpose of effecting such Core Open Auctions manually. See Securities Exchange Act Release No. 88546 (April 2, 2020), 85 FR 19782 (April 8, 2020) (SR-NYSE-2020-28) (Notice of filing and immediate effectiveness of proposed rule change).

¹¹ If a DMM is unable to facilitate an Auction electronically, the Exchange would facilitate such Auction pursuant to Rule 7.35C.

brokers will not be able to enter orders that require DMM involvement.¹²

Proposed Rule Change

For the period while the Trading Floor has been temporarily closed, the Exchange has modified the rules governing Auctions to add Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C¹³ that are in effect until the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 22, 2020.¹⁴

Because DMM access to the Trading Floor will not change with the partial reopening on May 26, 2020, the Exchange is proposing to extend the following Commentaries related to the absence of DMMs from the Trading Floor, until such time that there is a full reopening of the Trading Floor facilities to DMMs:

¹² See, e.g., Rules 76 (describing crossing orders) and 7.35B(a)(1) (describing Floor broker interest that is verbally represented by a Floor broker by the end of Core Trading Hours, which must be electronically accepted by the DMM before it can participate in the Closing Auction).

¹³ See Securities Exchange Act Release Nos. 88413 (March 18, 2020), 85 FR 16713 (March 24, 2020) (SR-NYSE-2020-19) (amending Rule 7.35C to add Commentary .01); 88444 (March 20, 2020), 85 FR 17141 (March 26, 2020) (SR-NYSE-2020-22) (amending Rules 7.35A to add Commentary .01, 7.35B to add Commentary .01, and 7.35C to add Commentary .02); 88488 (March 26, 2020), 85 FR 18286 (April 1, 2020) (SR-NYSE-2020-23) (amending Rule 7.35A to add Commentary .02); 88546 (April 2, 2020), 85 FR 19782 (April 8, 2020) (SR-NYSE-2020-28) (amending Rule 7.35A to add Commentary .03); 88562 (April 3, 2020), 85 FR 20002 (April 9, 2020) (SR-NYSE-2020-29) (amending Rule 7.35C to add Commentary .03); 88705 (April 21, 2020), 85 FR 23413 (April 27, 2020) (SR-NYSE-2020-35) (amending Rule 7.35A to add Commentary .04); 88725 (April 22, 2020), 85 FR 23583 (April 28, 2020) (SR-NYSE-2020-37) (amending Rule 7.35 to add Commentary .01); and 88829 (May 6, 2020), 85 FR 28115 (May 12, 2020) (SR-NYSE-2020-41) (amending Rule 7.35B to add Commentary .02 to Rule 7.35B).

¹⁴ See Securities Exchange Act Release No. 88891 (May 15, 2020) (SR-NYSE-2020-45) (Notice of filing and immediate effectiveness of proposed rule change to extend the temporary period for Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C to end on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 22, 2020).

- Commentary .01 to Rule 7.35;¹⁵
- Commentaries .01, .02, .03, and .04 to Rule 7.35A;
- Commentary .01 to Rule 7.35B;¹⁶ and
- Commentaries .01, .02, and .03 to Rule 7.35C

To reflect that the Trading Floor facilities will continue to be closed to DMMs after May 22, 2020, except on trading days when there is an IPO or post-IPO public offering scheduled to allow a DMM on the Trading Floor for the limited purpose of effecting such IPO Auction or Core Open Auction manually, the Exchange proposes to extend the end date of each of the above Commentaries to provide that such Rules would be in effect for the temporary period that ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020.

The Exchange is not proposing any substantive changes to these Rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles

¹⁵ Although a subset of Floor brokers will be on the Trading Floor after May 26, 2020, an IPO Auction may still be conducted by a DMM remotely as provided for in Commentary .04 to Rule 7.35A. If a DMM chooses to conduct an IPO Auction remotely, Floor brokers on the Trading Floor will not have access to IPO Auction imbalance information. For this reason, the Exchange is proposing to extend the temporary rule providing for the dissemination of Auction Imbalance Information for IPO Auctions.

¹⁶ The Exchange is not proposing to extend the effective date of Commentary .02 to Rule 7.35B.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

To reduce the spread of COVID-19, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading. In connection with such temporary closure of the Trading Floor, the Exchange adopted Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C, which are in effect until May 22, 2020. On May 14, 2020, the CEO made a determination under Rule 7.1(c)(3) that, beginning May 26, 2020, the Trading Floor would be partially reopened to allow a subset of Floor brokers to return to the Trading Floor. DMM access to the Trading Floor will not change after May 22, 2020.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because DMM access to the Trading Floor will not change after May 22, 2020. Accordingly, the Exchange believes that the temporary rule changes in effect pursuant to the Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C (other than Commentary .02 to Rule 7.35B), which are intended to be in effect during the temporary period while the Trading Floor is closed to DMMs, should be extended until such time that there is a full reopening of the Trading Floor facilities to DMMs. The Exchange is not proposing any substantive changes to these Rules.

The Exchange believes that, by clearly stating that this relief will be in effect through the earlier of a full reopening of the Trading Floor facilities to DMMs or the close of the Exchange on June 30, 2020, market participants will have advance notice of the temporary period during

which the Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C will be in effect, including that Commentary .02 to Rule 7.35B will sunset on May 22, 2020.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather would extend the period during which Commentary .01 to Rule 7.35; Commentaries .01, .02, .03, and .04 to Rule 7.35A; Commentary .01 to Rule 7.35B; and Commentaries .01, .02, and .03 to Rule 7.35C will be in effect. These Commentaries are intended to be in effect during the temporary period while the Trading Floor is closed to DMMs and currently expire on May 22, 2020. Because the Trading Floor will remain temporarily closed to DMMs past May 22, 2020, the Exchange proposes to extend the temporary period for these Commentaries to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰ Because the proposed rule change does not:

(i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was

¹⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁰ 17 CFR 240.19b-4(f)(6).

filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²¹ and Rule 19b-4(f)(6) thereunder.²²

A proposed rule change filed under Rule 19b-4(f)(6)²³ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposal would extend the temporary period during which Commentary .01 to Rule 7.35; Commentaries .01, .02, .03, and .04 to Rule 7.35A; Commentary .01 to Rule 7.35B; and Commentaries .01, .02, and .03 to Rule 7.35C will be in effect to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020.²⁵ The proposal would not make any substantive changes to these Commentaries. The Exchange has represented that these Commentaries are intended to be in effect during the temporary period while the Trading Floor is closed to DMMs and currently expire on May 22, 2020. According to the Exchange, while the Trading Floor will partially reopen to a subset of Floor brokers on May 26, 2020, DMM access to the Trading Floor will not change after May 22,

²¹ 15 U.S.C. 78s(b)(3)(A).

²² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²³ 17 CFR 240.19b-4(f)(6).

²⁴ 17 CFR 240.19b-4(f)(6)(iii).

²⁵ Commentary .02 to Rule 7.35B will sunset on May 22, 2020.

2020.²⁶ The Commission notes that, without a waiver of the operative delay, these Commentaries would cease to apply while the Exchange's Trading Floor facilities are still temporary closed to DMMs.²⁷ For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁸

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or 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

²⁶ According to the Exchange, the Trading Floor facilities will continue to be closed to DMMs, except on trading days when an IPO Auction or Core Open Auction for a post-IPO public offering is scheduled to allow a DMM on the Trading Floor for the limited purpose of effecting such IPO Auction or Core Open Auction manually.

²⁷ See supra note 26 and accompanying text.

²⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2020-47 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-2020-47. 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-2020-47, 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.²⁹

J. Matthew DeLesDernier
Assistant Secretary

²⁹ 17 CFR 200.30-3(a)(12), (59).