

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-89086; File No. SR-NYSE-2020-52)

June 17, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add, for a Temporary Period that Begins on June 17, 2020, Commentary .06 to Rule 7.35A; Commentary .03 to Rule 7.35B; Supplementary Material .20 to Rule 76; and An Amendment to Supplementary Material .30 to Rule 36 to Support the Partial Return of Designated Market Makers to the Trading Floor

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on June 16, 2020, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “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, for a temporary period that begins on June 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, (1) Commentary .06 to Rule 7.35A; (2) Commentary .03 to Rule 7.35B; (3) Supplementary Material .20 to Rule 76; and (4) an amendment to Supplementary Material .30 to Rule 36. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add, for a temporary period that begins on June 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, (1) Commentary .06 to Rule 7.35A; (2) Commentary .03 to Rule 7.35B; (3) Supplementary Material .20 to Rule 76; and (4) an amendment to Supplementary Material .30 to Rule 36. This temporary rule relief will support the partial return of Designated Market Makers (“DMMs”) to the Trading Floor.

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.<sup>4</sup> On May 14, 2020, the CEO of the Exchange made a determination under Rule 7.1(c) to reopen the Trading Floor on a limited basis on May 26, 2020 to a subset of Floor brokers, subject

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<sup>4</sup> See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/news-details/2020/New-York-Stock-Exchange-to-Move-Temporarily-to-Fully-Electronic-Trading/default.aspx>.

to safety measures designed to prevent the spread of the COVID-19 virus.<sup>5</sup> On June 15, 2020, the CEO of the Exchange made a determination under Rule 7.1(c) to begin the second phase of the Trading Floor reopening by allowing DMMs to return to on June 17, 2020, subject to safety measures designed to prevent the spread of COVID-19.<sup>6</sup>

With this partial reopening of the Trading Floor to DMMs, each DMM unit may choose to return a limited number of staff to the Trading Floor. A DMM unit that chooses to return staff to the Trading Floor would be able to facilitate Core Open, Trading Halt, and Closing Auctions manually in all of the DMM unit's assigned securities, and the Exchange would no longer automatically run an Exchange-facilitated Auction for the securities assigned to that DMM unit.<sup>7</sup> DMM units that choose to return to the Trading Floor would be provided an opportunity to facilitate Auctions in each of their assigned securities electronically, and manually facilitate any Auctions that were not facilitated electronically. To accommodate health-focused considerations and social distancing, DMMs would be precluded from accepting verbal bids and offers from Floor brokers during this phase of the reopening.

The temporary relief described in Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C would continue to be available during the second phase of the partial reopening of the Trading Floor to support not only DMM units that have chosen not to return to the Trading Floor, but

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<sup>5</sup> See Securities Exchange Act Release No. 88933 (May 22, 2020) (SR-NYSE2020-47) (Notice of filing and immediate effectiveness of proposed rule change).

<sup>6</sup> See Trader Update, dated June 15, 2020, available here: <https://www.nyse.com/trader-update/history#110000272018>.

<sup>7</sup> Unless and until a DMM unit chooses to return staff to the Trading Floor, the Exchange will continue to automatically facilitate any Auctions assigned to that remote-based DMM unit that were not electronically-facilitated by that DMM unit. The Exchange will publish a daily list on its website of those securities that will be ineligible for manual auctions conducted from the Floor.

also to support DMM units that would be returning to the Trading Floor with only a subset of staff.

#### Proposed Rule Change

To support DMM units that choose to return to the Trading Floor with reduced staff, the Exchange proposes additional temporary rule relief that would be in effect beginning on June 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.

First, as noted above, if a DMM unit chooses to return to the Trading Floor, that DMM unit would be expected to manually facilitate any Auctions in its assigned securities that it was not able to facilitate electronically, including publishing pre-opening indications pursuant to Rule 7.35A(d).<sup>8</sup> However, because such DMM units would have reduced staff on the Trading Floor, the Exchange proposes that for this temporary period, the Applicable Price Range used to determine whether to publish a pre-opening indication would be widened to 10% for securities with an Indication Reference Price higher than \$3.00 and \$0.30 for securities with an Indication Reference Price equal to or lower than \$3.00. The Exchange further proposes to temporarily

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<sup>8</sup> Rule 7.35A(d) sets forth the requirements relating to pre-opening indications, which a DMM will publish 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)(2), from a specified “Indication Reference Price,” as specified in Rule 7.35A(d)(2). Under Rule 7.35A(d)(3)(A), the 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. 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 market-wide trading halt under Rule 7.12, or if the Exchange determined that it is necessary or appropriate for the maintenance of a fair and orderly market, the Applicable Price Range for determining whether to publish a pre-opening indication will be 10% 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. See Rule 7.35A(d)(3)(B).

suspend the Applicable Price Range currently specified in Rules 7.35A(d)(3)(A) and (B). The Exchange believes that this proposed rule change would promote fair and orderly auctions during this temporary period because it would reduce potential burdens on the subset of DMM staff available to facilitate Auctions manually, while at the same time preserving pre-opening indications for securities with significant price movement.

To effect this change, the Exchange proposes to add Commentary .06 to Rule 7.35A as follows:

For a temporary period that begins on June 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 Applicable Price Range specified in paragraphs (d)(3)(A) and (B) of this Rule is suspended and the Applicable Price Range will be 10% for securities with an Indication Reference Price higher than \$3.00 and \$0.30 for securities with an Indication Reference Price equal to or lower than \$3.00.

Second, because DMMs would be precluded from accepting verbal bids and offers from Floor brokers during this temporary period while the Trading Floor is open to only a subset of staff from DMM units that choose to return to the Trading Floor, the Exchange proposes to add temporary rules specifying that Floor Broker Interest<sup>9</sup> would not be available for Closing Auctions and “crossing” orders pursuant to Rule 76, including the Cross Function specified in Supplementary Material .10 to Rule 76, would not be available to Floor brokers.

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<sup>9</sup> For purposes of Auctions under the Rule 7.35 Series, the term “Floor Broker Interest” means orders represented orally by a Floor broker at the point of sale. See Rule 7.35(a)(9). Floor Broker Interest that has been electronically accepted by the DMM is eligible to participate in the Closing Auction. See Rule 7.35B(a)(1).

To effect this change, the Exchange proposes to add Commentary .03 to Rule 7.35B as follows:

For a temporary period that begins on June 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, Floor Broker Interest will not be eligible to participate in the Closing Auction.

The Exchange also proposes to add Supplementary Material .20 to Rule 76 as follows:

For a temporary period that begins on June 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 availability of “crossing” orders as described in this Rule, including the Cross Function as specified in Supplementary Material .10 to this Rule, will be suspended.

Third, although a DMM unit may choose to return to the Trading Floor beginning on June, 17, 2020, such DMM units may have implemented, and continue to follow, remote working arrangements to halt the spread of the COVID-19. Specifically, as part of their business continuity plans, DMM units have instituted remote working arrangements for their off-Floor offices, thereby limiting or eliminating the availability of persons in DMMs’ off-Floor offices ordinarily reachable using the land-based telephone lines located in the DMM units’ post locations on the Trading Floor.<sup>10</sup> To provide DMMs with flexibility to communicate with staff

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<sup>10</sup> Rule 36.30 provides that, with the approval of the Exchange, a DMM unit may maintain a telephone line at its stock trading post location to the off-Floor offices of the DMM unit, the unit’s clearing firm, or to persons providing non-trading related services. Such telephone connection shall not be used for the purpose of transmitting to the Floor orders for the purchase or sale of securities. Communications by DMM staff on the Trading Floor are governed by Rule 98.

of the DMM unit that are not assigned to the Trading Floor, but who are temporarily working remotely, the Exchange proposes to permit DMMs to use telephones installed at the DMM unit trading post to communicate with DMM unit personnel working in locations other than the off-Floor offices of the DMM unit. This temporary rule relief would be subject to the DMM unit providing the telephone numbers of such off-Floor personnel to the Exchange in advance.

To effect this change, the Exchange proposes a new paragraph to Supplementary Material .30 to Rule 36 as follows:

For a temporary period that begins on June 17, 2020 and ends on the earlier of the full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 2020, a DMM unit may maintain a telephone line at its trading post location to communicate with DMM unit personnel working in locations other than the off-Floor offices of the DMM unit, provided that the telephone numbers of such persons are provided to the Exchange in advance.

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>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>12</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

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

<sup>12</sup> 15 U.S.C. 78f(b)(5).

in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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 14, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning May 26, 2020, the Trading Floor would be partially reopened to allow a subset of Floor brokers to return to the Trading Floor. And on June 15, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning June 17, 2020, the Trading Floor would be partially reopened to allow a subset of DMMs to return to the Trading Floor.

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 they are designed to support the return of DMMs to the Trading Floor, who would be operating with reduced staff. The Exchange believes that the proposed rule change to add Commentary .06 to Rule 7.35A would promote fair and orderly markets because it would widen the Applicable Price Range for pre-opening indications during the temporary period when the Trading Floor has been reopened to a subset of DMMs. This proposed rule change will reduce potential burdens on the subset of DMM staff available to facilitate Auctions manually, while at the same time preserving pre-opening indications for securities with significant price movement. The Exchange notes that it has the authority to implement the proposed Applicable Price Range under Rule 7.35A(d)(3)(B) if the Exchange determined that it is necessary or appropriate for the maintenance of a fair and orderly market. The Exchange believes it would promote transparency

to specify that such widened Applicable Price Range would be in effect during this temporary period, instead of implementing the widened Applicable Price Range on a day-to-day basis under Rule 7.35A(d)(3)(B).

The Exchange further believes that proposed Commentary .03 to Rule 7.35B and Supplementary Material .20 to Rule 76 would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would promote transparency that Floor Broker Interest, as defined in Rule 7.35(a)(9), and crossing orders, as defined in Rule 76, would not be available to Floor brokers during the temporary period when the DMMs who choose to return to the Trading Floor are operating with reduced staff.

Finally, the Exchange believes that the proposed amendment to Rule 36 would remove impediments to and perfect the mechanism of a free and open market and a national market system by continuing to facilitate permitted communications between DMMs and their off-Floor personnel notwithstanding the remote working arrangements implemented by DMM units for their off-Floor offices. The Exchange believes that DMMs using the telephone lines at their trading posts to communicate with off-Floor personnel working remotely would ensure continuity in DMM operations and enable DMMs to communicate with DMM staff in order to conduct their regular business and facilitate fair and orderly markets in DMM securities. The Exchange further believes that without the requested relief, DMMs could be compromised in their ability to conduct their regular course of business on the Trading Floor, which would adversely impact the market generally and investor confidence. In particular, any inability for DMMs to communicate with personnel from their off-Floor offices permitted under Rule 98 regardless of where such off-Floor personnel may be located during the pandemic, could

compromise DMM units' ability to meet their obligations, particularly if a DMM unit experiences issues with connectivity or its algorithms.

In addition, the proposed temporary rule would require DMM units to provide the telephone numbers of the permitted contacts working remotely. This additional safeguard would provide the Exchange with information that may be important to determining whether DMM units are only communicating with personnel from their off-Floor offices in a manner permitted under Rule 98.

The Exchange believes that, by clearly stating that this relief would 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 would have advance notice of the temporary period during which these proposed rule changes would be in effect.

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. These proposed rule changes are not designed to address any competitive issues but rather to support the partial reopening of the Trading Floor to DMM units that choose to return to the Trading Floor with reduced staff for a temporary period that begins on June 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.

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>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup> Because the foregoing 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, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>15</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>16</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>17</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>18</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 proposal may become operative immediately upon filing.

The Exchange has represented that, during this partial reopening of the Trading Floor to DMMs, each DMM unit may choose to return only a limited number of staff to the Trading

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<sup>13</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

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

<sup>16</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its 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.

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

<sup>18</sup> 17 CFR 240.19b-4(f)(6)(iii).

Floor. The Exchange believes that the proposed rule change to widen temporarily the Applicable Price Range specified in Rules 7.35A(d)(3)(A) and (B) would promote fair and orderly auctions during this period because it would reduce potential burdens on the subset of DMM staff available to facilitate Auctions manually, while at the same time preserving pre-opening indications for securities with significant price movement.<sup>19</sup> The Exchange has also represented that, to halt the spread of the COVID-19, many such DMM units, as part of their business continuity plans, have instituted remote working arrangements for their off-Floor offices, thereby limiting or eliminating the availability of persons in DMMs' off-Floor offices ordinarily reachable using the land-based telephone lines located in the DMM units' post locations on the Trading Floor. The Exchange believes that allowing DMMs to use the telephone lines at their trading posts to communicate with off-Floor personnel working remotely would ensure continuity in DMM operations and enable DMMs to communicate with DMM staff in order to conduct their regular business and facilitate fair and orderly markets in DMM securities. The Exchange has also represented that, to accommodate health-focused considerations and social distancing, DMMs would be precluded from accepting verbal bids and offers from Floor brokers during this phase of the reopening, which would effectively bar Floor Broker Interest from participating in Closing Auctions under Rule 7.35B or engaging in the crossing orders under Rule 76; the Exchange believes that noting this effect in its rules would promote transparency. The Exchange believes that waiving the operative delay for the proposed rule changes would be

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<sup>19</sup> The Exchange has stated that it has the authority to implement the proposed Applicable Price Range under Rule 7.35A(d)(3)(B) if the Exchange determined that it is necessary or appropriate for the maintenance of a fair and orderly market. The Exchange believes it would promote transparency to specify in its rules that such widened Applicable Price Range would be in effect during this temporary period, instead of implementing the widened Applicable Price Range on a day-to-day basis under Rule 7.35A(d)(3)(B).

consistent with the protection of investors and the public interest because DMM units may choose to return to the Trading Floor with reduced staff beginning on June 17, 2020, and at least one DMM unit has notified the Exchange that they will be present on the Trading Floor on that day. The Exchange believes that a waiver of the operative delay would provide it with the ability to implement the rule changes immediately to support the second phase of the reopening of the Trading Floor to reduced staff of the DMM units.

The Commission notes that the proposed rule changes appear to be designed to address a limited, partial reopening scenario where, due to health and social distancing considerations, only a subset of DMM staff would be allowed on the Trading Floor (while many of their off-Floor personnel would continue working remotely), and DMMs would be precluded from accepting verbal bids and offers from Floor Brokers. The Commission also notes that the proposal is a temporary measure designed to respond to current, unprecedented market and health conditions, and would end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on June 30, 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.<sup>20</sup>

At any time within 60 days of the filing of such 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

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<sup>20</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).

Commission shall institute proceedings under Section 19(b)(2)(B)<sup>21</sup> of the Act 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-2020-52 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-2020-52. 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

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<sup>21</sup> 15 U.S.C. 78s(b)(2)(B).

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-2020-52 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>22</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>22</sup> 17 CFR 200.30-3(a)(12).