

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88546; File No. SR-NYSE-2020-28)

April 2, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add Commentary .03 to Rule 7.35A to provide that, for a Temporary Period, the Exchange would permit a DMM Limited Entry to the Trading Floor to Effect Manually a Core Open Auction in connection with a Listed Company's Post-IPO Public Offering

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 ("Act"),² and Rule 19b-4 thereunder,³ notice is hereby given that on April 2, 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 add Commentary .03 to Rule 7.35A to provide that, for a temporary period that begins April 2, 2020, and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, the Exchange would permit a DMM limited entry to the Trading Floor to effect manually a Core Open Auction in connection with a listed company's post-IPO public offering. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it 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 to add Commentary .03 to Rule 7.35A to provide that, for a temporary period that begins April 2, 2020, and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, the Exchange would permit a DMM limited entry to the Trading Floor to effect manually a Core Open Auction in connection with a listed company's post-IPO public offering.

Background

Since March 9, 2020, markets worldwide have been experiencing unprecedented market-wide declines and volatility because of the ongoing spread of COVID-19. 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.

On March 18, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic

trading.⁴ Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination.

On March 26, 2020, the Exchange amended Rule 7.35A to add Commentary .02,⁵ which provides:

For a temporary period that begins on March 26, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, the Exchange will permit a DMM limited entry to the Trading Floor to effect an IPO Auction manually. For such an IPO Auction, the Exchange will disseminate the following Auction Imbalance Information provided by the DMM via Trader Update: the Imbalance Reference Price; the Paired Quantity; the Unpaired Quantity; and the Side of the Unpaired Quantity. The Exchange will publish such Trader Update(s) promptly after each publication by the DMM of a pre-opening indication for such security. The Trader Update will also include the pre-opening indication range.

As described in the Rule 7.35A Filing, the Exchange added this Commentary because, while the Trading Floor is temporarily closed, Designated Market Makers (“DMMs”) cannot engage in any manual actions, such as facilitating an Auction manually or publishing pre-opening indications before a Core Open or Trading Halt Auction. Commentary .02 to Rule

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

⁵ See Securities Exchange Act Release No. 88488 (March 26, 2020) (SR-NYSE-2020-23), 85 FR 18286 (April 1, 2020) (Notice of filing and immediate effectiveness of proposed rule change) (“Rule 7.35A Filing”).

7.35A permits entry to the Trading Floor to a single employee from the DMM member organization assigned to such security so that this DMM can access the Floor-based systems used to effect an Auction manually, and specifies the information that would be included in a Trader Update in advance of such IPO Auction.

On March 27, 2020, the Exchange effected an IPO Auction pursuant to Commentary .02 to Rule 7.35A.

Proposed Rule Change

The Exchange proposes to add Commentary .03 to Rule 7.35A to permit a DMM limited entry to the Trading Floor to effect manually a Core Open Auction in connection with a listed company's post-IPO public offering, for a temporary period that begins April 2, 2020, and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020.

As proposed, during this temporary period, the Exchange would permit a DMM limited entry to the Trading Floor to effect manually a Core Open Auction in connection with a listed company's post-IPO public offering. Such Core Open Auction would be effected in a manner similar to how an IPO Auction would be conducted under Commentary .02 to Rule 7.35A: a Floor Governor would be present on the Trading Floor to approve the publication of pre-opening indications⁶ and Exchange staff would be in communication with the lead underwriter and would convey to the DMM information that the underwriter would normally convey to the DMM via a Floor broker, such as when the underwriter has entered all interest for such auction.

⁶ See Rule 7.35A(d)(4)(A) (“Publication of a pre-opening indication requires the supervision and approval of a Floor Governor.”) The Exchange will arrange for a qualified ICE employee that has been designated as a Floor Governor to perform this function. See Rule 46(b)(v).

Unlike an IPO Auction, this type of Core Open Auction is eligible to be effected electronically by a DMM. In addition, the Exchange publishes Auction Imbalance Information in advance of a Core Open Auction for a post-IPO public offering. However, similar to IPO Auctions, when the Trading Floor is open, DMMs generally facilitate a post-IPO public offering manually so that information about the pricing of an Auction can be communicated from an underwriter to the DMM via a Floor broker. This information is helpful for the DMM to determine when to facilitate such Core Open Auction and at what price. By contrast, if a DMM were to facilitate such Core Open Auctions electronically, the DMM would not be able to take this information into account when pricing the Auction, and the DMM would not have any flexibility with respect to the timing of such Core Open Auctions. Accordingly, for reasons similar to those set forth in the Rule 7.35A Filing regarding providing limited access to the Trading Floor for IPO Auctions to be effected manually, the Exchange believes it would promote fair and orderly markets to provide a DMM limited entry to the Trading Floor to effect manually a Core Open Auction in connection with a listed company's post-IPO public offering for the temporary period during which the Trading Floor is closed.

To effect these changes, the Exchange proposes to add Commentary .03 to Rule 7.35A, which would provide as follows:

For a temporary period that begins on April 2, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, the Exchange will permit a DMM limited entry to the Trading Floor to effect manually a Core Open Auction in connection with a listed company's post-IPO public offering.

On April 1, 2020, the CEO of the Exchange determined pursuant to Rule 7.1(c) that, for

the period while the Trading Floor is temporarily closed as a precautionary measure to prevent the spread of COVID-19, the Trading Floor will be partially reopened on trading days when a Core Open Auction is scheduled in connection with a listed company's post-IPO public offering, to allow a DMM on the Trading Floor for the limited purpose of effecting such Core Open Auctions manually. During this temporary reopening, the Trading Floor will not be open to Floor brokers or for the DMM to perform any functions other than effecting the Core Open Auction manually. Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination.

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,⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁸ 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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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.

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 Core Open Auctions in connection with a listed company's post-IPO public offering. The Exchange believes that it would promote fair and orderly markets to provide the DMM with mechanisms to facilitate such Core Open Auctions manually because it would provide flexibility for the DMM to consider information from the underwriter when determining when to conduct the Core Open Auction and at what price.

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, market participants will have advance notice that a Core Open Auction in connection with a post-IPO public offering may be effected manually by the DMM during this period, and therefore may not be conducted at 9:30 a.m.

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 Core Open Auctions in connection with a post-IPO public offering by providing a DMM with limited entry to the Trading Floor to effect such Core Open Auction manually 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 Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ 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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ 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.

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 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.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

During the temporary period when the Exchange's Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of the COVID-19 virus time, the Exchange has proposed to provide a DMM with limited entry to the Trading Floor to effect manually a Core Open Auction in connection with a listed company's post-IPO public offering. The Exchange contends that this proposed rule change would promote fair and orderly markets because it would provide flexibility for the DMM to consider information from the underwriter when determining when to conduct the Core Open Auction and at what price. The Exchange also asserts 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, market participants will have advance notice that a Core Open Auction in connection with a post-IPO public offering may be effected manually by the DMM during this period, and therefore may not be conducted at 9:30 a.m. In addition, the Exchange represents that a post-IPO public offering in an Exchange-listed security has been priced to proceed for the Core Open Auction on April 2, 2020, and that the Exchange is able to implement this proposed rule change immediately. The Commission notes that the proposed rule change provides the DMM with limited entry to effect manually Core Open Auctions in connection with post-IPO public offerings, which is similar to what is currently provided for DMMs effecting IPO Auctions under Commentary .02 of NYSE Rule 7.35A. The Commission also notes that the proposed rule change would provide DMMs the ability to consider information from the underwriter when determining when to conduct the Core Open Auction and at what price, and would inform market participants on how and when a Core Open Auction in connection with a post-IPO public offering may be effected manually by the DMM during this period. Moreover, the Commission notes that the proposal is a temporary measure designed to respond to current, unprecedented

market conditions. Finally, the Commission notes that waiving the 30-day operative would allow the Exchange to implement the proposed rule change immediately, and thereby enable it to enact the proposed procedures for the post-IPO public offering in an Exchange-listed security that has been priced to proceed for the Core Open Auction on April 2, 2020. 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.¹⁵

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. Please include File Number SR-NYSE-2020-28 on the subject line.

¹⁵ 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-2020-28. 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-2020-28, 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.¹⁶

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 17 CFR 200.30-3(a)(12), (59).