

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-89925; File No. SR-NYSE-2020-75)

September 18, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add Commentary .02 to Rule 7.35

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 September 4, 2020, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I 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 add Commentary .02 to Rule 7.35 to provide that, for a temporary period that begins on September 4, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on September 30, 2020, for a Direct Listing Auction, Rule 7.35(c)(3) will not be in effect, and the Exchange will disseminate Auction Imbalance Information if a security is a Direct Listing and has not had its Direct Listing Auction. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 to add Commentary .02 to Rule 7.35 to provide that, for a temporary period that begins on September 4, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on September 30, 2020, for a Direct Listing Auction, Rule 7.35(c)(3) will not be in effect, and the Exchange will disseminate Auction Imbalance Information if a security is a Direct Listing and has not had its Direct Listing Auction.

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

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>.

May 14, 2020, the CEO of the Exchange made a determination under Rule 7.1(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 On June 15, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) to begin the second phase of the Trading Floor reopening by allowing DMMs to return on June 17, 2020, subject to safety measures designed to prevent the spread of COVID-19.⁶ Consistent with these safety measures, both DMMs and Floor broker firms continue to operate with reduced staff on the Trading Floor.

On April 21, 2020, the Exchange added Commentary .01 to Rule 7.35, which has since been amended to provide:⁷

For a temporary period that begins on April 21, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, for an IPO Auction, paragraph (c)(3) of this Rule will not be in effect, and the Exchange will disseminate Auction Imbalance Information if a security is an IPO and has not had its IPO Auction. Such Auction Imbalance Information will be disseminated in the same manner that Auction Imbalance Information is disseminated for a Core Open Auction, as set forth in Rule 7.35A(e)(1) - (3), except that references to the term “Consolidated Last

⁵ See Securities Exchange Act Release No. 88933 (May 22, 2020), 85 FR 32059 (May 28, 2020) (SR-NYSE-2020-47) (Notice of filing and immediate effectiveness of proposed rule change).

⁶ See Securities Exchange Act Release No. 89086 (June 17, 2020) (SR-NYSE-2020-52) (Notice of filing and immediate effectiveness of proposed rule change).

⁷ See Securities Exchange Act Release Nos. 88725 (April 22, 2020), 85 FR 23583 (April 28, 2020) (SR-NYSE-2020-37) (amending Rule 7.35 to add Commentary .01) and 89199 (June 30, 2020), 85 FR 40718 (July 7, 2020) (SR-NYSE-2020-56) (extending the temporary period for, among other rules, Commentary .01 to Rule 7.35).

Sale Price” in Rule 7.35A(e)(3) and subparagraphs (A) - (C) of that Rule will be replaced with the term “the security’s offering price.”

Proposed Rule Change

The Exchange proposes to amend Rule 7.35 to add Commentary .02 to provide that, just as with IPO Auctions, for a temporary period that begins on September 4, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on September 30, 2020, the Exchange would disseminate Auction Imbalance Information for a Direct Listing Auction.

Rule 7.35(c)(3) provides that the Exchange will not disseminate Auction Imbalance Information if a security is an IPO or Direct Listing and has not had its IPO Auction or Direct Listing Auction. This Rule is based on a change that the Exchange made in 2015 to reflect that Exchange systems would not publish Order Imbalance Information for an IPO.⁸ In 2015, the rationale provided for excluding IPOs from Order Imbalance Information was because Exchange systems at the time did not have access to interest represented in the crowd by Floor brokers. However, since the Exchange transitioned to Pillar in August 2019, all Floor broker interest intended for a Core Open Auction, IPO Auction, or Direct Listing Auction must be entered electronically and therefore Exchange systems would be able to include orders from Floor brokers for such Auctions in the Auction Imbalance Information.

The Auction Imbalance Information that the Exchange proposes to disseminate for a Direct Listing Auction would be the same information that is disseminated in advance of a Core Open Auction, as set forth in Rule 7.35A(e), except for how the Imbalance Reference Price

⁸ See Securities Exchange Act Release No. 74837 (April 29, 2015), 80 FR 25741 (May 5, 2015) (SR-NYSE-2015-19) (Notice of filing and immediate effectiveness of proposed rule change).

would be determined. Rule 7.35A(e)(1) provides that the Exchange begins disseminating Auction Imbalance Information for a Core Open Auction at 8:00 a.m., and would do the same for a Direct Listing Auction. In addition, Rule 7.35A(e)(2) specifies the content of the Auction Imbalance Information that is disseminated in advance of a Core Open Auction, which would be the same content for a Direct Listing Auction.⁹ Finally, Rule 7.35A(e)(3) specifies the Imbalance Reference Price, which for a Core Open Auction is the Consolidated Last Sale Price. The Exchange proposes that the Imbalance Reference Price for a Direct Listing would be the same as the security's Indication Reference Price, as determined pursuant to Rule 7.35A(d)(2)(A)(iv), and that such Imbalance Reference Price would be updated as provided for in Rule 7.35A(e)(3)(A) - (C).¹⁰

Proposed Commentary .02 to Rule 7.35 would provide:

For a temporary period that begins on September 4, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on September 30, 2020, for a Direct Listing Auction, paragraph (c)(3) of this Rule will not be in effect, and the Exchange will disseminate Auction Imbalance Information if a security is a Direct Listing and has not had its Direct Listing Auction. Such Auction Imbalance Information will be disseminated in the same manner that Auction Imbalance Information is disseminated for a Core Open Auction, as set forth in Rule 7.35A(e)(1) -

⁹ For Core Open Auctions, the Exchange disseminates Total Imbalance, Side of Total Imbalance, Paired Quantity, and Continuous Book Clearing Price, as these terms are defined in Rule 7.35(a)(4).

¹⁰ As provided for in Rule 7.35A(e)(3), the Imbalance Reference Price changes if a pre-opening indication has been published for such Auction. For example, if the security's Indication Reference Price as determined under Rule 7.35A(d)(2)(A)(iv) were lower than the bid price of a pre-opening indication, the Imbalance Reference Price for that Direct Listing Auction would be the pre-opening indication bid price, and not the security's Indication Reference Price. See, e.g., Rule 7.35A(e)(3)(A).

(3), except that with respect to a Direct Listing Auction, references to the term “Consolidated Last Sale Price” in Rule 7.35A(e)(3) and subparagraphs (A) - (C) of that Rule will be replaced with the term “the security’s Indication Reference Price as determined under Rule 7.35A(d)(2)(A)(iv).”

The Exchange also proposes to make a non-substantive change to Commentary .01 to Rule 7.35 to specify that the change to how the Imbalance Reference Price would be determined under that Commentary would be specific to an IPO Auction.

The Exchange has tested the ability to disseminate such Auction Imbalance Information on the day of Direct Listing Auction. In addition, because such Auction Imbalance is already disseminated on a daily basis in connection with Core Open Auctions, the Exchange believes that member organizations that subscribe to such proprietary data feeds would be able to receive, read, and respond to Auction Imbalance Information for a Direct Listing Auction without needing to make any changes. Accordingly, the Exchange would be able to implement the proposed rule change immediately upon effectiveness of this filing.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² in particular, in that 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

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. 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. On June 15, 2020, the CEO made a determination under Rule 7.1(c)(3) that, beginning June 17, 2020, DMM units may choose to return a subset of staff to the Trading Floor. Consistent with these safety measures, both DMMs and Floor broker firms continue to operate with reduced staff on the Trading Floor.

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, during a temporary period when both Floor broker firms and DMMs are operating with reduced staff on the Trading Floor, it would promote fair and orderly Direct Listing Auctions for the Exchange to disseminate Auction Imbalance Information on the same terms that such information is disseminated for a Core Open Auction. Because of reduced Floor broker staff, there are fewer individuals on the Trading Floor who would have access to imbalance information for a Direct Listing Auction to provide to customers. Moreover, such Auction Imbalance Information would include Floor broker interest eligible to participate in such Direct Listing Auction. The Exchange therefore believes that the Auction Imbalance Information would provide more granular information in advance of a Direct Listing Auction than would otherwise be available during this temporary period when there is reduced staff on the Trading Floor. As described above, the Auction Imbalance Information disseminated via the proprietary data feeds would begin being published at 8:00 a.m. ET, would be published every second, and would include

Total Imbalance, Side of Total Imbalance, Paired Quantity, and Continuous Book Clearing Price information. The Exchange therefore believes that proposed rule change would promote transparency in advance of a Direct Listing Auction, which would benefit investors and the public.

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 September 30, 2020, market participants will have advance notice that the Exchange would disseminate Auction Imbalance Information for a Direct Listing Auction that may occur during that period.

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 is designed, during a temporary period when both Floor broker firms and DMMs are operating with reduced staff on the Trading Floor, to ensure fair and orderly Direct Listing Auctions by providing that the Exchange would disseminate Auction Imbalance Information for such auctions via its proprietary data feeds during a temporary period.

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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ 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 prior to 30 days from the date on which it was 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 Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁶ 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.¹⁷ The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Exchange believes that a number of member organizations that currently subscribe to the Exchange's proprietary data feeds are technologically prepared to receive, read, and respond to Auction Imbalance Information for a Direct Listing. The Exchange further states that two companies recently filed registration statements with the Commission and could potentially list their securities on the Exchange via a Direct Listing within 30 days from the date of this filing. The

¹³ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁴ 17 CFR 240.19b-4(f)(6).

¹⁵ 17 CFR 240.19b-4(f)(6).

¹⁶ 17 CFR 240.19b-4(f)(6)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

Commission believes that dissemination of Auction Imbalance Information as proposed is reasonably designed to promote transparency in advance of a Direct Listing Auction and to benefit investors and the public. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.¹⁸

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)¹⁹ of the Act 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2020-75 on the subject line.

¹⁸ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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-2020-75. 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-2020-75 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.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).