



**Martha Redding**  
Associate General Counsel  
Assistant Secretary

April 12, 2021

**VIA E-MAIL**

Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: Securities Exchange Act Rel. 34-90387 (SR-NYSE-2020-93)

Dear Secretary:

NYSE LLC, Inc. filed the attached Amendment No. 1 to the above-referenced filing on April 9, 2021.

Sincerely,

A handwritten signature in blue ink, appearing to be the initials "MR" or similar, written in a cursive style.

(Encl. Amendment No. 1 to (SR-NYSE-2020-93))

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="7"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2020"/> - * <input type="text" value="93"/>	Amendment No. (req. for Amendments *) <input type="text" value="1"/>
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Filing by   
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input 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)(6)
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input 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 \*).

**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 \*  Last Name \*

Title \*

E-mail \*

Telephone \*  Fax

**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  Assistant Secretary

By

(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 \***

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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 \***

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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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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)

**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**

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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.

**SR-NYSE-2020-93; Partial Amendment No. 1**

New York Stock Exchange LLC (“NYSE” or the “Exchange”) submits this partial amendment No. 1 to SR-NYSE-2020-93 (the “Filing”) to provide additional background in support of the proposed rule change. The Exchange is not proposing to amend any of the rules proposed in the Filing.

The Filing proposes two changes. First, to amend Rule 7.35 to make permanent that the Exchange would disseminate Auction Imbalance Information if a security is an IPO or Direct Listing and has not had its IPO Auction or Direct Listing Auction. Second, to amend Rule 7.35A regarding DMM consultations in connection with an IPO Auction or Direct Listing Auction.

In the order instituting proceedings to determine whether to approve or disapprove the Filing (the “Order”),<sup>1</sup> the Commission requested comment on the nature of the communications permitted between the Designated Market Maker (“DMM”) and the underwriter or financial advisor, including whether the proposed rule should specify what is a permitted consultation, or alternately, whether there are any types of information that the underwriter or financial advisor should be prohibited from conveying to the DMM in these consultations. The Commission also asked whether DMMs should be permitted to communicate directly with the underwriter or financial advisor, and finally, whether Exchange rules should distinguish between consultations with underwriters or financial advisors with respect to follow-on offerings.

**Background**

Pursuant to Rule 104(a)(2), DMMs are responsible for facilitating openings for each of the securities in which the DMM is registered, which may include supplying liquidity as needed. Rule 7.35A sets forth the process for DMM-Facilitated Core Open Auctions. Pursuant to Rule 7.35A(c)(1)(C), a DMM must facilitate an IPO Auction or Direct Listing Auction manually. Otherwise, with respect to the auction process, IPO Auctions and Direct Listing Auctions are facilitated in the same manner as any other Core Open Auction, as set forth in Rule 7.35A.

For example, among other things, it is the responsibility of the DMM to ensure that registered securities open as close to the beginning of Core Trading Hours as possible, while at the same time not unduly hasty.<sup>2</sup> In addition, openings and reopenings should reflect the DMM’s professional assessment of market conditions at that time, and appropriate consideration of the balance of supply and demand as reflected by orders in the Exchange Book.<sup>3</sup> Moreover, to the best of their ability, “DMMs should provide timely and impartial information at the point of sale on the Trading Floor at all phases of the opening or reopening process.”<sup>4</sup> Floor brokers also have

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<sup>1</sup> See Securities Exchange Act Release No. 91121 (February 12, 2021), 86 FR 10386 (February 19, 2021) (SR-NYSE-2020-93).

<sup>2</sup> See Rule 7.35A(a).

<sup>3</sup> See Rule 7.35A(a)(1).

<sup>4</sup> See Rule 7.35A(a)(2).

a role to “make every effort to ascertain their customers’ interest as early as possible and to inform the DMM so that such interest can be factored into the opening or reopening process.”<sup>5</sup>

When facilitating a manual Core Open Auction, including an IPO Auction or Direct Listing Auction, DMMs become aware of buying and selling interest in one of two ways. First, at the point of sale, the DMM has a graphical user interface that provides an aggregate view of the buy and sell orders that have been electronically entered into the Exchange Book and are eligible to trade at each price point in the auction. Second, Floor brokers may verbally relay information about potential buying and selling interest to the DMM in the trading crowd, which is information available to anyone present at the point of sale.<sup>6</sup>

Pursuant to Rule 36.21(b), while at the point of sale, Floor brokers may use a registered cellular telephone to engage in direct voice communications to an off-Floor location. By contrast, DMMs are not permitted to use cellular phones on the Trading Floor, and pursuant to Rule 36.30, may maintain a telephone line at its trading post location only to the off-Floor offices of the DMM unit, the unit’s clearing firm, or to persons providing non-trading related services. As a result, Exchange rules do not permit a DMM, while on the Trading Floor, to communicate with anyone off the Trading Floor, other than as prescribed in Rule 36.30. However, Exchange rules do not prescribe what information Floor brokers may share with a DMM or others on the Trading Floor.

### IPO Auctions

In an IPO, a broker-dealer that functions as a statutory underwriter performs multiple roles in connection with such an offering, including working with the company to determine the initial offering price of the securities, purchasing a set quantity of shares from the issuer at that initial offering price and, in advance of the IPO Auction, allocating those shares to its distribution network. Because of this process, the only shares eligible to be sold in an IPO Auction generally are those held either by the underwriter or by investors that received an allocation from the underwriter. As a result, the underwriter serves a unique role in an IPO Auction by having access to information about all potential selling interest for that auction.

Historically, the broker-dealer that serves as the underwriter for an IPO on the Exchange has been an NYSE member organization staffed with Floor brokers, and those Floor brokers often represent the selling interest for participation in the IPO Auction of both the underwriter and the

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<sup>5</sup> See Rule 7.35A(a)(3).

<sup>6</sup> Since August 2019, when the Exchange transitioned to Pillar, Floor brokers must electronically enter buy and sell orders intended for the Core Open Auction in order for such orders to be eligible to participate in the auction. However, this order-entry requirement has not changed the dynamic of verbal communications between Floor brokers and DMMs in advance of a manually-facilitated Core Open Auction.

investors that received shares in an allocation.<sup>7</sup> That is a classic role of a Floor broker: to represent orders on an agency basis.

Because Rule 36.30 bars DMMs from communicating directly with an off-Floor underwriter, the Floor broker that represents the underwriter also serves as a conduit of information both from the underwriter to the DMM and from the DMM to the underwriter. For example, a Floor broker may relay to the DMM (and the Trading Crowd) how many shares the underwriter will release for participation in the IPO Auction, pricing of such sell interest, and timing of when such orders would be entered for participation in the IPO Auction. That information often changes in advance of the IPO Auction as the underwriter assesses the market conditions based on the available buy interest at any given time. The underwriter is generally able to assess such market conditions in part based on information that a Floor broker relays to the underwriter from the Trading Floor. For example, pursuant to Rule 104(j), a Floor broker may request market looks from the DMM, such as requesting the level of buy interest for the IPO Auction or unpaired quantity. A DMM's response to such market look requests is available to any persons standing at the point of sale. Pursuant to Rule 36.21(b)(ii), any Floor broker that receives that information - whether as the representative of the underwriter or any other Floor broker - may relay such market look information by cell phone to locations off the Trading Floor.

As a result of this process, both the information that an underwriter seeks to relay to the DMM and any information that the DMM seeks to relay to the underwriter is conducted openly on the Trading Floor; the information is available to any other Floor brokers that choose to be present at the point of sale, which can then be shared with those Floor brokers' customers. Moreover, to the extent the DMM receives information from a Floor broker that would impact the IPO Auction opening price, such information would be incorporated into the pre-opening indication published by the DMM, which is disseminated via both proprietary data feeds and the Consolidated Tape.<sup>8</sup>

While Exchange rules do not require that a Core Open Auction for a follow-on offering be facilitated by a DMM manually, depending on the size of the offering, a DMM may choose to facilitate such Core Open Auction manually. In such case, the DMM may communicate with a Floor broker representing the underwriter for the offering on the Trading Floor in a manner similar to the communications described above for an IPO Auction. In such case, a Floor broker both relays information about selling interest for the offering to the DMM and relays back to the underwriter market look information that a DMM provides on the Trading Floor. This information is therefore available to anyone else located at the point of sale.

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<sup>7</sup> If the broker-dealer that is the underwriter does not have a Floor broker presence, then the underwriter generally retains an independent Floor broker to perform the same functions.

<sup>8</sup> Rule 7.35A(d) sets forth the requirements relating to pre-opening indications, including that the DMM must wait minimum specified periods after publishing a pre-opening indication before facilitating an Auction.

### Direct Listing Auction

Unlike an IPO, there is no statutory underwriter for a Direct Listing Auction. Instead, the selling interest that is eligible to participate in a Direct Listing Auction are shares held by existing shareholders of the company. Pursuant to Rule 7.35A(g)(1), when facilitating the opening on the first day of trading of a Selling Shareholder Direct Floor Listing that has not had recent sustained history of trading in a Private Placement Market prior to listing, the DMM is required to consult with a financial advisor to the issuer of such security in order to effect a fair and orderly opening of such security.

Because Rule 36.30 prohibits the DMM from using a telephone to communicate directly with a financial advisor who is located off of the Trading Floor, to meet the Exchange rule obligation to consult with a financial advisor, DMMs use Floor brokers to communicate with a financial advisor in connection with a Direct Listing Auction. The communications follow the same model as for IPO Auctions. For example, the Floor broker representing the financial advisor can request market looks from the DMM - which are provided to anyone located in the Trading Crowd - and relay that information to the financial advisor. The financial advisor in turn informs the Floor broker whether selling shareholders that use that financial advisor as their broker have chosen to enter selling interest into the Direct Listing Auction, which the Floor broker then shares with the DMM (and anyone else in the Trading Crowd). Through this iterative process, which is conducted openly on the Trading Floor, the DMM is able to ascertain when equilibrium between buying and selling interest has been reached and can determine the price at which to conduct the Direct Listing Auction. Moreover, to the extent the DMM receives information from a Floor broker that would impact the Direct Listing Auction opening price, such information would be incorporated into the pre-opening indication published by the DMM, which is disseminated via both proprietary data feeds and the Consolidated Tape.<sup>9</sup>

### The Filing

As described above, there is a long-standing practice on the Trading Floor for DMMs to communicate with underwriters via Floor brokers in connection with IPO Auctions and Core Open Auctions for follow-on offerings. This practice is consistent with Exchange rules, which permit Floor brokers to use cellular phones at the point of sale, including to relay market look information off the Trading Floor. This practice also promotes a fair and orderly and transparent auction process as any information that is relayed from the underwriter to the DMM or from the DMM to the underwriter is announced on the Trading Floor, available to anyone at the point of sale. To the extent the DMM receives information that would impact the Auction opening price, such information would be incorporated into the pre-opening indication published by the DMM, which is disseminated via both proprietary data feeds and the Consolidated Tape. When the Exchange introduced Direct Listing Auctions, DMMs met their obligation to consult with financial advisors using the same process.

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<sup>9</sup> Id.

The Filing proposes to specify in Exchange rules this long-standing practice with only one proposed difference. Specifically, as described in more detail in the Filing, the Exchange proposes to provide an underwriter or financial advisor the choice to use either a Floor broker or Exchange staff to relay information to and from the DMM. The Exchange has been operating in this manner on a temporary basis during the period when there have been reduced DMM and Floor broker staff on the Trading Floor to reduce the spread of COVID-19. The Exchange notes that if an underwriter or financial advisor chooses to use Exchange staff to relay information, it would still be an open and transparent process. Specifically, any information that Exchange staff request of a DMM would be relayed to anyone at the point of sale, and any information that an underwriter or financial advisor provides to Exchange staff would be relayed to the DMM at the point of sale, again, available to anyone else standing in the crowd.

Because the manner of such communications are available to all Floor brokers that choose to be at the point of sale and if the communications impact pricing, the information would be incorporated into the pre-opening indication published by the DMM and disseminated via both proprietary data feeds and the Consolidated Tape, the Exchange does not believe it is necessary for Exchange rules to impose any restrictions on the type of information that is relayed from an underwriter or financial advisor to the DMM and vice versa. Similarly, because any such communications are available to any Floor brokers at the point of sale, and could be shared with customers of those Floor brokers, Exchange rules do not need to prohibit what information an underwriter or financial advisor may request be relayed to the DMM. The Exchange further believes that having a Floor-based intermediary between an underwriter or financial advisor and the DMM ensures an open and transparent process on the Trading Floor, and therefore, at this time, does not believe that Exchange rules need to be modified to permit direct communications between the DMM and underwriter or financial advisor. And for similar reasons, the Exchange does not believe that the method of communication needs to be distinguished among an IPO Auction, Direct Listing Auction, or Core Open Auction in connection with a follow-on offering.

All other representations made in the Filing remain unchanged as stated therein and no other changes are being made.