

## OMB APPROVAL

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Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 19

SECURITIES AND EXCHANGE COMMISSION  
 WASHINGTON, D.C. 20549  
 Form 19b-4

File No. \* SR - 2020 - \* 03  
 Amendment No. (req. for Amendments \*) 1

Filing by New York Stock Exchange LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial \* ☐ Amendment \* ☒ Withdrawal ☐ Section 19(b)(2) \* ☒ Section 19(b)(3)(A) \* ☐ Section 19(b)(3)(B) \* ☐

## Rule

Pilot ☐ Extension of Time Period for Commission Action \* ☐ Date Expires \*   
☐ 19b-4(f)(1) ☐ 19b-4(f)(4)  
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)  
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934

Section 806(e)(1) \* ☐ Section 806(e)(2) \* ☐ Section 3C(b)(2) \* ☐

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document



### Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal a new Rule 46B to permit the appointment of Regulatory Trading Officials and corresponding amendments to Rules 47 and 75 to permit Regulatory Trading Officials to review whether a bid or offer was verbalized at the point of sale in time to be eligible for inclusion in the Closing Auction

### Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* David Last Name \* De Gregorio  
 Title \* Senior Counsel, NYSE Group Inc.  
 E-mail \* David.DeGregorio@theice.com  
 Telephone \* (212) 656-4166 Fax (212) 656-8101

### Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date 04/07/2020

By Clare Saperstein

(Name \*)

Associate General Counsel

Clare Saperstein,

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549	
For complete Form 19b-4 instructions please refer to the EFFF website.	
<div>Form 19b-4 Information *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
<div>Exhibit 1 - Notice of Proposed Rule Change *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
<div>Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
<div>Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications</div> <div><div>Add</div><div>Remove</div><div>View</div></div> <div>Exhibit Sent As Paper Document <input type="checkbox"/></div>	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
<div>Exhibit 3 - Form, Report, or Questionnaire</div> <div><div>Add</div><div>Remove</div><div>View</div></div> <div>Exhibit Sent As Paper Document <input type="checkbox"/></div>	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
<div>Exhibit 4 - Marked Copies</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
<div>Exhibit 5 - Proposed Rule Text</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
<div>Partial Amendment</div> <div><div>Add</div><div>Remove</div><div>View</div></div>	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> New York Stock Exchange LLC (“NYSE” or the “Exchange”) proposes a new Rule 46B to permit the appointment of Regulatory Trading Officials and corresponding amendments to Rule 47 to permit Regulatory Trading Officials to review whether a bid or offer is eligible for inclusion in the Closing Auction. This Amendment No. 1 to SR-NYSE-2020-03 replaces SR-NYSE-2020-03 as originally filed and supersedes such filing in its entirety.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.

- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the board of directors of the Exchange (the “Board”). No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

David De Gregorio  
Senior Counsel  
NYSE Group, Inc.  
(212) 656-4166

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

- (a) Purpose

The Exchange proposes a new Rule 46B to permit the appointment of Regulatory

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

<sup>2</sup> 17 CFR 240.19b-4.

Trading Officials and corresponding amendments to Rule 47 to permit Regulatory Trading Officials to review whether a bid or offer is eligible for inclusion in the Closing Auction.

### Background

Rule 46 permits the Exchange to appoint active NYSE members<sup>3</sup> as Floor Officials. Rule 46 also permits the Exchange to appoint “qualified”<sup>4</sup> ICE employees to act as Floor Governors, one of the more senior types of Floor Officials (“Staff Governors”).<sup>5</sup> Floor Officials are delegated certain authority from the Board of Directors of the Exchange to supervise and regulate active openings and unusual situations that arise in connection with the making of bids, offers or transactions on the Trading Floor,<sup>6</sup> and to review and approve certain trading actions.

Currently, only Floor Officials are authorized to act under the Exchange’s rules in connection with certain situations involving bids, offers or transactions on the Trading Floor. Specifically, under Rule 47 (Floor Officials—Unusual Situations), Floor Officials have the authority to “supervise and regulate active openings and unusual situations that may arise in connection with the making of bids, offers or transactions on the Floor.”

Unusual situations may arise that could impede or prevent Floor brokers from representing customer interest before the end of Core Trading Hours.<sup>7</sup> Unusual situations may arise, for example, if the Floor broker hand-held device

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<sup>3</sup> Rule 2(a) states that the term “member,” when referring to a natural person, means a natural person associated with a member organization who has been approved by the Exchange and designated by such member organization to effect transactions on the Exchange Trading Floor or any facility thereof. See also note 6, infra.

<sup>4</sup> Supplementary Material .10 defines “qualified” employees as “employees of ICE or any of its subsidiaries, excluding employees of NYSE Regulation, Inc., who shall have satisfied any applicable testing or qualification required by the NYSE for all Floor Governors.”

<sup>5</sup> Pursuant to Rules 46 and 46A, Floor Governors are one of several ranks of the broader category of Floor Officials, including, in order of increasing seniority, Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors and Executive Floor Governors. See Securities Exchange Act Release No. 57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR-NYSE-2008-19).

<sup>6</sup> The term “Trading Floor” is defined in Rule 6A to mean the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the “Main Room” and the “Buttonwood Room.”

<sup>7</sup> See NYSE Rule 52. Core Trading Hours are defined in Rule 1.1(d) to mean the hours of 9:30 a.m. ET through 4:00 p.m. ET, or such other hours as may be determined by the Exchange, for example, an early scheduled closing time.

malfunctions or ceases to work or if a Floor broker is physically impeded, as a result of a crowd condition beyond that of normal traffic flow on the Exchange's trading Floor or some other circumstance beyond the Floor broker's control, in his or her ability to be present at a post before the DMM closes the security.<sup>8</sup> In the event of such a potentially unusual situation, a Floor broker may consult with a Floor Official and the Designated Market Maker ("DMM") in the relevant security regarding whether and how that customer interest can be represented so that it is eligible to participate in the Closing Auction.<sup>9</sup> The Floor Official's role in this consultation is to provide an impartial professional assessment of the situation consistent with NYSE Rule 47. Currently, the DMM makes the final determination whether to include or exclude Floor broker verbal interest in the Closing Auction.

#### Proposed Rule Change

The Exchange proposes a new "Regulatory Trading Official" who would perform the functions currently performed by Floor Officials regarding whether a bid or offer is eligible for inclusion in the Closing Auction by the DMM. Floor Officials would continue to supervise and regulate all other unusual situations not enumerated for the Regulatory Trading Official to perform.

To effectuate this change, the Exchange proposes a new Rule 46B that would provide that a Regulatory Trading Official would be an Exchange employee or officer designated by the Chief Regulatory Officer or its designee to perform the functions specified in Exchange rules. The Exchange further proposes to amend Rule 47 to specify the functions that would be performed by the Regulatory Trading Official.

First, the existing rule text of Rule 47 would be designated subsection (a) and would be amended to specify that whether a verbal bid or verbal offer is eligible for inclusion in the Closing Auction by a DMM would be governed by new subsection (b) to Rule 47. This amendment therefore carves out the Floor Official's specific function with respect to unusual situations that would no longer be performed by Floor Officials.

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<sup>8</sup>

See NYSE Member Education Bulletin 19-01 (June 21, 2019).

<sup>9</sup>

Floor broker buy and sell interest is eligible to participate in the Closing Auction if, by the end of Core Trading Hours, such interest is (1) entered into an Exchange system and recorded in accordance with Rule 123(e), and (2) either entered electronically or verbally represented at the point of sale. When verbally representing customer interest, Floor brokers must bid or offer by articulating the following elements: symbol, side (buy or sell), size, and, if the order is a limit order, the price. See Member Education Bulletin 19-01 (June 21, 2019); see generally Rule 123(b) (record of orders must contain the required terms of the order, including the name and amount of the security, the terms of the order and the time when such order was received).

Second, proposed new Rule 47(b) would set forth the authority of Regulatory Trading Officials. As proposed, subsection (b) would provide that situations regarding whether a verbal bid or verbal offer is eligible for inclusion in the Closing Auction by the DMM shall be supervised and regulated as follows in the proposed rule. Under the proposed rule, a Floor broker with the interest to be included in the Closing Auction or the DMM responsible for the Closing Auction in the relevant security may consult a Regulatory Trading Official regarding whether a bid or offer is eligible for inclusion in the Closing Auction by the DMM. Proposed Rule 47(b) would also provide that if such a request has been made, the DMM will not facilitate the Closing Auction until a Regulatory Trading Official has completed his or her review. The proposed rule would also provide, consistent with current rules, that the final determination to include or exclude interest from the Closing Auction will be made by the DMM pursuant to Rule 104. Finally, proposed Rule 47(b) would specify that the Regulatory Trading Official's review will be documented in Exchange systems no later than one business day following the review.

The Exchange believes that it is more appropriate for a regulatory employee to review the eligibility of Floor broker interest in the Closing Auction. Whether a bid or offer is eligible for inclusion in the Closing Auction, including whether such a bid or offer was verbalized at the point of sale in time to be eligible for the Closing Auction, will often require assessing whether a Floor broker complied with the rules for entry of its interest prior to the Closing Auction.<sup>10</sup> The Exchange believes that having a regulatory employee involved in such discussions will emphasize the importance of including all eligible Floor broker interest in the Closing Auction.

(b) Statutory Basis

The Exchange believes that 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, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

In particular, the Exchange believes that creating a new category of trading official to perform the functions currently performed by Floor Officials in reviewing whether a bid or offer is eligible for inclusion in the Closing Auction would promote just and equitable principles of trade and remove impediments to a free and open market by continuing to provide certainty to the Closing Auction when a dispute arises at the point of sale regarding whether a bid or offer can

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<sup>10</sup> See note 9, *supra*.

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

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

participate in the Closing Auction, thereby facilitating fair competition among brokers and dealers and among exchange markets. The Exchange's Closing Auction is a recognized industry reference point,<sup>13</sup> and the Exchange believes that maintaining the current process with a regulatory employee would continue to promote the efficient execution of the Closing Auction, thereby contributing to fair and orderly markets and strengthening investor confidence in the market.

The Exchange believes that assigning responsibility for reviewing whether Floor broker interest was eligible for inclusion in the Closing Auction to a regulatory employee designated by the Chief Regulatory Officer will contribute to the protection of investors and the public interest. As noted above, the Exchange believes that regulatory employees are appropriately suited to the role of consultation regarding the eligibility of Floor broker interest, including verbal interest, to participate in the Closing Auction. The Exchange also believes the proposed amendments further the goal of transparency and add clarity to the Exchange's rules, which would not be inconsistent with the public interest and the protection of investors because investors would not be harmed and in fact would benefit from such increased transparency and clarity in the Exchange's rules, thereby reducing potential confusion.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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

The Exchange does not believe that the proposed rule change will 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 and competitive issues, but rather assign responsibility for reviewing eligibility of verbal interest for inclusion in the Closing Auction to a regulatory employee. Since the proposal does not substantively modify the Closing Auction or system functionality, the proposed changes will not impose any burden on competition.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in

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<sup>13</sup> For example, the pricing and valuation of certain indices, funds, and derivative products require primary market prints.

Section 19(b)(2)<sup>14</sup> of the Exchange Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advanced Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Publication in the Federal Register

Exhibit 5 – Text of the Proposed Rule Change

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<sup>14</sup>

15 U.S.C. 78s(b)(2).



## EXHIBIT 1

## SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NYSE-2020-03, Amendment No. 1)

[Date]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change a New Rule 46B to Permit the Appointment of Regulatory Trading Officials

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 April 7, 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, II, and III 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 a new Rule 46B to permit the appointment of Regulatory Trading Officials and corresponding amendments to Rule 47 to permit Regulatory Trading Officials to review whether a bid or offer is eligible for inclusion in the Closing Auction. This Amendment No. 1 to SR-NYSE-2020-03 replaces SR-NYSE-2020-03 as originally filed and supersedes such filing in its entirety. 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 a new Rule 46B to permit the appointment of Regulatory Trading Officials and corresponding amendments to Rule 47 to permit Regulatory Trading Officials to review whether a bid or offer is eligible for inclusion in the Closing Auction.

Background

Rule 46 permits the Exchange to appoint active NYSE members<sup>4</sup> as Floor Officials. Rule 46 also permits the Exchange to appoint “qualified”<sup>5</sup> ICE employees to act as Floor Governors, one of the more senior types of Floor Officials (“Staff

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<sup>4</sup> Rule 2(a) states that the term “member,” when referring to a natural person, means a natural person associated with a member organization who has been approved by the Exchange and designated by such member organization to effect transactions on the Exchange Trading Floor or any facility thereof. See also note 7, infra.

<sup>5</sup> Supplementary Material .10 defines “qualified” employees as “employees of ICE or any of its subsidiaries, excluding employees of NYSE Regulation, Inc., who shall have satisfied any applicable testing or qualification required by the NYSE for all Floor Governors.”

Governors”).<sup>6</sup> Floor Officials are delegated certain authority from the Board of Directors of the Exchange to supervise and regulate active openings and unusual situations that arise in connection with the making of bids, offers or transactions on the Trading Floor,<sup>7</sup> and to review and approve certain trading actions.

Currently, only Floor Officials are authorized to act under the Exchange’s rules in connection with certain situations involving bids, offers or transactions on the Trading Floor. Specifically, under Rule 47 (Floor Officials—Unusual Situations), Floor Officials have the authority to “supervise and regulate active openings and unusual situations that may arise in connection with the making of bids, offers or transactions on the Floor.”

Unusual situations may arise that could impede or prevent Floor brokers from representing customer interest before the end of Core Trading Hours.<sup>8</sup> Unusual situations may arise, for example, if the Floor broker hand-held device malfunctions or ceases to work or if a Floor broker is physically impeded, as a result of a crowd condition beyond that of normal traffic flow on the Exchange’s trading Floor or some other circumstance beyond the Floor broker’s control, in his or her ability to be present at a post before the DMM closes the security.<sup>9</sup> In the event of such a potentially unusual situation, a Floor

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<sup>6</sup> Pursuant to Rules 46 and 46A, Floor Governors are one of several ranks of the broader category of Floor Officials, including, in order of increasing seniority, Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors and Executive Floor Governors. See Securities Exchange Act Release No. 57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR-NYSE-2008-19).

<sup>7</sup> The term “Trading Floor” is defined in Rule 6A to mean the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the “Main Room” and the “Buttonwood Room.”

<sup>8</sup> See NYSE Rule 52. Core Trading Hours are defined in Rule 1.1(d) to mean the hours of 9:30 a.m. ET through 4:00 p.m. ET, or such other hours as may be determined by the Exchange, for example, an early scheduled closing time.

<sup>9</sup> See NYSE Member Education Bulletin 19-01 (June 21, 2019).

broker may consult with a Floor Official and the Designated Market Maker (“DMM”) in the relevant security regarding whether and how that customer interest can be represented so that it is eligible to participate in the Closing Auction.<sup>10</sup> The Floor Official’s role in this consultation is to provide an impartial professional assessment of the situation consistent with NYSE Rule 47. Currently, the DMM makes the final determination whether to include or exclude Floor broker verbal interest in the Closing Auction.

#### Proposed Rule Change

The Exchange proposes a new “Regulatory Trading Official” who would perform the functions currently performed by Floor Officials regarding whether a bid or offer is eligible for inclusion in the Closing Auction by the DMM. Floor Officials would continue to supervise and regulate all other unusual situations not enumerated for the Regulatory Trading Official to perform.

To effectuate this change, the Exchange proposes a new Rule 46B that would provide that a Regulatory Trading Official would be an Exchange employee or officer designated by the Chief Regulatory Officer or its designee to perform the functions specified in Exchange rules. The Exchange further proposes to amend Rule 47 to specify the functions that would be performed by the Regulatory Trading Official.

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<sup>10</sup> Floor broker buy and sell interest is eligible to participate in the Closing Auction if, by the end of Core Trading Hours, such interest is (1) entered into an Exchange system and recorded in accordance with Rule 123(e), and (2) either entered electronically or verbally represented at the point of sale. When verbally representing customer interest, Floor brokers must bid or offer by articulating the following elements: symbol, side (buy or sell), size, and, if the order is a limit order, the price. See Member Education Bulletin 19-01 (June 21, 2019); see generally Rule 123(b) (record of orders must contain the required terms of the order, including the name and amount of the security, the terms of the order and the time when such order was received).

First, the existing rule text of Rule 47 would be designated subsection (a) and would be amended to specify that whether a verbal bid or verbal offer is eligible for inclusion in the Closing Auction by a DMM would be governed by new subsection (b) to Rule 47. This amendment therefore carves out the Floor Official's specific function with respect to unusual situations that would no longer be performed by Floor Officials.

Second, proposed new Rule 47(b) would set forth the authority of Regulatory Trading Officials. As proposed, subsection (b) would provide that situations regarding whether a verbal bid or verbal offer is eligible for inclusion in the Closing Auction by the DMM shall be supervised and regulated as follows in the proposed rule. Under the proposed rule, a Floor broker with the interest to be included in the Closing Auction or the DMM responsible for the Closing Auction in the relevant security may consult a Regulatory Trading Official regarding whether a bid or offer is eligible for inclusion in the Closing Auction by the DMM. Proposed Rule 47(b) would also provide that if such a request has been made, the DMM will not facilitate the Closing Auction until a Regulatory Trading Official has completed his or her review. The proposed rule would also provide, consistent with current rules, that the final determination to include or exclude interest from the Closing Auction will be made by the DMM pursuant to Rule 104. Finally, proposed Rule 47(b) would specify that the Regulatory Trading Official's review will be documented in Exchange systems no later than one business day following the review.

The Exchange believes that it is more appropriate for a regulatory employee to review the eligibility of Floor broker interest in the Closing Auction. Whether a bid or offer is eligible for inclusion in the Closing Auction, including whether such a bid or

offer was verbalized at the point of sale in time to be eligible for the Closing Auction, will often require assessing whether a Floor broker complied with the rules for entry of its interest prior to the Closing Auction.<sup>11</sup> The Exchange believes that having a regulatory employee involved in such discussions will emphasize the importance of including all eligible Floor broker interest in the Closing Auction.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>13</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

In particular, the Exchange believes that creating a new category of trading official to perform the functions currently performed by Floor Officials in reviewing whether a bid or offer is eligible for inclusion in the Closing Auction would promote just and equitable principles of trade and remove impediments to a free and open market by continuing to provide certainty to the Closing Auction when a dispute arises at the point of sale regarding whether a bid or offer can participate in the Closing Auction, thereby facilitating fair competition among brokers and dealers and among exchange markets. The Exchange's Closing Auction is a recognized industry reference point,<sup>14</sup> and the

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<sup>11</sup> See note 10, supra.

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

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> For example, the pricing and valuation of certain indices, funds, and derivative

Exchange believes that maintaining the current process with a regulatory employee would continue to promote the efficient execution of the Closing Auction, thereby contributing to fair and orderly markets and strengthening investor confidence in the market.

The Exchange believes that assigning responsibility for reviewing whether Floor broker interest was eligible for inclusion in the Closing Auction to a regulatory employee designated by the Chief Regulatory Officer will contribute to the protection of investors and the public interest. As noted above, the Exchange believes that regulatory employees are appropriately suited to the role of consultation regarding the eligibility of Floor broker interest, including verbal interest, to participate in the Closing Auction. The Exchange also believes the proposed amendments further the goal of transparency and add clarity to the Exchange's rules, which would not be inconsistent with the public interest and the protection of investors because investors would not be harmed and in fact would benefit from such increased transparency and clarity in the Exchange's rules, thereby reducing potential confusion.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

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

The Exchange does not believe that the proposed rule change will 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 and competitive issues, but rather assign responsibility for reviewing eligibility of verbal interest for inclusion in

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products require primary market prints.

the Closing Auction to a regulatory employee. Since the proposal does not substantively modify the Closing Auction or system functionality, the proposed changes will not impose any burden on competition.

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

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-2020-03 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-2020-03. 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-2020-03 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>15</sup>

Eduardo A. Aleman  
Deputy Secretary

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<sup>15</sup> 17 CFR 200.30-3(a)(12).

Additions: Underlined  
Deletions: [Bracketed]

Rules of New York Stock Exchange LLC

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**Rule 46B. Regulatory Trading Official**

A Regulatory Trading Official will be an Exchange employee or officer designated by the Chief Regulatory Officer or its designee to perform those functions specified in Exchange rules.

**Rule 47. Floor Officials—Unusual Situations**

- (a) Floor Officials shall have power to supervise and regulate active openings and unusual situations that may arise in connection with the making of bids, offers or transactions on the Floor, other than with regard to whether a verbal bid or verbal offer is eligible for inclusion in the Closing Auction by the DMM, which is governed by subsection (b) of this Rule.
- (b) Situations regarding whether a verbal bid or verbal offer is eligible for inclusion in the Closing Auction by the DMM shall be supervised and regulated as follows. A Floor broker with the interest to be included in the Closing Auction or the DMM responsible for the Closing Auction may consult a Regulatory Trading Official regarding whether a bid or offer is eligible for inclusion in the Closing Auction by the DMM. If such a request has been made, the DMM will not facilitate the Closing Auction until a Regulatory Trading Official has completed his or her review. The final determination to include or exclude interest from the Closing Auction will be made by the DMM pursuant to Rule 104. The Regulatory Trading Official's review will be documented in Exchange systems no later than one business day following the review.

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