

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91095; File No. SR-NYSE-2020-89)

February 10, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Amend Rule 7.35C

I. Introduction

On October 23, 2020, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Rule 7.35C (Exchange-Facilitated Auctions) to (1) provide the Exchange authority to facilitate a Trading Halt Auction if a security has not reopened by 3:30 p.m. following a MWCB Halt; (2) widen the Auction Collar for an Exchange-facilitated Trading Halt Auction following an MWCB Halt; (3) provide that certain DMM Interest would not be canceled following an Exchange-facilitated Auction; and (4) change the Auction Reference Price for Exchange-facilitated Core Open Auctions.

The proposed rule change was published for comment in the Federal Register on November 12, 2020.³ On December 18, 2020, the Commission extended the time period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change, to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 90363 (Nov. 5, 2020), 85 FR 71964 (Nov. 12 2020) (“Notice”).

February 10, 2020.⁴ On February 5, 2020, the Exchange filed Amendment No. 1 to the proposed rule change.⁵ The Commission has received no comments on the proposed rule change.

The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and is instituting proceedings under Section 19(b)(2)(B) of the Act to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 1

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.

⁴ See Securities Exchange Act Release No. 90726 (Dec. 20, 2020), 85 FR 84431 (Dec. 28, 2020).

⁵ In Amendment No. 1, the Exchange removed one of the proposed changes from the original proposal. Specifically, the Exchange removed the proposed change to adopt a new definition of Auction Reference Price for exchange-facilitated Core Open Auctions and to amend the temporary rule related to such auctions set forth in Commentary .04 to Rule 7.35C. This aspect of the original proposal is now the subject of a separate proposed rule change filed by the Exchange on February 8, 2021 (SR-NYSE-2021-13).

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 amend Rule 7.35C (Exchange-Facilitated Auctions) to (1) provide the Exchange authority to facilitate a Trading Halt Auction⁶ if a security has not reopened following a Level 1 or Level 2 trading halt due to extraordinary market volatility under Rule 7.12 (“MWCB Halt”) by 3:30 p.m.; (2) widen the Auction Collar for an Exchange-facilitated Trading Halt Auction following a MWCB Halt; and (3) provide that certain DMM Interest⁷ would not be cancelled following an Exchange-facilitated Auction.⁸

These proposed changes are currently in place on a temporary basis, as described in Commentaries .01 - .03 to Rule 7.35C.

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

⁶ As defined in Rule 7.35(a)(1), an “Auction” refers to the process for opening, reopening, or closing of trading of Auction-Eligible Securities on the Exchange, which can result in either a trade or a quote.

⁷ For purposes of Auctions, the term “DMM Interest” is defined in Rule 7.35(a)(8) to mean all buy and sell interest entered by a DMM unit in its assigned securities and includes: “DMM Auction Liquidity,” which is non-displayed buy and sell interest that is designated for an Auction only (see Rule 7.35(a)(8)(A)); “DMM Orders” which are orders, as defined under Rule 7.31, entered by a DMM unit (see Rule 7.35(a)(8)(B)); and “DMM After-Auction Orders,” which are orders entered by a DMM unit before either the Core Open Auction or Trading Halt Auction that do not participate in an Auction and are intended instead to maintain price continuity with reasonable depth following an Auction (see Rule 7.35(a)(8)(C)).

⁸ In this Amendment No. 1, the Exchange is removing its proposed change to Rule 7.35C(b)(1) relating to the Auction Reference Price for Exchange-facilitated Core Open Auctions, which will be submitted as a separate proposed rule change.

close and the Exchange would move, on a temporary basis, to fully electronic trading.⁹ On 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-19.¹⁰ 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-19.¹¹

Rule 7.35C sets forth the procedures for Exchange-facilitated Auctions. The first time the Exchange facilitated any Auctions pursuant to Rule 7.35C was on March 19, 2020, when two DMM firms temporarily left the Trading Floor in connection with implementing their business continuity plans related to the COVID-19 pandemic. Beginning on March 23, 2020, when the Exchange temporarily closed the Trading Floor, the Exchange began facilitating Auctions on behalf of all DMM firms. During the period of March 23, 2020 through June 16, 2020, among the DMM firms, the percentage of Auctions that were facilitated by the Exchange ranged from 1% to 3.2% of the securities assigned to each DMM. During this period, the vast majority of Auctions were facilitated electronically by DMMs pursuant to Rules 7.35A and 7.35B.

⁹ 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>.

¹⁰ 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).

¹¹ See Securities Exchange Act Release No. 89086 (June 17, 2020) (SR-NYSE-2020-52) (Notice of filing and immediate effectiveness of proposed rule change).

In connection with both the market-wide volatility associated with the COVID-19 pandemic in March 2020 and the full and partial closing of the Trading Floor facilities, the Exchange added Commentaries .01, .02, .03, and .04 to Rule 7.35C¹² that are in effect until the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on April 30, 2021.¹³ These Commentaries set forth how the Exchange has been functioning during this temporary period when the Trading Floor facilities have been closed either in full or in part in connection with COVID-19.

The Exchange believes that the rules that it has added on a temporary basis to Rule 7.35C have supported the fair and orderly operation of the Exchange during both the market volatility associated with COVID-19 and the temporary period that the Trading Floor facilities have been closed either in full or in part due to COVID-19. The Exchange further believes the functionality that has been operating on a temporary basis would continue to support the fair and orderly operation of the Exchange under any circumstances where there may be either market-wide volatility or the need for the Exchange to facilitate one or more Auctions. Accordingly, the Exchange proposes that the following changes be made permanent in Exchange rules:

¹² 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) (“First Rule 7.35C Filing”); 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) (“Second Rule 7.35C Filing”); 88562 (April 3, 2020), 85 FR 20002 (April 9, 2020) (SR-NYSE-2020-29) (amending Rule 7.35C to add Commentary .03) (“DMM Interest Filing”); and 89059 (June 12, 2020), 85 FR 36911 (June 18, 2020) (SR-NYSE-2020-50) (amending Rule 7.35C to add Commentary .04) (“Fourth Rule 7.35C Filing”).

¹³ See Securities Exchange Act Release No. 90795 (December 23, 2020), 85 FR 86608 (December 30, 2020) (SR-NYSE-2020-106) (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; and temporary rule relief in Rule 36.30 to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on April 30, 2020).

- Provide the Exchange with authority to facilitate a Trading Halt Auction if a security has not reopened following a MWCB Halt by 3:30 p.m. Eastern Time.
- Widen the Auction Collars for an Exchange-facilitated Trading Halt Auction following a MWCB Halt to the greater of \$0.15 or 10%.
- Allow DMM Interest to remain on the Exchange Book after an Exchange-facilitated Auction.

Proposed Rule Changes

Exchange Authority to Facilitate a Trading Halt Auction following a MWCB Halt

In the midst of the market-wide volatility relating to COVID-19 and before the Exchange temporarily closed the Trading Floor, the Exchange added Commentary .01 to Rule 7.35C, which provided, at the time of filing, that:¹⁴

Until May 15, 2020, to facilitate the fair and orderly reopening of securities following either a Level 1 or Level 2 trading halt due to extraordinary market volatility under Rule 7.12 (“MWCB Halt”), the CEO of the Exchange or his or her designee may determine that the Exchange will facilitate a Trading Halt Auction in one or more securities under this Rule if a security has not reopened by 3:30 p.m. If the Exchange facilitates a Trading Halt Auction following a MWCB Halt pursuant to this Commentary, the Auction Collars will be the greater of \$0.15 or 10% away from the Auction Reference Price.

Following the temporary closure of the Trading Floor, the substance of this Commentary was revised and moved to Commentary .02 to Rule 7.35C, as follows:¹⁵

¹⁴ See First Rule 7.35C Filing, supra note 12.

¹⁵ See Second Rule 7.35C Filing, supra note 12.

If the Trading Floor facilities reopen, through trading on December 31, 2020, to facilitate the fair and orderly reopening of securities following a MWCB Halt, the CEO of the Exchange or his or her designee may determine that the Exchange will facilitate a Trading Halt Auction in one or more securities under this Rule if a security has not reopened by 3:30 p.m. Eastern Time. If the Exchange facilitates a Trading Halt Auction following a MWCB Halt pursuant to this Commentary, the Auction Collars will be the greater of \$0.15 or 10% away from the Auction Reference Price.

As described in more detail in the First Rule 7.35C Filing, under Rule 7.35C, the Exchange will facilitate an Auction only if a DMM cannot facilitate an Auction for one or more securities. In support of the proposed rule change, the Exchange explained:

The Exchange continues to believe that DMM-facilitated Trading Halt Auctions following a MWCB Halt provide the greatest opportunity for fair and orderly reopenings of securities, and would therefore continue to provide DMMs an opportunity to reopen securities before effectuating an Exchange-facilitated Trading Halt Auction. The proposal would provide the Exchange with another tool during volatile markets to reopen securities before 3:50 p.m., for continuous trading to resume leading into the close. . . . The Exchange believes that specifying a time in the Rule at which the Exchange could exercise such discretion would put DMMs on notice of the time that the Exchange could begin facilitating such auctions. The Exchange further believes that it is not appropriate to provide that the Exchange would automatically facilitate reopening auctions at 3:30 p.m. There may be facts and circumstances where DMMs would be able to reopen all securities before 3:50 p.m., but that the DMM-facilitated process may not have completed by 3:30 p.m. The Exchange would take those facts and circumstances into account before invoking the proposed relief. Exchange staff would communicate with the

impacted DMMs verbally on the Floor during such times, and therefore the DMMs would be on notice of whether the Exchange would invoke this relief, and for which securities.

The Exchange continues to believe that the ability for the Exchange to facilitate a Trading Halt Auction following a MWCB Halt if a security has not reopened by 3:30 p.m. would promote the fair and orderly reopening of one or more securities so that continuous trading may resume leading into the close. Accordingly, the Exchange proposes that the relief described above should be made a permanent part of Rule 7.35C. To effect this change, the Exchange proposes to amend 7.35C to add new subparagraph (a)(4) as follows, which is based on current Commentary .02 to Rule 7.35C without any substantive differences:

The CEO of the Exchange, or his or her designee, may determine that the Exchange will facilitate a Trading Halt Auction in one or more securities under this Rule if a security is subject to either a Level 1 or Level 2 trading halt due to extraordinary market volatility under Rule 7.12 (“MWCB Halt”) and has not reopened by 3:30 p.m. Eastern Time.

The Exchange further proposes to delete Commentary .02 to Rule 7.35C, which would be replaced by proposed Rule 7.35C(a)(4).

There are no technology changes associated with this proposed rule change and the Exchange would be able to implement it immediately upon approval of this proposed rule change.

Wider Auction Collars for a Trading Halt Auction Following a MWCB Halt

As noted above, as set forth in Commentary .01(a) to Rule 7.35C,¹⁶ the Exchange also widened the Auction Collars for an Exchange-facilitated Trading Halt Auction following a

¹⁶ Commentary .01(a) to Rule 7.35C currently provides that: “For a temporary period that begins March 23, 2020, when the Trading Floor facilities have been closed pursuant to Rule 7.1(c)(3), and ends on the earlier of a full reopening of the Trading Floor facilities to

MWCB Halt to the greater of \$0.15 or 10% away from the Auction Reference Price. Absent this temporary relief, the Auction Collars for all Exchange-facilitated Trading Halt Auctions, including reopenings following a MWCB Halt, is the greater of \$0.15 or 5% away from the Auction Reference Price and does not include extension logic.¹⁷

As described in the First Rule 7.35C Filing, the widening of the Auction Collars was designed to provide the Exchange with more flexibility to respond to the then unprecedented market-wide declines that resulted from the ongoing spread of COVID-19 at that time if the Exchange were to facilitate a Trading Halt Auction following a MWCB Halt. The Exchange cannot predict if and when the U.S. equities market will experience market-wide declines that would trigger a MWCB Halt again. However, if such market-wide volatility were to occur, the Exchange believes that the widened Auction Collars would promote fair and orderly reopenings following a MWCB Halt by providing a wider price range at which the Exchange could facilitate such a reopening.

To effect this change, the Exchange proposes to amend Rule 7.35C(b)(3)(A)(ii) to provide as follows (proposed new text underlined), which is based on current Commentary .01 to Rule 7.35C without any substantive differences:

DMMs or after the Exchange closes on December 31, 2020: (a) The Auction Collar for a Trading Halt Auction following a either a Level 1 or Level 2 trading halt due to extraordinary market volatility under Rule 7.12 (“MWCB Halt”) will be the greater of \$0.15 or 10% away from the Auction Reference Price.”

¹⁷ See Securities Exchange Act Release No. 85962 (May 29, 2019), 84 FR 26188 (June 5, 2019) (SR-NYSE-2019-05) (Order approving, among other rules, Rule 7.35C, including that extension logic would not be applied to Exchange-facilitated Trading Halt Auctions). The Exchange continues to believe that extension logic is not necessary for Exchange-facilitated Trading Halt Auctions following a MWCB Halt because marketable orders priced through the Auction Collars would be cancelled, which would serve the same purpose as the extension logic. The proposed wider Auction Collars for an Exchange-facilitated Trading Halt Auction following a MWCB Halt would allow for more interest to participate in such auction, thereby reducing the potential for orders to be cancelled.

The Auction Collar for the Trading Halt Auction will be based on a price that is the greater of \$0.15 or 5% away from the Auction Reference Price for the Trading Halt Auction, provided that, the Auction Collar for a Trading Halt Auction following a MWCB Halt will be the greater of \$0.15 or 10% away from the Auction Reference Price.

The Exchange further proposes to delete Commentary .01 to Rule 7.35C, which would be replaced by the proposed amendment to Rule 7.35C(b)(3)(A)(ii).

There are no technology changes associated with this proposed rule change and the Exchange would be able to implement it immediately upon approval of this proposed rule change.

DMM Interest and Exchange-Facilitated Auctions

As set forth in Rule 7.35C(a)(1), if the Exchange facilitates an Auction, DMM Interest would not be eligible to participate in such Auction and previously-entered DMM Interest would be cancelled. When a DMM cannot facilitate an Auction because the DMM unit is experiencing a system issue that prevents it from communicating with Exchange systems, cancelling DMM Interest following an Exchange-facilitated Auction would help ensure that DMM Interest that may be at stale prices does not participate in trading on the Exchange. On the other hand, by cancelling DMM Interest when the DMM units' systems are operating normally, DMMs may be limited in their ability to maintain price continuity with reasonable depth, i.e., provide passive liquidity at the Exchange best bid and offer and at depth, immediately following an Exchange-facilitated Auction.

After a period of operating Exchange-facilitated Auctions, the Exchange identified a way to provide DMMs with a greater opportunity to provide passive liquidity immediately following an Auction, thereby dampening volatility, while still limiting DMM risk. To effect this change,

the Exchange added Commentary .03 to Rule 7.35C, which provides that for the temporary period that begins on April 6, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2020, if the Exchange facilitates an Auction, DMM Interest (i) will not be eligible to participate if such Auction results in a trade, and will be eligible to participate if such Auction results in a quote, and (ii) will not be cancelled unless the limit price of such DMM Interest would be priced through the Auction Price or Auction Collars, as applicable, or such DMM Interest would be marketable against other unexecuted orders.¹⁸

The Exchange proposes to make permanent the changes to how Exchange-facilitated Auctions function, as described in Commentary .03 to Rule 7.35C. By making this functionality permanent, such rules would continue to apply both during the continuation of the current Trading Floor closure and if the Exchange were to facilitate Auctions any time after the Trading Floor fully reopens.

To effect this change, the Exchange proposes to amend 7.35C(a)(1) as follows (new text underlined, deleted text bracketed):

If the Exchange facilitates an Auction, DMM Interest will not be eligible to participate [in]if such Auction results in a trade, and will be eligible to participate if such Auction results in a quote[and previously-entered DMM Interest will be cancelled].

This proposed rule change would make permanent the temporary functionality set forth in paragraph (a)(1) to Commentary .03.

With this change, DMM Interest would not participate in any Exchange-facilitated Auctions that would result in a trade. This is how DMM Interest currently functions when the

¹⁸ See DMM Interest Filing, supra note 12.

Exchange facilitates an Auction pursuant to either Rule 7.35C(a)(1) or Commentary .03 to Rule 7.35C. Based on experience operating pursuant to Commentary .03 to Rule 7.35C, the Exchange believes that this functionality should continue permanently when the Exchange facilitates an Auction, including, for example, when the Trading Floor is open but the DMM is unable to facilitate an Auction because of a systems or technical issue.

More specifically, when a DMM facilitates an Auction that results in a trade, the DMM determines whether to participate on the buy or sell side and, based on that direction from the DMM, DMM Orders that do not participate in the Auction and that would lock or cross other orders, which would include other DMM Orders, will be cancelled.¹⁹ If the DMM has entered both buy and sell interest in advance of the Auction and the Exchange facilitates the Auction, the DMM would not be able to control whether the DMM's buy or sell interest would participate in a trade and the Exchange would not have that instruction from the DMM of which side of the market that the DMM would participate. As a result, there may be crossing DMM Interest that could result in a wash-sale trade that would not have occurred if the DMM had facilitated the Auction. Excluding DMM Interest from participating in an Exchange-facilitated Auction that results in a trade eliminates the potential for a wash-sale trade. In addition, the Exchange believes it promotes fair and orderly Exchange-facilitated Auctions that result in a trade to exclude DMM Interest from participating in such Auctions, because if a DMM's buy or sell interest does not reflect up-to-date prices, it could impact pricing of the Auction.

¹⁹ See Rule 7.35A(h)(3)(C) (providing that after a Core Open or Trading Halt Auction, better at-priced DMM Orders that do not receive an allocation and that lock or cross other unexecuted orders and buy and sell better-priced DMM Orders will be cancelled after the Auction Processing Period concludes).

By contrast, the Exchange believes that the proposed change for DMM Interest to participate in an Exchange-facilitated Auction that results in a quote would promote fair and orderly markets. This proposed change is consistent with Commentary .03(a)(1) to Rule 7.35C, but differs from current Rule 7.35C(a)(1). A security opens on a quote if there is no buy interest willing to trade with sell interest at the same price. The Exchange believes that under such circumstances, including DMM Interest in the Exchange's quote would assist the DMMs in meeting their obligation to maintain a two-sided quote as well as to maintain continuity and depth in their assigned securities.²⁰ Accordingly, the Exchange believes that making this change permanent would promote fair and orderly markets in connection with Exchange-facilitated Auctions that result in a quote.

The final element of the proposed change to Rule 7.35C(a)(1) is that DMM Interest would no longer be automatically cancelled after an Exchange-facilitated Auction. The Exchange believes that this proposed change would assist DMMs in meeting their obligation, as required by Rule 104(f)(2), to provide passive liquidity in order to maintain continuity with reasonable depth in their assigned securities immediately following a Core Open Auction or Trading Halt Auction that was facilitated by the Exchange. In advance of an Auction, DMMs can enter DMM Orders, which if not traded in an Auction, would be part of the DMM Interest on the Exchange Book after the Auction. In addition, DMMs can enter DMM After-Auction Orders, which do not participate in Auctions and are specifically designed to assist the DMMs to maintain passive liquidity on the Exchange immediately following an Auction, which supports their ability to maintain continuity with reasonable depth immediately following an Auction. If DMM Interest is not automatically cancelled following an Exchange-facilitated Auction, the

²⁰ See Rule 104(f)(2).

DMM would be better able to timely meet these obligations by ensuring that passive liquidity remains on the Exchange Book immediately following an Auction.

The Exchange believes that there remain circumstances when DMM Interest should be cancelled following an Exchange-facilitated Auction. As proposed, the Exchange would cancel unexecuted DMM Interest under the same circumstances that unexecuted orders of other member organizations would be cancelled following such Auctions.

To effect this change, the Exchange proposes to amend Rule 7.35C(g)(1), which currently describes which unexecuted orders would be cancelled if a security opens or reopens on a trade via an Exchange-facilitated Auction, and Rule 7.35C(g)(2), which currently describes which unexecuted orders would be cancelled if a security opens or reopens on a quote that is above (below) the upper (lower) Auction Collar via an Exchange-facilitated Auction. The Exchange proposes that these two subparagraphs would be replaced with the following text to incorporate that under the same circumstances, DMM Interest would similarly be cancelled (proposed new text underlined):

(1) If a security opens or reopens on a trade, Market Orders (including sell short Market Orders during a Short Sale Period) and Limit Orders, including DMM Interest, with a limit price that is better-priced than the Auction Price and were not executed in the applicable Auction will be cancelled.

(2) If a security opens or reopens on a quote that is above (below) the upper (lower) Auction Collar, Market Orders (including sell short Market Orders during a Short Sale Period) and Limit Orders, including DMM Interest, with a limit price that is better-priced than the upper (lower) Auction Collar will be cancelled before such quote is published.

These proposed rule changes would make permanent the temporary functionality set forth in paragraphs (b)(1) and (2) to Commentary .03.

The Exchange further believes that if previously-entered DMM Interest would be marketable against either other DMM Interest or contra-side unexecuted orders, such DMM Interest should be cancelled. For example, if for a security, the Auction Reference Price is \$10.00, the lower Auction Collar is \$9.00 and the upper Auction Collar is \$11.00, and the orders on the Exchange Book in advance of the Auction are as follows:

- Order 1 - Buy DMM Order 1000 shares at \$10.05
- Order 2 - Sell DMM Order 1000 shares at \$10.00
- Order 3 - Buy DMM Order 1000 shares at \$10.02
- Order 4 - Sell Limit Order at \$10.03,

the orders in this example would be processed as follows in an Exchange-facilitated Auction:

- Order 1 would be cancelled (because DMM Interest would not be eligible to participate in an Auction trade, and here, Order 1 is marketable with Orders 2 and 4)
- Order 2 would be cancelled (because DMM Interest would not be eligible to participate in an Auction trade, and here Order 2 is marketable with Order 3), and
- Order 3 would not be cancelled because it is no longer marketable with any other interest, i.e., it no longer locks or crosses the price of any other contra-side interest in the Exchange Book. Order 3 would therefore be included in the opening quote.

This Exchange-facilitated Auction would result in the following quote: \$10.02 (Order 3 - DMM Order) x \$10.03 (Order 4 - Limit Order).

To effect this change, the Exchange proposes new subparagraph (g)(3) to Rule 7.35C to specify the additional circumstances when DMM Interest would be cancelled, as follows:

The Exchange will cancel DMM Interest that is marketable against contra-side unexecuted orders. If the contra-side unexecuted order against which such DMM Interest is marketable is DMM Interest, the DMM Interest with the earlier working time will be canceled.

This proposed rule change would make permanent the temporary functionality set forth in paragraph (b)(3) to Commentary .03.

The Exchange believes that these proposed rule changes would promote fair and orderly markets whenever the Exchange facilitates an Auction under Rule 7.35C -- under any circumstance -- by supporting DMMs in maintaining continuity with reasonable depth in their assigned securities immediately following an Exchange-facilitated Core Open Auction or Trading Halt Auction that was facilitated by the Exchange.

The Exchange proposes that, with these proposed changes to Rules 7.35C(a)(1) and (g), Commentary .03 to Rule 7.35C would be deleted in its entirety.

In further support of making the functionality set forth in Commentary .03 to Rule 7.35C permanent, the Exchange notes that after the Exchange implemented that Commentary, the Exchange observed improved performance relating to Exchange-facilitated Auctions.

- For the period March 23, 2020 to April 3, 2020, 4.9% of all Core Open Auctions were facilitated by the Exchange. For the period April 6, 2020 through June 16, 2020, the Exchange facilitated only 2% of all Core Open Auctions. In addition, the percentage of Exchange-facilitated Core Open Auctions that were bound by

an Auction Collar decreased from 1.3% from the pre-April 6, 2020 period, to 0.58% in the April 6, 2020 - June 16, 2020 period.

- In addition, the Exchange observed that after April 6, 2020, Exchange-listed securities experienced reduced volatility in the first half hour of trading. The Exchange uses a quote-based metric to measure volatility in securities,²¹ and based on that metric, volatility in Exchange-listed securities between the period of April 6, 2020 and June 16, 2020 was 28.4% lower than the same measure between March 23, 2020 and April 3, 2020. In addition, the Exchange further observed that between these two periods, the difference between the Core Open Auction Price and the subsequent five-minute VWAP dropped by 31.3%.

For DMM firms that have already returned staff to the Trading Floor, this proposed change has limited application because the Exchange has not facilitated any Auctions on behalf of those firms since June 16, 2020. In addition, the Exchange anticipates that once the Trading Floor facilities open in full to DMMs, and all DMM firms have staffing on the Trading Floor, the need for Exchange-facilitated Auctions would be obviated, and the Exchange will revert to pre-pandemic rates of Exchange-facilitated Auctions, which were none. Accordingly, the proposed changes to Rule 7.35C will likely have limited application and would be available as a business

²¹ As described in an Exchange blog post, this metric is calculated using second-to-second “quote returns,” which is calculated by averaging the midpoints of all NBBO updates for a security within each second of the day from 9:35 a.m. to 4:00 p.m., and then calculating the percentage rate of return of these average quote midpoints from one second to the next. The variance of returns are then calculated in aggregated time periods (e.g., 5-minute buckets) and annualized from seconds to 6.5 hour trading days to 252 trading days in the years. Finally, the Exchange takes the square root of the annualized variance in the aggregated periods, which creates the Exchange’s quote volatility metric. See NYSE Data Insights, Introducing Quote Volatility (QV) - a new metric to measure price volatility, available here: <https://www.nyse.com/data-insights/introducing-quote-volatility-qv-a-new-metric-to-measure-price-volatility>.

continuity functionality should DMMs be unable to facilitate an Auction in one or more securities, for any reason.

There are no technology changes associated with this proposed rule change and the Exchange would be able to implement it immediately upon approval of this proposed rule change.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,²² in general, and furthers the objectives of Section 6(b)(5) of the Act,²³ 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.

The Exchange believes that the rules that it added on a temporary basis to Rule 7.35C have supported the fair and orderly operation of the Exchange during both the market volatility associated with COVID-19 and the temporary period that the Trading Floor facilities have been closed either in full or in part due to COVID-19. The Exchange further believes the functionality that has been operating on a temporary basis would continue to support the fair and orderly operation of the Exchange under any circumstances where there may be either market-wide volatility or the need for the Exchange to facilitate one or more Auctions.

Exchange Authority to Facilitate a Trading Halt Auction following a MWCB Halt

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(5).

The Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to provide the Exchange with authority to facilitate a Trading Halt Auction following a MWCB Halt. The Exchange continues to believe that DMM-facilitated Trading Halt Auctions following a MWCB Halt provide the greatest opportunity for fair and orderly reopenings of securities, and would therefore continue to provide DMMs an opportunity to reopen securities before effectuating an Exchange-facilitated Trading Halt Auction. The proposal would provide the Exchange with another tool during volatile markets to reopen securities before 3:50 p.m. so that continuous trading may resume before leading into the close. The Exchange further believes that it is not appropriate to provide that the Exchange would automatically facilitate reopening auctions at 3:30 p.m. There may be facts and circumstances where DMMs would be able to reopen all securities before 3:50 p.m., but that the DMM-facilitated process may not have completed by 3:30 p.m. The Exchange would take those facts and circumstances into account before invoking the proposed relief.

Wider Auction Collars for a Trading Halt Auction Following a MWCB Halt

The Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to widen the Auction Collars for an Exchange-facilitated Trading Halt Auction following a MWCB Halt. Such widened Auction Collars would provide the Exchange with more flexibility to respond to any market-wide declines that may continue following a MWCB Halt if the Exchange were to facilitate a Trading Halt Auction following such halt. The Exchange cannot predict if and when the U.S. equities market will experience market-wide declines that would trigger a MWCB Halt again. However, if such market-wide volatility were to occur, the Exchange believes that the widened Auction Collars would promote fair and orderly reopenings following a MWCB Halt by providing a

wider price range at which the Exchange could facilitate such a reopening, thereby allowing more buy and sell interest to participate in such Auction.

DMM Interest and Exchange-Facilitated Auctions

As noted above, beginning March 19, 2020, the Exchange began facilitating auctions as provided for under Rule 7.35C for the first time, and then, beginning March 23, 2020, when the Trading Floor was temporarily closed to reduce the spread of COVID-19, began facilitating Auctions on behalf of all DMM firms. Based on that experience, the Exchange added Commentary .03 to Rule 7.35C, which is in effect only for a temporary period while the Trading Floor is closed. The Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to make the changes described in Commentary .03 to Rule 7.35C permanent because it would allow DMMs to maintain continuity with reasonable depth in their assigned securities immediately following an Exchange-facilitated Auction.

As described above, the Exchange is proposing that DMM Interest would continue to not participate in an Exchange-facilitated Auction that results in a trade. As noted above, under both the current Rule and temporary Commentary .03, DMM Interest does not participate in an Exchange-facilitated Auction that results in a trade in part to prevent wash-trade sales of previously-entered DMM buy and sell interest and therefore reduces DMM units' risk. It also protects the fair and orderly operation of such Auctions because such DMM Interest may be at stale prices, and therefore could impact pricing of the Auction in a manner that does not reflect up-to-date trading interest. For this reason, the Exchange believes it would continue to promote fair and orderly Auctions for DMM Interest not to participate in an Exchange-facilitated Auction that results in a trade.

By contrast, the Exchange believes that the proposed change that DMM Interest would be included in an Exchange-facilitated Auction that results in a quote would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote fair and orderly resumption of trading by allowing DMM Interest to be considered as part of the opening quote. A security only opens on a quote when there are no buy and sell orders that can be crossed at a single price. Accordingly, when a security opens on a quote, the DMM has an immediate obligation to maintain a two-sided quote and to provide continuity and depth. Including DMM interest in an Exchange-facilitated Auction that results in a quote would assist DMMs in meeting those obligations.

The Exchange believes it would remove impediments to and perfect the mechanism of a free and open market and a national market system not to automatically cancel DMM Interest following an Exchange-facilitated Auction because it would provide DMMs with the opportunity to provide passive liquidity immediately following an Exchange-facilitated Auction, thereby reducing volatility while still limiting DMM risk. Similarly, the Exchange believes that because DMM Interest would not be participating in an Exchange-facilitated Auction that results in a trade, it would remove impediments to and perfect the mechanism of a free and open market and a national market system to cancel DMM Interest that would be marketable against unexecuted orders because, if not cancelled, such interest could trade at a price that would not be consistent with the Auction Price or opening or reopening quote determined in the Exchange-facilitated Auction. The proposed changes would also remove impediments to and perfect the mechanism of a free and open market because DMM Interest that, following an Exchange-facilitated Auction, would be priced through the Auction Price or Auction Collars, as applicable, would be cancelled in the same manner that other unexecuted orders would be cancelled.

The Exchange further believes that the proposed changes to Rules 7.35C(a) and (g) would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange observed improved performance following Exchange-facilitated Auctions after the Exchange implemented Commentary .03 to Rule 7.35C. Accordingly, should circumstances ever arise again that would require the Exchange to facilitate any Auctions, which, based on pre-pandemic experience, would likely be rare, the Exchange believes that these proposed changes would improve the performance of Exchange-facilitated Auctions by enabling better engagement by the DMMs in both the Auction and the immediate after-market while still limiting DMM risk.

III. Proceedings to Determine Whether to Disapprove SR-NYSE-2020-89 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal, as modified by Amendment No. 1, should be approved or disapproved.²⁴ Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning the proposed rule change's consistency with the Act²⁵ and, in particular, with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and

²⁴ 15 U.S.C. 78s(b)(2)(B).

²⁵ 15 U.S.C. 78f(b)(5).

manipulative acts and practices, to promote just and equitable principles of trade, 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.²⁶

For the reasons discussed above, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the proposal should be approved or disapproved.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is inconsistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulation thereunder.

Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.²⁷

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by [insert date 21 days from publication in the Federal Register]. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by [insert date 35 days from publication in the Federal Register]. The Commission asks that commenters address the sufficiency of the Exchange's

²⁶ Id.

²⁷ Rule 700(c)(2) of the Commission's Rules of Practice provides that "[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views." 17 CFR 201.700(c)(2).

statements in support of the proposal which are set forth in the Notice,²⁸ in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment, including where relevant, any specific data, statistics, or studies, on the following:

1. The NYSE proposal for its exchange-facilitated auctions would differ from other primary listing markets' MWCB re-opening processes in that it would establish price collars of the greater of \$0.15 or 10% away from the Auction Reference Price, with interest that cannot be satisfied within the collars being canceled, whereas Nasdaq, NYSE Arca, and Cboe BZX establish 5% price bands for re-opening and then widen those price bands in increments of 5% until market interest can be satisfied. Should the primary listing exchanges harmonize their respective processes for reopening trading by electronic auction after a halt pursuant to the market-wide circuit breaker mechanism following a Level 1 or Level 2 market decline, and if so, why? If so, which aspects of the re-opening processes following MWCB Halts should be harmonized (e.g., auction reference price, determination of auction match price, width of auction collars, or expansions of auction collars) and what are the appropriate parameters? Should NYSE further harmonize its proposed MWCB reopening process for exchange-facilitated auctions to align with Nasdaq, NYSE Arca, and Cboe BZX on the establishment of auction reference prices, auction collars levels, and/or the limit (or lack thereof) on auction collar adjustments?

2. Is it appropriate for the Exchange to derive and expand the lower/upper MWCB Auction Collar by subtracting from or adding to the Auction Reference Price the greater of \$0.15 or 10% of the Auction Reference Price, which are currently wider than the parameters

²⁸ See Notice, supra note 3.

that Nasdaq, NYSE Arca, and Cboe BZX use to derive and expand their respective MWCB auction collars? Are there any specific data, statistics, or studies to support the Exchange's belief that the wider parameters proposed for MWCB Auction Collars are set at appropriate levels that would allow the Exchange to re-open trading in securities more quickly while still reducing the potential to re-open at a price that is significantly away from the last traded price of the security? Are there any considerations regarding why the NYSE exchange-facilitated MWCB re-openings should be handled differently from other primary listing markets that list equities?

3. Are the other aspects of the proposal appropriate for auctions following a Trading Halt? Is it appropriate for the Exchange to have the authority to facilitate a Trading Halt Auction if a security has not re-opened by 3:30pm, following a MWCB Halt? Or should the Exchange afford the DMM additional time to open the security?

4. Should DMM Interest be eligible to participate in an Exchange-facilitated Auction, if that Auction results in a quote? Should DMM Interest be canceled when a security opens or reopens on a trade? When a security opens or reopens, should DMM Interest be canceled when the limit price of that DMM Interest prices through the Auction Price or the Auction Collars? Should DMM Interest be canceled when it is marketable against contra-side unexecuted orders?

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-2020-89 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-2020-89. 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 Web site (<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-2020-89 and should be submitted on or before [insert date 21 days from publication in the Federal Register]. Rebuttal comments should be submitted by [insert date 35 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)(57).