

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="28"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2020"/> - * <input type="text" value="35"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by New York Stock Exchange LLC
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 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) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

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

Proposal to add Commentary .04 to Rule 7.35A

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 * <input type="text" value="Clare"/>	Last Name * <input type="text" value="Saperstein"/>
Title * <input type="text" value="Associate General Counsel, NYSE Group Inc."/>	
E-mail * <input type="text" value="Clare.Saperstein@theice.com"/>	
Telephone * <input type="text" value="(212) 656-2355"/>	Fax <input type="text" value="(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 <input type="text" value="04/17/2020"/>	<input type="text" value="Assistant Secretary"/>
By <input type="text" value="Martha Redding"/>	<input type="text" value="Martha Redding,"/>
(Name *)	

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 EFFS website.

Form 19b-4 Information *

Add Remove View

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.

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

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)

Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies *

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Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document

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.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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.

Exhibit 4 - Marked Copies

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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.

Exhibit 5 - Proposed Rule Text

Add Remove View

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.

Partial Amendment

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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 (“Act”)¹ and Rule 19b-4 thereunder,² New York Stock Exchange LLC (“NYSE” or the “Exchange”) proposes to add Commentary .04 to Rule 7.35A to provide that, for a temporary period that begins 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 would 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.

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 the Exchange. 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:

Clare F. Saperstein
Associate General Counsel
NYSE Group, Inc.
(212) 656-2355

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

(a) Purpose

The Exchange proposes to add Commentary .04 to Rule 7.35A to provide that, for a temporary period that begins 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 would 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.

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.³ 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 .02,⁴ 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

³ 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>.

⁴ 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”).

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 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 2, 2020, the Exchange amended Rule 7.35A to add Commentary .03,⁵ which provides:

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

Similar to the rationale described in the Rule 7.35A Filing, the Exchange added this Commentary because, while the Trading Floor is temporarily closed, DMMs cannot engage in a manual Core Open Auction for a post-IPO public offering.

On April 2, 2020, the Exchange effected a post-IPO public offering pursuant to Commentary .03 to Rule 7.35A

Proposed Rule Change

The Exchange proposes to add Commentary .04 to Rule 7.35A to provide that, for a temporary period that begins 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 would 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.

⁵ See Securities Exchange Act Release No. 88546 (April 2, 2020) (SR-NYSE-2020-28), 85 FR 19782 (April 8, 2020) (Notice of filing and immediate effectiveness of proposed rule change).

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. However, during this period, the business continuity plans implemented by different DMM member organizations may not permit one of their employees to travel to the Trading Floor for the purpose of effecting an IPO or post-IPO public offering pursuant to Commentary .02 or .03 to Rule 7.35A.

Accordingly, the Exchange has developed technology that can be used as a stopgap during the period when the Trading Floor is temporarily closed to enable a DMM to manually effect an Auction without being present on the Trading Floor. This technology is intended to be a temporary solution to respond to the unique circumstances during the period when the Trading Floor is closed as a precaution to prevent the spread of COVID-19.

This proposed temporary technology solution would provide a DMM with remote access to NYSE trading systems that are located on the Trading Floor that DMMs use to facilitate auctions manually. This interim technology solution requires manual intervention by both the DMM and Exchange staff for each Auction, and therefore the Exchange does not believe it would be feasible to deploy this remote-access technology to all securities. However, for those IPO Auctions and Core Open Auctions for post-IPO public offerings that the Exchange believes should be effected manually during the temporary period when the Trading Floor is closed, this remote-access technology provides an alternative to a DMM whose firm may determine that travel to and entry to the Trading Floor would not be advisable or possible during this temporary period.

Because this limited scope remote-access technology is now available to all DMM firms, the Exchange proposes to add Commentary .04 to Rule 7.35A to specify that the Exchange would 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 for a listed company's post-IPO public offering.

Similar to an IPO Auction that would be effected under current Commentary .02 to Rule 7.35A, if a DMM uses this remote-access technology to manually effect an IPO Auction or Core Open Auction for a post-IPO public offering, the Exchange would arrange for a Floor Governor to be available to the DMM via telephone for such Auctions to approve the publication of any pre-opening indications.⁶ In addition, Exchange staff would be in communication via telephone with the lead underwriter for such IPO Auction or Core Open Auction

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

for a post-IPO public offering and would separately convey to the DMM via telephone information that the underwriter would normally convey to the DMM via a Floor broker, such as when the underwriter has entered all interest for such Auction.⁷ The Exchange staff person providing this communication link would use separate telephone lines to communicate with the underwriter and to communicate with the DMM.⁸ The Exchange will arrange for any such calls to be conducted via an Exchange-authorized secure teleconferencing service.

Similar to an IPO Auction effected pursuant to Commentary .02 to Rule 7.35A, if a DMM manually effects an IPO Auction pursuant to proposed Commentary .04 to Rule 7.35A, the Exchange would 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 would publish such Trader Update(s) promptly after each publication by the DMM of a pre-opening indication for such security. The Trader Update would also include the pre-opening indication range.

Because publishing such Trader Updates would be a manual process, the Exchange proposes to disseminate a Trader Update following each publication of a pre-opening indication by the DMM.⁹ The Exchange proposes to include in the Trader Update information that a DMM would convey on the Trading Floor during normal operations:

- The Imbalance Reference Price, which is the reference price that is used for the applicable Auction to determine the Auction Imbalance Information.¹⁰ However, unlike the Imbalance Reference Price used for the Core Open Auction, which is a static number, the Imbalance Reference Price that would be included in a Trader Update for an IPO

⁷ Rule 36.30 provides that a DMM unit may maintain a telephone line at its stock trading post to the off-Floor offices of the DMM unit, the unit's clearing firm, or to persons providing non-trading related services. Accordingly, pursuant to this Rule, on the Trading Floor, a DMM cannot have a telephone line that connects to an underwriter for an IPO. With this proposed remote-access functionality, the Exchange proposes that DMMs would similarly not communicate directly with the underwriter.

⁸ Depending on the circumstances of when the relief in this proposed rule change would be required, it is likely that the Exchange staff person facilitating the remote access for the DMM would also be working remotely and not on Exchange premises. In addition, the Exchange staff person providing such access may also be the Exchange staff person communicating with the underwriter and serving as the Floor Governor for this transaction.

⁹ Pre-opening indications are disseminated on both proprietary and SIP data feeds. See Rule 7.35A(d).

¹⁰ See Rule 7.35(a)(10).

Auction would be a prospective opening price manually selected by the DMM based on the interest in the Book at that time. The Imbalance Reference Price would be updated by the DMM as buy and sell interest in the Book updates.

- The Paired Quantity, which is the volume of better-priced and at-priced buy shares that can be paired with better-priced and at-priced sell shares at the Imbalance Reference Price.¹¹
- The Unpaired Quantity, which is the volume of at-priced buy or sell shares that cannot be paired at the Imbalance Reference Price.
- The Side of the Unpaired Quantity, which is the side (buy or sell) that cannot be paired at the Imbalance Reference Price.

The Exchange believes that, in the absence of Floor brokers, this proposed rule change would promote transparency in advance of an IPO Auction that would be manually effected by the DMM remotely while the Trading Floor is closed.

The Exchange has tested with each active DMM firm and relevant Exchange staff the proposed interim technology to provide DMMs remote access to the Floor-based systems that would be used to effect a manual (1) IPO Auction; or (2) Core Open Auction in connection with a listed company's post-IPO public offering. Accordingly, the Exchange would be able to implement the proposed rule change immediately upon effectiveness of this filing.

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ 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

¹¹ See Rule 7.35(a)(4)(B).

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

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

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote fair and orderly IPO Auctions or Core Open Auctions in connection with a listed company's post-IPO public offering. The Exchange believes that it would promote fair and orderly markets to provide the DMM with mechanisms to facilitate such Core Open Auctions manually because it would provide flexibility for the DMM to consider information from the underwriter when determining when to conduct the Core Open Auction and at what price.

The Exchange believes that providing DMMs with limited remote access to Floor-based trading systems to manually effect an IPO Auction or Core Open Auction for a listed company's post-IPO public offering 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 providing this stopgap would promote fair and orderly markets by providing the DMM with a limited-use mechanism to facilitate such Auctions manually so the DMM could consider information from the underwriter when determining when to conduct the IPO Auction or specified Core Open Auction and at what price.

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 IPO Auctions on the Exchange by allowing the Exchange to disseminate specified Auction Imbalance Information in advance of such auctions. The proposed rule change would therefore promote transparency in advance of an IPO Auction that would be manually effected by a DMM remotely 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 an IPO Auction or Core Open Auction in connection with a post-IPO public offering may be effected manually by the DMM during this period, and therefore may not be conducted at 9:30 a.m.

4. 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 or Core Open Auctions in connection with a listed company's post-IPO public offering by providing a DMM with remote access to Floor-based systems for the sole purpose of effecting such Auctions manually during a temporary period when the Exchange Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of the COVID-19 virus.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

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

The Exchange believes that the proposed rule change qualifies for immediate effectiveness upon filing as a "non-controversial" rule change in accordance with Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6), thereunder.¹⁵

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with 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, or such shorter time as the Commission may designate.

The Exchange believes that the proposed rule change will not significantly affect the protection of investors or the public interest or impose any significant burden on competition because it is designed to ensure fair and orderly IPO Auctions or Core Open Auctions in connection with a listed company's post-IPO public offering by providing a DMM with remote access to Floor-based systems for the sole purpose of effecting such Auctions manually during a temporary period when the Exchange Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of the COVID-19 virus.

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

In view of the immediate nature of the relief requested, the Exchange respectfully requests to have the proposed amendments become operative immediately. The Exchange requests that the Commission waive the 30-day operative delay, so that the proposed rule change may become immediately operative pursuant to Section 19(b)(3)(A)¹⁶ and Rule 19b-4(f)(6)¹⁷ thereunder. Waiver of this period will allow the Exchange to immediately implement the proposed rule change.

The Exchange believes that waiver of the operative delay of the proposed rule change would be consistent with the protection of investors and the public interest because the potential for a post-IPO public offering could arise with limited advance notice to the Exchange. In some cases, the Exchange receives less than 24-hour advance notice of the date that a listed company would be conducting a post-IPO secondary offering. Immediate effectiveness of the proposed rule change would also provide greater certainty to prospective listed companies that an IPO Auction could be conducted by the DMM manually in their security either on the Trading Floor or remotely, and in either case, the DMM would be able to receive up-to-date information about the offering from the underwriter and manually price the IPO Auction. The Exchange has tested the technology and is able to implement this proposed rule change immediately, and waiver of the operative delay would provide the Exchange with the flexibility it needs to permit DMMs to manually effect such Auctions via the interim remote-access technology solution.

For the foregoing reasons, the Exchange believes that this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule changes 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.

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

Not applicable.

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

Not applicable.

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

Not applicable.

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

11. Exhibits

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

Exhibit 5 – Text of the Proposed Rule Change

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSE-2020-35)

[Date]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add Commentary .04 to Rule 7.35A

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on April 17, 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 to add Commentary .04 to Rule 7.35A to provide that, for a temporary period that begins 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 would 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. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

Commission's Public Reference Room.

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 .04 to Rule 7.35A to provide that, for a temporary period that begins 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 would 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.

Background

Since March 9, 2020, markets worldwide have been experiencing unprecedented market-wide declines and volatility because of the ongoing spread of COVID-19. Beginning on March 16, 2020, to slow the spread of COVID-19 through social-distancing measures, significant limitations were placed on large gatherings throughout the country.

On March 18, 2020, the CEO of the Exchange made a determination under Rule

7.1(c)(3) that, beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.⁴ Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination.

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As described in the Rule 7.35A Filing, the Exchange added this Commentary

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

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

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 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 2, 2020, the Exchange amended Rule 7.35A to add Commentary .03,⁶ which provides:

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

Similar to the rationale described in the Rule 7.35A Filing, the Exchange added this Commentary because, while the Trading Floor is temporarily closed, DMMs cannot engage in a manual Core Open Auction for a post-IPO public offering.

On April 2, 2020, the Exchange effected a post-IPO public offering pursuant to

⁶ See Securities Exchange Act Release No. 88546 (April 2, 2020) (SR-NYSE-2020-28), 85 FR 19782 (April 8, 2020) (Notice of filing and immediate effectiveness of proposed rule change).

Commentary .03 to Rule 7.35A

Proposed Rule Change

The Exchange proposes to add Commentary .04 to Rule 7.35A to provide that, for a temporary period that begins 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 would 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.

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. However, during this period, the business continuity plans implemented by different DMM member organizations may not permit one of their employees to travel to the Trading Floor for the purpose of effecting an IPO or post-IPO public offering pursuant to Commentary .02 or .03 to Rule 7.35A.

Accordingly, the Exchange has developed technology that can be used as a stopgap during the period when the Trading Floor is temporarily closed to enable a DMM to manually effect an Auction without being present on the Trading Floor. This technology is intended to be a temporary solution to respond to the unique circumstances during the period when the Trading Floor is closed as a precaution to prevent the spread of COVID-19.

This proposed temporary technology solution would provide a DMM with remote access to NYSE trading systems that are located on the Trading Floor that DMMs use to

facilitate auctions manually. This interim technology solution requires manual intervention by both the DMM and Exchange staff for each Auction, and therefore the Exchange does not believe it would be feasible to deploy this remote-access technology to all securities. However, for those IPO Auctions and Core Open Auctions for post-IPO public offerings that the Exchange believes should be effected manually during the temporary period when the Trading Floor is closed, this remote-access technology provides an alternative to a DMM whose firm may determine that travel to and entry to the Trading Floor would not be advisable or possible during this temporary period.

Because this limited scope remote-access technology is now available to all DMM firms, the Exchange proposes to add Commentary .04 to Rule 7.35A to specify that the Exchange would 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 for a listed company's post-IPO public offering.

Similar to an IPO Auction that would be effected under current Commentary .02 to Rule 7.35A, if a DMM uses this remote-access technology to manually effect an IPO Auction or Core Open Auction for a post-IPO public offering, the Exchange would arrange for a Floor Governor to be available to the DMM via telephone for such Auctions to approve the publication of any pre-opening indications.⁷ In addition, Exchange staff would be in communication via telephone with the lead underwriter for such IPO Auction or Core Open Auction for a post-IPO public offering and would separately convey to the DMM via telephone information that the underwriter would normally convey to the

⁷ See Rule 7.35A(d)(4)(A) (“Publication of a pre-opening indication requires the supervision and approval of a Floor Governor.”) The Exchange will arrange for a qualified ICE employee that has been designated as a Floor Governor to perform this function. See Rule 46(b)(v).

DMM via a Floor broker, such as when the underwriter has entered all interest for such Auction.⁸ The Exchange staff person providing this communication link would use separate telephone lines to communicate with the underwriter and to communicate with the DMM.⁹ The Exchange will arrange for any such calls to be conducted via an Exchange-authorized secure teleconferencing service.

Similar to an IPO Auction effected pursuant to Commentary .02 to Rule 7.35A, if a DMM manually effects an IPO Auction pursuant to proposed Commentary .04 to Rule 7.35A, the Exchange would 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 would publish such Trader Update(s) promptly after each publication by the DMM of a pre-opening indication for such security. The Trader Update would also include the pre-opening indication range.

Because publishing such Trader Updates would be a manual process, the Exchange proposes to disseminate a Trader Update following each publication of a pre-

⁸ Rule 36.30 provides that a DMM unit may maintain a telephone line at its stock trading post to the off-Floor offices of the DMM unit, the unit's clearing firm, or to persons providing non-trading related services. Accordingly, pursuant to this Rule, on the Trading Floor, a DMM cannot have a telephone line that connects to an underwriter for an IPO. With this proposed remote-access functionality, the Exchange proposes that DMMs would similarly not communicate directly with the underwriter.

⁹ Depending on the circumstances of when the relief in this proposed rule change would be required, it is likely that the Exchange staff person facilitating the remote access for the DMM would also be working remotely and not on Exchange premises. In addition, the Exchange staff person providing such access may also be the Exchange staff person communicating with the underwriter and serving as the Floor Governor for this transaction.

opening indication by the DMM.¹⁰ The Exchange proposes to include in the Trader Update information that a DMM would convey on the Trading Floor during normal operations:

- The Imbalance Reference Price, which is the reference price that is used for the applicable Auction to determine the Auction Imbalance Information.¹¹ However, unlike the Imbalance Reference Price used for the Core Open Auction, which is a static number, the Imbalance Reference Price that would be included in a Trader Update for an IPO Auction would be a prospective opening price manually selected by the DMM based on the interest in the Book at that time. The Imbalance Reference Price would be updated by the DMM as buy and sell interest in the Book updates.
- The Paired Quantity, which is the volume of better-priced and at-priced buy shares that can be paired with better-priced and at-priced sell shares at the Imbalance Reference Price.¹²
- The Unpaired Quantity, which is the volume of at-priced buy or sell shares that cannot be paired at the Imbalance Reference Price.
- The Side of the Unpaired Quantity, which is the side (buy or sell) that cannot be paired at the Imbalance Reference Price.

The Exchange believes that, in the absence of Floor brokers, this proposed rule

¹⁰ Pre-opening indications are disseminated on both proprietary and SIP data feeds. See Rule 7.35A(d).

¹¹ See Rule 7.35(a)(10).

¹² See Rule 7.35(a)(4)(B).

change would promote transparency in advance of an IPO Auction that would be manually effected by the DMM remotely while the Trading Floor is closed.

The Exchange has tested with each active DMM firm and relevant Exchange staff the proposed interim technology to provide DMMs remote access to the Floor-based systems that would be used to effect a manual (1) IPO Auction; or (2) Core Open Auction in connection with a listed company's post-IPO public offering. 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,¹³ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁴ 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

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.

The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote fair and orderly IPO Auctions or Core Open Auctions in connection with a listed company's post-IPO public offering. The Exchange believes that it would promote fair and orderly markets to provide the DMM with mechanisms to facilitate such Core Open Auctions manually because it would provide flexibility for the DMM to consider information from the underwriter when determining when to conduct the Core Open Auction and at what price.

The Exchange believes that providing DMMs with limited remote access to Floor-based trading systems to manually effect an IPO Auction or Core Open Auction for a listed company's post-IPO public offering 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 providing this stopgap would promote fair and orderly markets by providing the DMM with a limited-use mechanism to facilitate such Auctions manually so the DMM could consider information from the underwriter when determining when to conduct the IPO Auction or specified Core Open Auction and at what price.

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 IPO Auctions on the Exchange by allowing the

Exchange to disseminate specified Auction Imbalance Information in advance of such auctions. The proposed rule change would therefore promote transparency in advance of an IPO Auction that would be manually effected by a DMM remotely 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 an IPO Auction or Core Open Auction in connection with a post-IPO public offering may be effected manually by the DMM during this period, and therefore may not be conducted at 9:30 a.m.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather is designed to ensure fair and orderly IPO Auctions or Core Open Auctions in connection with a listed company's post-IPO public offering by providing a DMM with remote access to Floor-based systems for the sole purpose of effecting such Auctions manually during a temporary period when the Exchange Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of the COVID-19 virus.

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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ 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.

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

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 Commission shall institute proceedings under Section

¹⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

19(b)(2)(B)¹⁹ 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. Please include File Number SR-NYSE-2020-35 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-2020-35. 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

¹⁹ 15 U.S.C. 78s(b)(2)(B).

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-2020-35 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

Eduardo A. Aleman
Deputy Secretary

²⁰ 17 CFR 200.30-3(a)(12).

Additions: Underlined
Deletions: [Bracketed]

Rules of New York Stock Exchange LLC

Pillar Platform Rules (Rules 1P - 13P)

Rule 7P EQUITIES TRADING

Section 3. Exchange Trading

Rule 7.35 Series. Auctions

Rule 7.35A. DMM-Facilitated Core Open and Trading Halt Auctions

Commentary:

.01 For a temporary period that begins March 23, 2020, when the Trading Floor facilities have been closed pursuant to Rule 7.1(c)(3), and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020:

- (a) The percentage price parameters in paragraph (c)(1)(G) and (c)(2) of this Rule are suspended and a DMM may not effect a Core Open or Trading Halt Auction electronically if the Core Open or Trading Halt Auction Price will be more than 10% away from the Consolidated Last Sale Price.
- (b) The volume parameters in paragraph (c)(1)(H) of this Rule are suspended.
- (c) The requirement to publish a pre-opening indication pursuant to paragraph (d) of this Rule before either a Core Open or Trading Halt Auction is suspended.

- .02 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.
- .03 For a temporary period that begins on April 2, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, the Exchange will permit a DMM limited entry to the Trading Floor to effect manually a Core Open Auction in connection with a listed company's post-IPO public offering.
- .04 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.
