

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92374; File No. SR-NYSE-2020-89)

July 9, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 2, to Amend NYSE Rule 7.35C

I. Introduction

On October 23, 2020, New York Stock Exchange LLC (“Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change 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 market-wide circuit-breaker halt (“MWCB Halt”); (2) widen the Auction Collar for an Exchange-facilitated Trading Halt Auction following an MWCB Halt; (3) provide that certain DMM (designated market maker) Interest will not be canceled following an Exchange-facilitated Auction; and (4) change the Auction Reference Price for Exchange-facilitated Core Open Auctions.<sup>3</sup> The proposed rule change was published for comment in the Federal Register on November 12, 2020.<sup>4</sup>

On December 18, 2020, pursuant to Section 19(b)(2) of the Act,<sup>5</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> By amendment of the proposed rule change, the Exchange has removed several of these proposed changes from the original proposal. See infra notes 7 and 10.

<sup>4</sup> See Securities Exchange Act Release No. 90363 (Nov. 5, 2020), 85 FR 71964 (Nov. 12 2020).

<sup>5</sup> 15 U.S.C. 78s(b)(2).

proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change, extending the date for Commission action to February 10, 2020.<sup>6</sup> On February 5, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.<sup>7</sup> On February 10, 2021, the Commission published notice of Amendment No. 1 and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act<sup>8</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.<sup>9</sup> On March 17, 2021, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change, as modified by Amendment No. 1, in its entirety.<sup>10</sup> The Commission has received no comment letters on the proposal.

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<sup>6</sup> See Securities Exchange Act Release No. 90726 (Dec. 20, 2020), 85 FR 84431 (Dec. 28, 2020).

<sup>7</sup> 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).

<sup>8</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>9</sup> See Securities Exchange Act Release No. 91095 (Feb. 10, 2021), 86 FR 9978 (Feb. 17, 2020).

<sup>10</sup> In Amendment No. 2, the Exchange removed several more proposed changes from the original proposal, as modified by Amendment No. 1. Specifically, the Exchange removed the proposed changes to make permanent the temporary rules pertaining to: (i) permitting the CEO to determine that the Exchange will facilitate a Trading Halt Auction in one or more securities following a MWCB Halt if the security has not reopened by 3:30 p.m. Eastern Time, and (ii) establishing wider Auction Collars for Trading Halt Auctions following a MWCB Halt.

The Commission is publishing this notice to solicit comments on Amendment No. 2 to the proposed rule change from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 2

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 amend Rule 7.35C (Exchange-Facilitated Auctions) to provide that certain DMM Interest<sup>11</sup> would not be cancelled following an Exchange-facilitated Auction.<sup>12</sup>

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<sup>11</sup> 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)).

<sup>12</sup> In this Amendment No. 2, the Exchange is removing its proposed changes to (1) the Exchange authority to facilitate a Trading Halt Auction 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.; and (2) widen the Auction Collar for an Exchange-facilitated Trading Halt Auction following a MWCB Halt, which are currently temporary rules set forth in Commentaries .01 and .02 to Rule 7.35C.

These proposed changes are currently in place on a temporary basis, as described in Commentary .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 close and the Exchange would move, on a temporary basis, to fully electronic trading.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup>

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

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<sup>13</sup> 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>.

<sup>14</sup> 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).

<sup>15</sup> See Securities Exchange Act Release No. 89086 (June 17, 2020) (SR-NYSE-2020-52) (Notice of filing and immediate effectiveness of proposed rule change).

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.

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 Commentary .03 to Rule 7.35C,<sup>16</sup> which is 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.<sup>17</sup>

The Exchange believes that Commentary .03 to Rule 7.35C, which is in effect on a temporary basis, has 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

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<sup>16</sup> See Securities Exchange Act Release No. 88413 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”).

<sup>17</sup> 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). [The Commission notes that, after submitting Amendment No. 2, the Exchange extended the outside date for effectiveness of the temporary relief from April 30, 2021 to August 31, 2021. See Securities Exchange Act Release No. 91778 (May 5, 2021), 86 FR 25902 (May 11, 2021)].

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 changes to how DMM Interest may participate in an Exchange-facilitated Auction be made permanent.

#### Proposed Rule Changes

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.<sup>18</sup>

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 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

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<sup>18</sup> See DMM Interest Filing, supra note 10.

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.<sup>19</sup> 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.

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

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<sup>19</sup> 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).



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.<sup>20</sup> 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 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

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<sup>20</sup> See Rule 104(f)(2).

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,<sup>21</sup> 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

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<sup>21</sup> 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,<sup>22</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>23</sup> 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 Commentary .03 to Rule 7.35C, which is currently in effect on a temporary basis, has 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.

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

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<sup>22</sup> 15 U.S.C. 78f(b).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

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 not to 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. Discussion and Commission Findings

After careful review, the Commission is approving the proposed rule change, as modified by Amendment No. 2, for the reasons discussed below.<sup>24</sup> The Commission finds that the proposed rule change, as modified, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, including Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.<sup>25</sup>

The Exchange proposes to make permanent certain provisions of its rules that have been temporarily in effect during the course of the COVID-19 pandemic, as the Exchange has operated with fully and partially closed floor trading facilities. The Exchange proposes that, when it facilitates an auction because a DMM is unable to connect to Exchange systems, DMM Interest will not be able to participate in the auction if that auction results in a trade, but will be able to participate if the auction results in a quote (i.e., if no buy interest in the auction is willing to trade with sell interest at the same price). This aspect of the proposal is consistent with

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<sup>24</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>25</sup> 17 U.S.C. 78f(b)(5).

Section 6(b)(5) of the Act because (1) in the case of an Exchange-facilitated auction that results in a trade, the rule is reasonably designed to prevent wash-sale trades between DMM Interest on opposite sides of the market and to prevent DMM Interest that does not reflect up-to-date prices from affecting the price of the auction; and (2) in the case of an Exchange-facilitated auction that results in a quote, to allow DMM Interest to populate the Exchange's order book after the auction, assisting DMMs in meeting their obligations to maintain a two-sided quote and continuity and depth in their assigned securities.

The Exchange also proposes that DMM Interest would no longer be automatically canceled after an Exchange-facilitated opening or reopening auction. Under the proposal, the Exchange would cancel DMM Interest after an auction under the same circumstances in which it cancels unexecuted limit orders of other member organizations, namely (1) in the case of an Exchange-facilitated auction that opens or reopens on a trade, when the interest is better-priced than the auction price, and (2) in the case of an Exchange-facilitated auction that opens or reopens on a quote, when the interest is priced better than the Auction Collar under the Exchange's rules. Other DMM Interest, however, including DMM After-Auction Orders, would not be canceled and would be incorporated into the Exchange's order book immediately upon the commencement of continuous trading following the auction. This aspect of the proposal is consistent with Section 6(b)(5) of the Act because the proposed rule is reasonably designed to permit DMMs to provide passive liquidity in continuous trading immediately following an auction and thereby meet their obligations to maintain price continuity with reasonable depth.

For these reasons, the Commission finds that this proposed rule change is consistent with the requirements of the Act and in particular Section 6(b)(5) because it is reasonably 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.

#### IV. Solicitation of Comments on Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 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](mailto: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 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 this filing will also 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].

V. Accelerated Approval of the Proposed Rule Change, as modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of Amendment No. 2 in the Federal Register. In Amendment No. 2, the Exchange removed from the original proposal the proposed changes to its permanent rules to: (i) permit the CEO to determine that the Exchange will facilitate a Trading Halt Auction in one or more securities following a MWCB Halt if the security has not reopened by 3:30 p.m. Eastern Time, and (ii) establish wider Auction Collars for Trading Halt Auctions following a MWCB Halt.<sup>26</sup>

The Commission finds that Amendment No. 2 is consistent with the Act in that is designed, among other things, to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>27</sup> to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

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<sup>26</sup> See supra note 10.

<sup>27</sup> 15 U.S.C. 78s(b)(2).

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>28</sup> that the proposed rule change SR-NYSE-2020-89, as modified by Amendment No. 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>29</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>28</sup> 15 U.S.C. 78s(b)(2).

<sup>29</sup> 17 CFR 200.30-3(a)(12).