

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88444; File No. SR-NYSE-2020-22)

March 20, 2020

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

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”),<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on March 20, 2020, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 amend Rules 7.35A, 7.35B, and 7.35C for a temporary period that begins March 23, 2020, and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes, for a temporary period that begins March 23, 2020, when the Trading Floor facilities will have been closed pursuant to Rule 7.1(c)(3), and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, to:

- suspend the current price and volume parameters set forth in Rules 7.35A and 7.35B restricting DMMs from effecting a Core Open, Trading Halt, or Closing Auction;
- widen the percentage price parameters for when a DMM may effect a Core Open, Trading Halt, or Closing Auction electronically to 10%;
- suspend the requirement to publish pre-opening indications; and
- establish the Auction Collars for an Exchange-facilitated Trading Halt Auction following a Level 1 or Level 2 market-wide circuit breaker halt<sup>4</sup> at the greater of 10% or \$0.15.

Current rules already provide for DMMs to effect Auctions electronically without any price or volume limitations, but only on a temporary basis for the trading day on which the

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<sup>4</sup> Rule 7.12 sets forth when the Exchange would halt trading due to extraordinary trading volatility. Under Rule 7.12, a "Level 1 Market Decline" means a decline in the price of the S&P 500 Index of 7% from the closing price of that index, and a "Level 2 Market Decline" means a decline in the price of the S&P 500 Index of 13% from the closing price of that index. If there is a Level 1 or Level 2 Market Decline, the Exchange halts trading in all stocks for 15 minutes (a "MWCB Halt").

suspension was declared. The Exchange is proposing these changes only for the period when the NYSE Trading Floor has temporarily closed as a precautionary measure to reduce the spread of COVID-19.

The Exchange also proposes a non-substantive amendment to correct rule cross references in Rule 7.35B(j)(1)(A) and (B).

### **Background**

#### *NYSE Trading Floor Temporarily Closes March 23, 2020*

Since March 9, 2020, markets worldwide are experiencing unprecedented market-wide declines and volatility because of the ongoing spread of COVID-19. In the U.S. equity markets, Level 1 MWC B Halts have been triggered under Rule 7.12 on March 9, 2020, March 12, 2020, March 16, 2020, and March 18, 2020.

Beginning on March 16, 2020, to slow the spread of COVID-19 through social-distancing measures, significant limitations were placed on large gatherings throughout the country. For example, in New York City, which is where the NYSE Trading Floor is located, public and private schools, universities, churches, restaurants, bars, movie theaters, and other commercial establishments where large crowds can gather have been closed.

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>5</sup> Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of

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<sup>5</sup> 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,

this determination.

Because the Trading Floor facilities will be closed, Floor brokers will not be able to enter orders on the Trading Floor.<sup>6</sup> As a result, there will not be any Floor Broker Participants in allocations and there will not be any order types unique to Floor brokers, such as D Orders.<sup>7</sup> In addition, because DMMs will not be on the Trading Floor, DMMs will not engage in any manual actions, such as facilitating an Auction manually or publishing pre-opening indications before a Core Open or Trading Halt Auction. As they do today, DMMs will be able to participate electronically both intraday and for Auctions.

Because DMMs would not be physically present on the Trading Floor, DMMs would facilitate Auctions electronically as provided for in Rules 7.35A and 7.35B. If a DMM does not facilitate an Auction electronically pursuant to the parameters specified in those rules, the Exchange would facilitate the Auction pursuant to Rule 7.35C.

*DMM-Facilitated Core Open and Trading Halt Auctions*

Rule 7.35A(c)(1) sets forth the circumstances when a DMM may not effect a Core Open or Trading Halt Auction electronically. Relevant to this proposed rule change, a DMM cannot electronically effect a Core Open or Trading Halt Auction:

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available here: <https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110>.

<sup>6</sup> An order entered by a Floor broker is eligible to be included in the Floor Broker Participant for allocation purposes only if it is entered by a Floor broker while on the Trading Floor. See Rule 7.36(a)(5)(A).

<sup>7</sup> The following order types are available only to Floor brokers and would not participate when the Exchange is trading in a fully-electronic mode: Opening D Order (Rule 7.31(c)(1)(C)); Closing D Order (Rule 7.31(c)(2)(C)); D Order (Rule 7.31(d)(4)); Pegged Orders (Rule 7.31(h)); Yielding Modifier (Rule 7.31(i)(5)); and Crossing Orders (Rule 76).

- If the Core Open or Trading Halt Auction Price would be more than 4% away from the Consolidated Last Sale Price (See Rule 7.35A(c)(1)(G)).
- If the paired volume for that Auction would be more than: (i) 1,500 round lots for securities with an average opening volume of 1,000 round lots or fewer in the previous calendar quarter; or (ii) 5,000 round lots for securities with an average opening volume of over 1,000 round lots in the previous calendar quarter (See Rule 7.35A(c)(1)(H)).

Under current rules, the DMM may effect a Core Open or Trading Halt Auction electronically if the Auction Price will be up to 8% away from the Consolidated Last Sale and without any volume limitations under the following circumstances:

- If as of 9:00 a.m., the E-mini S&P 500 Futures are +/- 2% from the prior day's closing price of the E-mini S&P 500 Futures, or
- If the Exchange determines that it is necessary or appropriate for the maintenance of a fair and orderly market.

In addition, if the CEO of the Exchange or his or her designee determines that a Floor-wide event is likely to have an impact on the ability of DMMs to arrange for a fair and orderly Core Open or Trading Halt Auction and that, absent relief, the operation of the Exchange is likely to be impaired, the CEO or his or her designee can temporarily suspend the prohibition on a DMM opening a security electronically if the Core Open or Trading Halt Auction Price will be more than the price or volume parameters specified in Rule 7.35A(c)(1)(G) and (H).<sup>8</sup>

*Publishing Pre-Opening Indications*

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<sup>8</sup> See Rule 7.35A(j)(1)(A). A temporary suspension under this Rule is in effect only for the trading day on which it was declared and the Exchange must inform Commission staff as promptly as practicable of the temporary suspension.

Rule 7.35A(d) requires the DMM to publish a pre-opening indication before a security opens or reopens if the Core Open or Trading Halt Auction Price is anticipated to be a change of more than the “Applicable Price Range,” as specified in Rule 7.35A(d)(3) from the “Indication Reference Price,” as specified in Rule 7.35A(d)(2). The standard Applicable Price Range is 5% for securities with an Indication Reference Price over \$3.00 and \$0.15 for securities with an Indication Reference Price equal to or lower than \$3.00.

Under current rules, the Applicable Price Range is 10% for securities with an Indication Reference Price over \$3.00 and \$0.30 for securities with an Indication Reference Price equal to or lower than \$3.00 under the following circumstances:

- If, as of 9:00 a.m., the E-mini S&P 500 Futures are +/- 2% from the prior day’s closing price of the E-mini S&P 500 Futures,
- when reopening trading following a MWCB Halt, or
- if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and orderly market.<sup>9</sup>

In addition, the requirement to publish a pre-opening indication prior to opening or reopening a security following a MWCB Halt can be temporarily suspended if the CEO of the Exchange or his or designee determines that a Floor-wide event is likely to have an impact on the ability of DMMs to arrange for a fair and orderly Core Open or Trading Halt Auction and that, absent relief, the operation of the Exchange is likely to be impaired.<sup>10</sup>

#### *DMM-Facilitated Closing Auctions*

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<sup>9</sup> See Rule 7.35A(d)(3)(B).

<sup>10</sup> See Rule 7.35A(j)(1)(B). A suspension under this Rule is in effect only for the trading day on which it was declared and the Exchange must notify Commission staff as promptly as practicable of the temporary suspension.

Rule 7.35B(c)(1) sets forth the circumstances when a DMM may not effect a Closing Auction electronically. Relevant to this proposed rule change, a DMM cannot electronically effect a Closing Auction:

- If the Closing Auction Price will be more than a designated percentage away from the Exchange Last Sale Price (See Rule 7.35B(c)(1)(G)), as follows:

Exchange Last Sale Price	Designated Percentage
\$25.00 and below	5%
\$25.01 to \$50.00	4%
Above \$50.00	2%

- If the paired volume for that Auction would be more than 1,000 round lots for such security (See Rule 7.35B(c)(1)(H)).

Under current rules, if the CEO of the Exchange or his or her designee determines that a Floor-wide event is likely to have an impact on the ability of DMMs to arrange for a fair and orderly Closing Auction and that, absent relief, the operation of the Exchange is likely to be impaired, the CEO of the Exchange or his or her designee may temporarily suspend the prohibition on a DMM closing a security electronically if the Closing Auction Price would be more than the price or volume parameters specified in Rules 7.35B(c)(1)(G) and (H) of this Rule.<sup>11</sup>

#### *Exchange-Facilitated Auctions*

If a DMM cannot electronically facilitate an Auction for one or more securities in which the DMM is registered, the Exchange will conduct the Auction for such security or securities, as

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<sup>11</sup> See Rule 7.35B(j)(1)(A). A suspension under this Rule is in effect only for the trading day on which it was declared and the Exchange must inform Commission staff as promptly as practicable of the temporary suspension. Rule 7.35B(j)(1)(A) and (B) cross references incorrect sub-paragraph numbers that do not correspond to the price and volume limitations applicable to Closing Auctions, which are described in Rules 7.35B(c)(1)(G) and (H), not Rules 7.35B(c)(1)(F) and (G).

provided for in Rule 7.35C.<sup>12</sup> Before facilitating such an Exchange-facilitated auction, Rule 7.35C(d) requires the Exchange to provide the DMM with the opportunity to electronically facilitate an Auction.<sup>13</sup>

Unlike a DMM-facilitated Auction, an Exchange-facilitated Auction is subject to Auction Collars. The Auction Collar for the Core Open and the Closing Auction is based on a price that is greater than \$0.15 or 10% away from the Auction Reference Price for the applicable Auction.<sup>14</sup> The Auction Collar for the Trading Halt Auction is based on a price that is the greater of \$0.15 or 5% away from the Auction Reference Price for the Trading Halt Auction.<sup>15</sup> Market

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<sup>12</sup> See Rule 7.35C(a). This functionality was introduced in 2015, and is designed to allow the Exchange to electronically open and close securities when a DMM is unable to do so because of business continuity disruptions, such as the physical closing of the Exchange Trading Floor or equipment or connectivity breakdowns. See Securities Exchange Act Release No. 76290 (October 28, 2015), 80 FR 67822, 67823 n.3 (November 3, 2015) (SR-NYSE-2015-49) (Notice of filing and immediate effectiveness of proposed rule change to specify that Exchange systems may open one or more securities electronically if a DMM cannot facilitate the opening of trading). See also Securities Exchange Act Release No. 74006 (January 6, 2015), 80 FR 1567, 1568 n.3 (January 12, 2015) (SR-NYSE-2014-74) (Notice of filing and immediate effectiveness of proposed rule change to specify that Exchange systems may close one or more securities electronically). See also Securities Exchange Act Release No. 85962 (May 29, 2015), 84 FR 26188, 26217 (June 5, 2019) (Approval Order of Pillar Auction Rules).

<sup>13</sup> As the Exchange does every day when the Trading Floor is open, the Exchange sends electronic messages in all securities to the DMMs to open, reopen, or close their assigned securities at scheduled times, e.g., 9:30 a.m. for the Core Open Auction, and the DMM's algorithms can choose to respond to that message within a set time period and electronically-facilitate an Auction by selecting the Auction Price and submitting DMM Auction Liquidity, as defined in Rule 7.35(a)(8)(A). When the Trading Floor is open, if a DMM's algorithm chooses not to respond, the DMM on the Trading Floor will proceed to facilitate the Auction manually. When the Trading Floor is closed, the Exchange will continue to send such electronic messages in all securities to the DMMs to electronically open, reopen, or close their assigned securities at the same scheduled times. If the DMMs do not electronically-facilitate an Auction within a set time period, because the DMM cannot facilitate the Auction manually when the Trading Floor is closed, the Exchange will facilitate such Auction.

<sup>14</sup> See Rule 7.35C(b)(3)(A)(i).

<sup>15</sup> See Rule 7.35C(b)(3)(A)(ii).

Orders and Limit Orders better-priced than the Auction Price and that were not executed in the Exchange-facilitated Auction will be cancelled.<sup>16</sup>

Before facilitating an Auction under Rule 7.35C, the Exchange will provide the DMM with the opportunity to electronically facilitate an Auction pursuant to Rules 7.35A or 7.35B.<sup>17</sup> If the Exchange facilitates an Auction, DMM Interest does not participate and any previously-entered DMM Interest will be cancelled.<sup>18</sup>

The Exchange has tested the above-described functionality under Rule 7.35C, most recently in an industry-wide test on March 7, 2020. Specifically, the Exchange tested a scenario where the Trading Floor was unavailable and DMMs electronically facilitated Auctions in their assigned securities electronically, and for any Auctions not facilitated electronically by the DMM, the Exchange facilitated the balance of the Auctions pursuant to Rule 7.35C. In addition, on March 19, 2020, two DMM firms implemented their own business continuity plans and removed staff from the Trading Floor. For Auctions on March 19 and March 20, 2020 in the securities assigned to those DMMs, consistent with Rule 7.35C, the Exchange provided the DMMs with the opportunity to electronically facilitate both the Core Open and Closing Auctions before an Exchange-facilitated auction under Rule 7.35C Auctions. For the 16 Core Open Auctions and 19 Closing Auctions that the Exchange facilitated on March 19, 2020, all interest

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<sup>16</sup> See Rule 7.35C(g)(1).

<sup>17</sup> See Rule 7.35C(d). As provided for in Rule 7.35A(c)(1)(E), a DMM cannot electronically facilitate a Trading Halt Auction if it is a reopening following a regulatory halt issued under Section 2 of the Listed Company Manual. Accordingly, in such case, the Exchange would not provide the DMM with the opportunity to reopen electronically, and will facilitate such reopening pursuant to Rule 7.35C.

<sup>18</sup> See Rule 7.35C(a)(1).

was able to participate within the Auction Collars and no orders were cancelled after the Auctions.

### **Proposed Rule Change**

The Exchange proposes temporary changes to Rules 7.35A, 7.35B, and 7.35C related to DMM electronically- facilitated Auctions beginning March 23, 2020 and ending on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020.<sup>19</sup>

For the Core Open and Trading Halt Auction, the Exchange proposes to suspend:

- The percentage price parameters in Rule 7.35A(c)(1)(G) and (c)(2) and not allow a DMM to effect a Core Open or Trading Halt Auction electronically if the Core Open or Trading Halt Auction Price would be more than 10% away from the Consolidated Last Sale Price;<sup>20</sup>
- The volume parameters in Rule 7.35A(c)(1)(H);<sup>21</sup>
- The requirement to publish a pre-opening indication pursuant to Rule 7.35A(d) either before a Core Open or Trading Halt Auction.<sup>22</sup>

For the Closing Auction, the Exchange proposes to suspend:

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<sup>19</sup> If the Trading Floor remains closed past May 15, 2020, the Exchange will file a separate proposed rule change to extend the relief.

<sup>20</sup> See proposed Commentary .01(a) to Rule 7.35A. During this period, the Exchange could still determine to invoke temporary relief under Rule 7.35A(j)(1) to further widen the percentage parameters for a trading day for which the relief is declared.

<sup>21</sup> See proposed Commentary .01(b) to Rule 7.35A.

<sup>22</sup> See proposed Commentary .01(c) to Rule 7.35A.

- The percentage price parameters in Rule 7.35B(c)(1)(G) and not allow a DMM to effect a Closing Auction electronically if the Closing Auction Price would be more than 10% away from the Exchange Last Sale Price.<sup>23</sup>
- The volume requirements in Rule 7.35B(c)(1)(H).<sup>24</sup>

The Exchange believes that these proposed measures are consistent with our current rules, as described above. Pursuant to either Rule 7.35A(j)(1) or 7.35B(j)(1), the CEO of the Exchange or his or her designee can determine to take one or more of the above actions for the trading day on which it is declared. The Exchange believes that closing the Trading Floor, combined with the current high volatility in the markets, would otherwise warrant invoking such temporary relief. Specifically, the Exchange believes that by eliminating volume restrictions and widening the percentage parameters for all Auctions to 10% during the this temporary period when the Trading Floor is closed, DMMs would be able to facilitate more Auctions electronically and enter their own interest to participate in such Auctions, reducing the need for the Exchange to facilitate Auctions, which would not include DMM interest. Similarly, because it will not be feasible for DMMs to publish pre-opening indications, which is a Floor-based manual action, during this temporary period when the Trading Floor is closed, the Exchange believes it would promote clarity and transparency in Exchange rules to specify that the requirement to publish such indications would be suspended.

The Exchange believes that it would promote clarity and transparency for DMMs, the Commission and the public to specify in Commentary to both Rule 7.35A and 7.35B the price

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<sup>23</sup> See proposed Commentary .01(a) to Rule 7.35B. During this period, the Exchange could still determine to invoke temporary relief under Rule 7.35B(j)(1) to further widen the percentage parameters for a trading day for which the relief is declared.

<sup>24</sup> See proposed Commentary .01(b) to Rule 7.35B.

and volume parameters that would be applicable to when a DMM could facilitate an Auction electronically during this temporary period of time.

In addition to amending Rules 7.35A and 7.35B, the Exchange proposes to amend Rule 7.35C to provide that, the Auction Collar for a Trading Halt Auction following either a Level 1 or Level 2 MWCB Halt would be the greater of \$0.15 or 10% away from the Auction Reference Price.<sup>25</sup> The Exchange recently filed a separate proposed rule change to widen, until May 15, 2020, the Auction Collars for such Exchange-facilitated Auctions in the same manner if a security was not reopened by a DMM following a MWCB Halt by 3:30 p.m.<sup>26</sup> With the Trading Floor closed, the Exchange could potentially facilitate a Trading Halt Auction following a MWCB Halt before 3:30 p.m. Therefore, the Exchange proposes to extend the widened Auction Collars to any Exchange-facilitated MWCB Halt reopenings, regardless of time of day.

The Exchange also proposes to amend current Commentary .01, which was added in the MWCB Reopen Filing, and renumber it Commentary .02. Because the relief described in the MWCB Reopen Filing is moot during the temporary period when the Trading Floor is closed, the Exchange proposes to amend when that Commentary would be applicable to provide that it would be in effect if the Trading Floor facilities reopen through trading on May 15, 2020. The Exchange also proposes non-substantive amendments to this Commentary to move a defined term to proposed Commentary .01(a) to Rule 7.35C.

Finally, the Exchange also proposes a non-substantive amendment to correct rule cross references in Rule 7.35B(j)(1)(A) and (B), which currently cross reference Rules 7.35B(c)(1)(F)

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<sup>25</sup> See proposed Commentary .01(a) to Rule 7.35C

<sup>26</sup> See Securities Exchange Act Release No. 88413 (March 18, 2020) (SR-NYSE-2020-19) (Notice of filing and immediate effectiveness of proposed rule change) (“MWCB Reopen Filing”).

and (G). As noted above, these rule cross references should be Rules 7.35B(c)(1)(G) and (H), which correspond to the price and volume parameters applicable to Closing Auctions.

As noted above, the Exchange has previously tested Exchange-facilitated Auctions when the Trading Floor is closed, and has implemented them in production beginning on March 19, 2020. The Exchange proposes to test the changes described above in an industry test scheduled for Saturday, March 21, 2020, before the Trading Floor closes on March 23, 2020.

The Exchange would be able to implement the proposed rule change immediately upon effectiveness of this proposed rule change.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>27</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>28</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.

As a result of uncertainty related to the ongoing spread of COVID-19, the U.S. equities markets are experiencing unprecedented market volatility. In addition, social-distancing measures have been implemented throughout the country, including in New York City, to reduce the spread of COVID-19. Directly related to such social-distancing measures, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the

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

<sup>28</sup> 15 U.S.C. 78f(b)(5).

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.

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 it would promote fair and orderly Auctions on the Exchange by allowing DMMs to open, reopen, or close more securities electronically. Since March 9, 2020, the Exchange has been implementing the proposed relief under current Rules on a day-by-day basis. Accordingly, the Exchange believes that the changes that would be described in the proposed Commentary to Rules 7.35A and 7.35B are consistent with our current rules.

The Exchange believes that by clearly stating that this relief will be in effect through the earlier of the reopening of the Trading Floor facilities or the close of the Exchange on May 15, 2020, DMMs will have more certainty regarding what limitations would be applicable during this period when they are unable to manually facilitate Auctions. Because they would no longer need to respond to relief that is invoked on a same-day basis, DMMs would be able to better manage their Auction processes, which the Exchange believes would remove impediments to and perfect the mechanism of a free and open market and a national market system.

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 to ensure fair and orderly Auctions on the Exchange by allowing DMMs to open, reopen, or close more securities electronically during a temporary period when the Exchange Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of the COVID-19 virus.

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 Act<sup>29</sup> and Rule 19b-4(f)(6) thereunder.<sup>30</sup> Because the proposed rule change does not:

(i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was 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<sup>31</sup> and Rule 19b-4(f)(6) thereunder.<sup>32</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>33</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>34</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. The

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<sup>29</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>30</sup> 17 CFR 240.19b-4(f)(6).

<sup>31</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>32</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange’s intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived that requirement for this proposed rule change.

<sup>33</sup> 17 CFR 240.19b-4(f)(6).

<sup>34</sup> 17 CFR 240.19b-4(f)(6)(iii).

Exchange represents that the proposed rule change is designed to ensure fair and orderly Auctions on the Exchange by allowing DMMs to open, reopen, or close more securities electronically during a temporary period when the Exchange Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of the COVID-19 virus. The Exchange also believes that the proposed changes are consistent with the type of relief that the Exchange can invoke on a temporary basis pursuant to Rules 7.35A(j)(1) and 7.35B(j)(2). According to the Exchange, the relief being requested has already been implemented on a day-by-day basis to respond to the ongoing market volatility that the markets have experienced since March 9, 2020, meaning that the proposed relief is consistent with relief already available under Exchange rules. In the Exchange's view, implementing the proposed rule change would eliminate the need to invoke these measures on a daily basis, and would provide advance notice and greater certainty to DMMs regarding what parameters would be applicable to whether they can facilitate an Auction electronically during the temporary period when the Trading Floor is closed. The Exchange states that it is able to implement these proposed rule changes immediately, that it will have tested such measures on March 21, 2020, and that waiver of the 30-day operative delay would provide the DMMs with greater ability to facilitate Auctions electronically during the temporary period when the Trading Floor is closed. The Commission notes that since March 9, 2020, the Exchange has been implementing the proposed relief under current Exchange rules on a day-by-day basis. The Commission also notes that by clearly stating that this relief will be in effect through the earlier of the reopening of the Trading Floor facilities or the close of the Exchange on May 15, 2020, DMMs will have more certainty regarding what limitations would be applicable during this period when they are unable to manually facilitate Auctions, and thus should be able to better manage their Auction processes. Finally, The

Commission notes that the proposal is a temporary measure designed to respond to current, unprecedented market conditions. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>35</sup>

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

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2020-22 on the subject line.

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<sup>35</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2020-22. 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-2020-22, 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.<sup>36</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>36</sup> 17 CFR 200.30-3(a)(12), (59).