

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88950; File No. SR-NYSE-2020-48)

May 26, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to add Commentary .05 to Rule 7.35A

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 May 26, 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 self-regulatory organization. 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 .05 to Rule 7.35A to provide that, for a temporary period that begins May 26, 2020, and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020, the Exchange would (1) permit a DMM limited entry to the Trading Floor or (2) provide a DMM remote access to Floor-based systems, for the purpose of effecting a manual Trading Halt Auction for reopening a security following a regulatory halt issued under Section 2 of the Listed Company Manual. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add Commentary .05 to Rule 7.35A to provide that, for a temporary period that begins May 26, 2020, and ends on the earlier of a full reopening of the Trading Floor facilities to Designated Market Makers (“DMM”) or after the Exchange closes on June 30, 2020, the Exchange would (1) permit a DMM limited entry to the Trading Floor or (2) provide a DMM remote access to Floor-based systems, for the purpose of effecting a manual Trading Halt Auction for reopening a security following a regulatory halt issued under Section 2 of the Listed Company Manual.

Background

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 On May 14, 2020, the CEO of the Exchange made a determination under Rule 7.31(c)

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

to reopen the Trading Floor on a limited basis on May 26, 2020 to a subset of Floor brokers.⁵

The Trading Floor facilities have been reopened to DMMs for only limited circumstances, as described in Commentaries .02 - .04 to Rule 7.35A. Commentary .02 to Rule 7.35A provides that:

For a temporary period that begins on March 26, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020, the Exchange will permit a DMM limited entry to the Trading Floor to effect an IPO Auction manually.

Commentary .03 to Rule 7.35A provides that:

For a temporary period that begins on April 2, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 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.

Commentary .04 to Rule 7.35A provides that:

For a temporary period that begins on April 17, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 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.

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. 88933 (May 22, 2020) (SR-NYSE-2020-47) (Notice of filing and immediate effectiveness of proposed rule change).

The Exchange added these Commentaries because, while the Trading Floor is temporarily closed to DMMs, DMMs cannot engage in a manual IPO Auction or Core Open Auction for a post-IPO public offering and these Commentaries allow for such Auctions to be conducted manually by a DMM either on the Trading Floor or remotely.⁶

Proposed Rule Change

Rule 7.35A(c)(1)(E) provides that a DMM may not effect a Trading Halt Auction electronically if it is a reopening following a regulatory halt issued under Section 2 of the Listed Company Manual. Accordingly, during the temporary period while the Trading Floor is temporarily closed to DMMs, the Exchange has facilitated Trading Halt Auctions pursuant to Rule 7.35C to reopen trading in a security following a regulatory halt issued under Section 2 of the Listed Company Manual.

When the Exchange facilitates such a Trading Halt Auction, the Exchange determines an Auction Price based on the Indicative Match Price for a security, which is bound by Auction Collars.⁷ The Auction Reference Price for determining the Auction Collars is the most recent consolidated last-sale eligible trade in a security on any market during Core Trading Hours, and if none, the Official Closing Price from the prior trading day for that security.⁸ Accordingly, an

6 See Securities Exchange Act Release Nos. 88488 (March 26, 2020), 85 FR 18286 (April 1, 2020) (SR-NYSE-2020-23) (Notice of filing and immediate effectiveness of proposed rule change to add Commentary .02 to Rule 7.35A); 88546 (April 2, 2020) (SR-NYSE-2020-28), 85 FR 19782 (April 8, 2020) (Notice of filing and immediate effectiveness of proposed rule change to add Commentary .03 to Rule 7.35A); and 88705 (April 21, 2020), 85 FR 23413 (April 27, 2020) (SR-NYSE-2020-35) (Notice of filing and immediate effectiveness of proposed rule change to add Commentary .04).

7 See Rule 7.35C(b)(2).

8 Rule 7.35C(b)(1) provides that the Auction Reference Price for a Trading Halt Auction is the same as the Imbalance Reference Price determined under Rule 7.35A(e)(3). Pursuant to Rule 7.35A(e)(3), the Imbalance Reference Price for a Trading Halt Auction is the Consolidated Last Sale Price, unless a pre-opening indication has been published. Pursuant to Rule 7.35(a)(11)(A), the term “Consolidated Last Sale Price” means the most

Exchange-facilitated Auction will be conducted at a price that is no higher or lower than the greater of \$0.15 or 5% away from that Auction Reference Price.⁹

As noted above, during the temporary period while the Trading Floor is closed, the Exchange has permitted limited reentry to the Trading Floor for the purposes of effecting an IPO Auction and a post-IPO public offering. The Exchange has also provided DMMs with remote access to NYSE trading systems that are located on the Trading Floor so that a DMM can manually effect such Auctions remotely. The Exchange proposes to provide DMMs with limited entry to the Trading Floor or remote access to NYSE trading systems so that a DMM may manually effect a Trading Halt Auction to reopen a security following a regulatory halt issued under Section 2 of the Listed Company Manual.

To effect this change, the Exchange proposes to add Commentary .05 to Rule 7.35A to provide that:

For a temporary period that begins May 26, 2020, and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020, the Exchange would (1) permit a DMM limited entry to the Trading Floor or (2) provide a DMM remote access to Floor-based systems, for the purpose of effecting a manual Trading Halt Auction for reopening a security following a regulatory halt issued under Section 2 of the Listed Company Manual.

The Exchange believes that providing DMMs with the ability to conduct such Trading Halt Auctions manually would promote fair and orderly reopening auctions following a regulatory halt because it would allow such reopenings to be facilitated at a price that is

recent consolidated last-sale eligible trade in a security during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security.

⁹ See Rule 7.35C(b)(3)(A)(ii).

consistent with the buy and sell interest for such securities. As noted above, an Exchange-facilitated Trading Halt Auction is bound by Auction Collars that use an Auction Reference Price from before the regulatory halt. Accordingly, an Exchange-facilitated Auction would allow for 5% of price movement away from such reference price. To date, that has not been an issue as the Exchange has been able to facilitate Trading Halt Auctions to reopen a security following a regulatory halt issued under Section 2 of the Listed Company Manual at Auction Prices that have been consistent with the buy and sell interest of the security.

However, if there has been significant change in price in a security during the course of a regulatory halt, an Exchange-facilitated Auction, which would be bound by the Auction Collars, would be conducted at a price that is not consistent with the buy and sell interest in the security. This result could be obviated by enabling the DMMs to effect such Auctions manually, either on the Trading Floor or remotely, pursuant to Rule 7.35A.

If a DMM were to effect such Auctions manually pursuant to Rule 7.35A, the Auction Price would not be bound by Auction Collars and all better-priced orders on the side of the imbalance would be satisfied in the Auction.¹⁰ In addition, if a DMM were to manually effect such Trading Halt Auctions, the DMM would publish pre-opening indications pursuant to Rule 7.35A(d), which would be in addition to the Auction Imbalance Information available for such Trading Halt Auctions.

During this temporary period while the Trading Floor has been closed due to precautionary measures to prevent the spread of COVID-19, DMMs are available to conduct such Trading Halt Auctions manually, either on the Trading Floor or remotely. Accordingly, this proposed rule change could be implemented immediately.

¹⁰ See Rule 7.35A(g) (requiring the DMM to select an Auction Price at which all better-priced orders on the Side of the Imbalance can be satisfied).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹¹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹² 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.

Directly related to social-distancing measures to reduce the spread of COVID-19, 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. On May 26, 2020, the Trading Floor reopened on a limited basis to a subset of Floor brokers, but remains closed to DMMs except under limited circumstances specified in Commentary .02 and .03 to Rule 7.35A.

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 Trading Halt Auctions in connection with the reopening of trading following a regulatory halt issued under Section 2 of the Listed Company Manual. The Exchange believes that it would promote fair and orderly markets to provide the DMM with mechanisms to facilitate such Trading Halt Auctions manually because it would allow such Auctions to be conducted consistent with the buy and sell interest in the security, and not be bound by Auction Collars based on an Auction Reference Price that may no longer reflect the price of the security to investors.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

The Exchange believes that providing DMMs with the option to either come to the Trading Floor or use remote access to Floor-based trading systems to manually effect a Trading Halt Auction to reopen a security following a regulatory halt issued under Section 2 of the Listed Company Manual would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would provide flexibility to DMMs who may determine that travel to and entry to the Trading Floor would not be advisable or possible during this temporary period.

The Exchange believes that, by clearly stating that this relief will be in effect through the earlier of a full reopening of the Trading Floor facilities to DMMs or the close of the Exchange on June 30, 2020, market participants will have advance notice that a Trading Halt Auction for a reopening following a regulatory halt issued under Section 2 of the Listed Company Manual 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 Trading Halt Auctions for reopening a security following a regulatory halt issued under Section 2 of the Listed Company Manual during a temporary period when the Exchange Trading Floor has been closed to DMMs 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 Act¹³ and Rule 19b-4(f)(6) thereunder.¹⁴ 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 prior to 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 and Rule 19b-4(f)(6)(iii) thereunder.¹⁵

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. In support of this request, the Exchange has represented that the proposal would provide the DMM with mechanisms to facilitate manually and to conduct Trading Halt Auctions consistent with the buy and sell interest in the security, and not be bound by Auction Collars based on an Auction Reference Price that may no longer reflect the price of the security to investors. Further, the Commission notes that the proposed

13 15 U.S.C. 78s(b)(3)(A)(iii).

14 17 CFR 240.19b-4(f)(6).

15 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 this requirement.

16 17 CFR 240.19b-4(f)(6).

17 17 CFR 240.19b-4(f)(6)(iii).

rule change would only be in effect only during a temporary period. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.¹⁸

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.¹⁹ 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-2020-48 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission,

¹⁸ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁹ 15 U.S.C. 78s(b)(3)(C).

100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2020-48. 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-2020-48 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.²⁰

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 17 CFR 200.30-3(a)(12).