

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88725; File No. SR-NYSE-2020-37)

April 22, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add Commentary .01 to Rule 7.35

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 April 21, 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 .01 to Rule 7.35 to provide that, for a temporary period that begins on April 21, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, for an IPO Auction, Rule 7.35(c)(3) will not be in effect, and the Exchange will disseminate Auction Imbalance Information if a security is an IPO and has not had its IPO Auction. 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.

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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.

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 .01 to Rule 7.35 to provide that, for a temporary period that begins on April 21, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, for an IPO Auction, Rule 7.35(c)(3) will not be in effect, and the Exchange will disseminate Auction Imbalance Information if a security is an IPO and has not had its IPO Auction.

**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.<sup>4</sup> 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,<sup>5</sup> 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

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<sup>4</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, available here: <https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110>.

<sup>5</sup> 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.

On April 17, 2020, the Exchange amended Rule 7.35A to add Commentary .04,<sup>6</sup> which provides:

For a temporary period that begins on April 17, 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 provide a DMM remote access to Floor-based systems for the sole purpose of effecting a manual (1) IPO Auction, or (2) Core Open Auction in connection with a listed company's post-IPO public offering. 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.

With these amendments to Rule 7.35A, during the temporary period while the Trading Floor is closed, a DMM can effect a manual IPO Auction either on the Trading Floor or

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<sup>6</sup> See Securities Exchange Act Release No. 88705 (April 21, 2020) (SR-NYSE-2020-35) (Notice of filing and immediate effectiveness of proposed rule change).

remotely.

#### Proposed Rule Change

Rule 7.35(c)(3) provides that the Exchange will not disseminate Auction Imbalance Information if a security is an IPO or Direct Listing and has not had its IPO Auction or Direct Listing Auction. The Exchange proposes to add Commentary .01 to Rule 7.35 to provide that, for a temporary period that begins on April 21, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, for an IPO Auction, Rule 7.35(c)(3) will not be in effect, and the Exchange will disseminate Auction Imbalance Information if a security is an IPO and has not had its IPO Auction.

As noted above, during the temporary period while the Trading Floor is closed, pursuant to either Commentary .02 or Commentary .04 to Rule 7.35A, DMMs will be able to effect IPO Auctions manually, either on the Trading Floor or remotely. However, in either case, Floor brokers will not be present and therefore would not be available to disseminate Floor-based information about the IPO Auction to their customers. Accordingly, for this temporary period while the Trading Floor is closed and there are no Floor brokers, the Exchange believes it would be appropriate to temporarily suspend Rule 7.35(c)(3) relating to IPO Auctions.

The Auction Imbalance Information that the Exchange proposes to disseminate for an IPO Auction would be the same information that is disseminated in advance of a Core Open Auction, as set forth in Rule 7.35A(e), except for how the Imbalance Reference Price would be determined. Rule 7.35A(e)(1) provides that the Exchange begins disseminating Auction Imbalance Information for a Core Open Auction at 8:00 a.m., and would do the same for an IPO Auction. In addition, Rule 7.35A(e)(2) specifies the content of the Auction Imbalance Information that is disseminated in advance of a Core Open Auction, which would be the same

content for an IPO Auction.<sup>7</sup> Finally, Rule 7.35A(e)(3) specifies the Imbalance Reference Price, which for a Core Open Auction is the Consolidated Last Sale Price. The Exchange proposes that the Imbalance Reference Price for an IPO Auction would be the security's offering price, and that such Imbalance Reference Price would be updated as provided for in Rule 7.35A(e)(3)(A) - (C).<sup>8</sup>

To effect this change, the Exchange proposes to add Commentary .01 to Rule 7.35, which would provide:

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

Disseminating such Auction Imbalance Information via the proprietary data feeds obviates the need to publish the Trader Updates described in Commentary .02 and Commentary

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<sup>7</sup> For Core Open Auctions, the Exchange disseminates Total Imbalance, Side of Total Imbalance, Paired Quantity, and Continuous Book Clearing Price, as these terms are defined in Rule 7.35(a)(4).

<sup>8</sup> As provided for in Rule 7.35A(e)(3), the Imbalance Reference Price changes if a pre-opening indication has been published for such Auction.

.04 to Rule 7.35A, as described above.<sup>9</sup> Under these specific circumstances, when Floor brokers are absent and unavailable to relay Floor-based information about an IPO Auction to their customers, Auction Imbalance Information would provide more granular information in advance of an IPO Auction as compared to the Trader Updates. Specifically, as noted above, the Auction Imbalance Information disseminated via the proprietary data feeds would begin being published at 8:00 a.m. ET, would be published every second, and would include Total Imbalance, Side of Total Imbalance, Paired Quantity, and Continuous Book Clearing Price information. By contrast, a Trader Update as provided for in Commentaries .02 or .04 to Rule 7.35A would be disseminated on a more limited basis, and only if the DMM were to publish a pre-opening indication. Accordingly, the Exchange proposes to amend those Commentaries to delete the following text:

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.

The Exchange has tested the ability to disseminate such Auction Imbalance Information on the day of an IPO Auction. In addition, because such Auction Imbalance is already disseminated on a daily basis in connection with Core Open Auctions, the Exchange believes

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<sup>9</sup> For example, as provided for in Rule 7.35A(d), a pre-opening indication is published via both the securities information processor and proprietary data feeds. Accordingly, pre-opening indications for an IPO Auction would be included in the Auction Imbalance Information that would be disseminated via the proprietary data feeds pursuant to this proposed rule change.

that member organizations that subscribe to such proprietary data feeds would be able to receive, read, and respond to Auction Imbalance Information for an IPO Auction without needing to make any changes. Accordingly, the Exchange would be able to implement the proposed rule change immediately upon effectiveness of this filing.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>11</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 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, during the temporary period while the Trading Floor is closed and Floor brokers are not present, it

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<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

would promote fair and orderly IPO Auctions for the Exchange to disseminate Auction Imbalance Information on the same terms that such information is disseminated for a Core Open Auction. Specifically, during the period when the Trading Floor is temporarily closed, Floor brokers are not available to disseminate Floor-based information about the IPO Auction to their customers. Under these specific circumstances, the Exchange believes that the Auction Imbalance Information would provide more granular information in advance of an IPO Auction as compared to the Trader Updates described in Commentaries .02 and .04 to Rule 7.35A. As described above, the Auction Imbalance Information disseminated via the proprietary data feeds would begin being published at 8:00 a.m. ET, would be published every second, and would include Total Imbalance, Side of Total Imbalance, Paired Quantity, and Continuous Book Clearing Price information. By contrast, a Trader Update as provided for in Commentaries .02 or .04 to Rule 7.35A would be disseminated on a more limited basis, and only if the DMM were to publish a pre-opening indication. The Exchange therefore believes that proposed rule change would therefore promote transparency in advance of an IPO Auction while the Trading Floor is closed.

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 the Exchange would disseminate Auction Imbalance Information for an IPO Auction that may be effected manually by the DMM during this period.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to

ensure fair and orderly IPO Auctions by providing that the Exchange would disseminate Auction Imbalance Information for such auctions via its proprietary data feeds 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>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</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>14</sup> and Rule 19b-4(f)(6) thereunder.<sup>15</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>16</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>17</sup>

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<sup>12</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>15</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 Exchange has satisfied this requirement.

<sup>16</sup> 17 CFR 240.19b-4(f)(6).

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

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. During this temporary period when the Exchange Trading Floor is closed, the Exchange would disseminate Auction Imbalance Information for IPO Auctions via proprietary data feeds. Because Floor brokers are not available to disseminate Floor-based information about an IPO Auction to their customers during this period, the Exchange believes that the Auction Imbalance Information would provide more granular information in advance of an IPO Auction as compared to the Trader Updates described in Commentaries .02 and .04 to Rule 7.35A. The Exchange represents that an IPO is scheduled to price on the Exchange on April 22, 2020, and that the Exchange has tested the relevant technology and is able to implement this proposed rule change immediately. The Commission believes that the Auction Imbalance Information disseminated pursuant to this proposed rule change could provide more detailed information with greater frequency in advance of an IPO Auction as compared to the current Trader Updates. Further, the Commission notes that the Exchange has tested this technology, and 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>18</sup>

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<sup>18</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).

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-2020-37 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-2020-37. 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-2020-37, 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>19</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>19</sup> 17 CFR 200.30-3(a)(12), (59).