

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88488; File No. SR-NYSE-2020-23)

March 26, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.35A to Allow the Exchange, for a Temporary Period, to publish Trader Updates with Auction Imbalance Information for IPO Auctions

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”),² and Rule 19b-4 thereunder,³ notice is hereby given that on March 26, 2020, New York Stock Exchange LLC (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 amend Rule 7.35A relating to IPO Auctions for a temporary period that begins 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 proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes, for a temporary period that begins on the effective date of this filing and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, that the Exchange would publish Trader Updates with Auction Imbalance Information⁴ for IPO Auctions.⁵

Current rules provide that the Exchange does not disseminate Auction Imbalance Information if a security is an IPO and has not had its IPO Auction.⁶ The Exchange is proposing to publish specified Auction Imbalance Information via Trader Update email for such auctions for the period when the NYSE Trading Floor has temporarily closed as a precautionary measure to reduce the spread of COVID-19.

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

⁴ The term “Auction Imbalance Information” is defined in Rule 7.35(4) to mean the information that is disseminated by the Exchange for an Auction via a proprietary data feed during the times specified in the Rule 7.35 Series. See Rule 7.35(c).

⁵ An “IPO Auction” is defined in Rule 7.35(a)(1)(D) to mean the Core Open Auction for the first day of trading on the Exchange of a security that is an IPO.

⁶ See Rule 7.35(c)(3).

limitations were placed on large gatherings throughout the country. For example, in New York City, which is where the NYSE Trading Floor is located, public and private schools, universities, churches, restaurants, bars, movie theaters, and other commercial establishments where large crowds can gather have been closed.

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.⁷ Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination.

Because the Trading Floor facilities are now temporarily closed, Designated Market Makers (“DMMs”) are not on the Trading Floor and therefore 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.⁸ The auction process for IPO Auctions is manual; DMMs are not permitted to effect an IPO Auction electronically.⁹

On March 25, 2020, the CEO of the Exchange determined pursuant to Rule 7.1(c) that, for the period while the Trading Floor is temporarily closed as a precautionary measure to prevent the spread of COVID-19, the Trading Floor will be partially reopened on trading days

⁷ 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>.

⁸ While the Trading Floor is temporarily closed, DMMs participate electronically both intraday and for Auctions.

⁹ See Rule 7.35A(c)(1)(C).

when an IPO Auction is scheduled, to allow a DMM on the Trading Floor for the limited purpose of effecting such IPO Auction manually. During this temporary reopening, the Trading Floor will not be open to Floor brokers or for the DMM to perform any functions other than effecting the IPO Auction manually. Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination.

If the Trading Floor is partially reopened for an IPO Auction, the Exchange would permit 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. When effecting an IPO Auction, the DMM would be expected to publish pre-opening indications consistent with the requirements specified in Rule 7.35A(d). The Exchange will arrange for a Floor Governor to be present for such Auctions to approve the publication of any pre-opening indications.¹⁰ In addition, Exchange staff on the Trading Floor will be in communication with the lead underwriter or financial advisor, as applicable, for such IPO Auction and will convey to the DMM 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.

Proposed Rule Change

During normal operations, Floor brokers perform a vital role during IPO Auctions to convey information that is available on the Trading Floor about such auctions to their customers. Information available at the point of sale includes imbalance and paired quantity information that

¹⁰ 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).

the Exchange systems and DMM calculate based on the buy and sell interest in the Book at a given point in time. During any temporary reopening of the Trading Floor to permit a DMM to effect an IPO Auction manually, Floor brokers will not be present and therefore unable to convey this information to their customers.

In the absence of Floor brokers, the Exchange proposes that for the temporary period while the Trading Floor has been closed and a DMM is permitted limited entry to facilitate an IPO Auction, the Exchange would disseminate specified Auction Imbalance Information via Trader Update.

The Exchange recently amended Rule 7.35A to add Commentary .01 that describes changes related to DMM electronically-facilitated Auctions that are in effect beginning March 23, 2020 and ending on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020.¹¹ The Exchange proposes to amend Rule 7.35A to add new Commentary .02 to specify the Auction Imbalance Information that the Exchange would disseminate relating to an IPO Auction during the period when the Trading Floor is closed, as follows:

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

¹¹ See Securities Exchange Act Release No. 88444 (March 20, 2020) (SR-NYSE-2020-22) (Notice of filing and immediate effectiveness of proposed rule change).

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.

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.¹² 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.¹³

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.¹⁴

¹² Pre-opening indications are disseminated on both proprietary and SIP data feeds. See Rule 7.35A(d).

¹³ See Rule 7.35(a)(10).

¹⁴ See Rule 7.35(a)(4)(B).

- 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 while the Trading Floor is closed.

The Exchange would be able to implement the proposed rule change immediately upon effectiveness of this proposed rule change.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶ 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

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

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 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 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 more certainty regarding what information would be available about IPO Auctions that are conducted during the temporary period while the Trading Floor is closed.

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 on the Exchange by allowing the Exchange to disseminate specified Auction Imbalance Information in advance of such auctions 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 Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸ 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 for 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 Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²² 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 proposed rule change may become operative immediately.

The Exchange represents that the proposed rule change is designed to facilitate fair and orderly IPO Auctions on the Exchange during a temporary period when the Exchange Trading Floor has been closed in response to social-distancing measures designed to reduce the spread of

¹⁷ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived that requirement for this proposed rule change.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

the COVID-19 virus. The Exchange proposes to permit a DMM limited entry to the Trading Floor to facilitate an IPO manually, and, in the absence of Floor brokers, to have the Exchange disseminate specified Auction Imbalance Information via Trader Updates. The Exchange represents that the information it would include in Trader Updates is the same information that a DMM would normally convey on the Trading Floor during regular operations. The Exchange believes that the proposed rule change would promote transparency in advance of an IPO Auction that would be manually effected by a DMM while the Trading Floor is partially reopened for the limited purpose of facilitating an IPO Auction, that could not otherwise be conducted when the Trading Floor is closed. The Exchange also represents that it is able to implement this proposed rule change immediately, that an IPO Auction is currently scheduled for March 27, 2020, and that waiver of the 30-day operative delay would allow the Exchange to disseminate Trader Updates in connection with this planned IPO Auction. The Commission notes that by disclosing that the Exchange will permit a DMM limited entry to the Trading Floor to effect an IPO Auction manually, and by enabling the Exchange to disseminate the information as discussed above, the proposed rule change would promote transparency in advance of an IPO Auction that would be manually effected by a DMM while the Trading Floor is partially reopened for this limited purpose. Further, the Commission notes 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 more certainty regarding what information would be available about IPO Auctions that are conducted during the temporary period while the Trading Floor is partially reopened for the limited purpose of facilitating an IPO Auction. The Commission also notes that the proposal is a temporary measure designed to respond to current, unprecedented market conditions. Finally, the

Commission notes that waiving the 30-day operative delay would allow the Exchange to implement the proposed rule change immediately and thereby enable it to enact the proposed procedures for its IPO Auction scheduled on March 27, 2020. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2020-23 on the subject line.

²³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2020-23. 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-2020-23, 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.²⁴

J. Matthew DeLesDernier
Assistant Secretary

²⁴ 17 CFR 200.30-3(a)(12), (59).