

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-92480; File No. SR-NYSE-2020-95)

July 23, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2, to Make Permanent Commentaries to Rule 7.35A and Commentaries to Rule 7.35B and to Make Related Changes to Rules 7.32, 7.35C, 46B, and 47

I. Introduction

On November 30, 2020, New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to make permanent Commentaries .01(a) and (b) and .06 to Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions) and Commentaries .01 and .03 to Rule 7.35B (DMM-Facilitated Closing Auctions) and to make related changes to NYSE Rules 7.32 (Order Entry), 7.35C (Exchange-Facilitated Closing Auctions), 46B (Regulatory Trading Official), and 47 (Floor Officials - Unusual Situations). The proposed rule change was published for comment in the Federal Register on December 1, 2020.<sup>3</sup>

On January 13, 2021, the Commission extended to March 1, 2021, the time period in which to approve the proposal, disapprove the proposal, or institute proceedings to determine whether to approve or disapprove the proposal.<sup>4</sup> On March 1, 2021, the Commission instituted

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

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

<sup>3</sup> See Securities Exchange Act Release No. 90495 (Nov. 24, 2020), 85 FR 77304 (Dec. 1, 2020) (SR-NYSE-2020-95) (“Notice”).

<sup>4</sup> See Securities Exchange Act Release No. 90917 (Jan. 13, 2021), 86 FR 6403 (Jan. 21, 2021).

proceedings under Section 19(b)(2)(B) of the Act<sup>5</sup> to determine whether to approve or disapprove the proposed rule change.<sup>6</sup> On April 12, 2021, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission and submitted Amendment No. 1 for inclusion in the public comment file.<sup>7</sup> On May 17, 2021, the Exchange filed Amendment No. 2 to the proposed rule change with the Commission, which superseded the original filing, as amended by Amendment No. 1, in its entirety, and submitted Amendment No. 2 for inclusion in the public comment file.<sup>8</sup> On May 24, 2021, the Commission extended to July 29, 2021, the time period in which to approve or disapprove the proposal.<sup>9</sup> The Commission has received no comment letters on the proposed rule change.

The Commission is publishing notice of the filing of Amendment No. 2 to solicit comment from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

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<sup>5</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>6</sup> See Securities Exchange Act Release No. 91227, (Mar. 1, 2021), 86 FR 12991 (Mar. 5, 2021) (“Order Instituting Proceedings”).

<sup>7</sup> See Letter from Martha Redding, Associate General Counsel, NYSE LLC, to Secretary, Commission (April 12, 2021). Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nyse-2020-95/srnyse202095-8662901-235314.pdf>.

<sup>8</sup> In Amendment No. 2, the Exchange proposes to: (i) amend Rule 7.35A(c)(1)(H) to provide a 5% price parameter and eliminate the volume restrictions for DMM-facilitated Trading Halt Auctions; and (ii) amend Rule 7.35A(d)(3)(B) to provide that the Applicable Price Range for determining whether to publish a pre-opening indication for a Trading Halt Auction would be 5% for securities with an Indication Reference Price over \$3.00 and \$0.15 for securities with an Indication Reference Price equal to or lower than \$3.00. See Letter from Martha Redding, Associate General Counsel, NYSE LLC, to Secretary, Commission (May 17, 2021). Amendment No. 2 is available at <https://www.sec.gov/comments/sr-nyse-2020-95/srnyse202095-8807418-237986.pdf>.

<sup>9</sup> See Securities Exchange Act Release No. 91975 (May 24, 2021), 86 FR 28921 (May 28, 2021).

II. Self-Regulatory Organization's Description of the Proposal, as Modified by Amendment No. 2

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 make permanent Commentaries .01(a) and (b) and .06 to Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions) and Commentaries .01 and .03 to Rule 7.35B (DMM-Facilitated Closing Auctions) and make related changes to Rules 7.32 (Order Entry), 7.35C (Exchange-Facilitated Closing Auctions), 46B (Regulatory Trading Official), and 47 (Floor Officials - Unusual Situations).<sup>10</sup>

**Background**

In connection with the closing of the Trading Floor facilities located at 11 Wall Street in New York City as of March 23, 2020 and moving the Exchange, on a temporary basis, to fully electronic trading,<sup>11</sup> and subsequent reopening of the Trading Floor on a limited basis first to

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<sup>10</sup> In this Amendment No. 2, the Exchange proposes that the percentage parameter that would be applicable to when a DMM may electronically facilitate a Trading Halt Auction or would be required to publish a pre-opening indication would be 5% instead of 10%.

<sup>11</sup> Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of her determination under Rule 7.1(c)(3). The Exchange's rules establish how the Exchange will function fully-electronically. See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110>.

Floor Brokers on May 26, 2020<sup>12</sup> and then to DMMs on June 15, 2020,<sup>13</sup> the Exchange added Commentaries .01 and .06 to Rule 7.35A and Commentaries .01 and .03 to 7.35B.<sup>14</sup> Currently, these Commentaries are in effect until the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on April 30, 2021.<sup>15</sup>

Specifically, Commentary .01 to Rule 7.35A provides:

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 a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 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

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<sup>12</sup> See Securities Exchange Act Release No. 88933 (May 22, 2020), 85 FR 32059 (May 28, 2020) (SR-NYSE-2020-47) (Notice of filing and immediate effectiveness of proposed rule change).

<sup>13</sup> See Securities Exchange Act Release No. 89086 (June 17, 2020) (SR-NYSE-2020-52) (Notice of filing and immediate effectiveness of proposed rule change).

<sup>14</sup> See Securities Exchange Act Release Nos. 88444 (March 20, 2020), 85 FR 17141 (March 26, 2020) (SR-NYSE-2020-22) (amending Rules 7.35A to add Commentary .01, 7.35B to add Commentary .01, and 7.35C to add Commentary .02) and 89086 (June 17, 2020), 85 FR 37712 (SR-NYSE-2020-52) (amending Rules 7.35A to add Commentary .06, 7.35B to add Commentary .03, 76 to add Supplementary Material 20, and Supplementary Material .30 to Rule 36).

<sup>15</sup> See Securities Exchange Act Release No. 90795 (December 23, 2020), 85 FR 86608 (December 30, 2020) (SR-NYSE-2020-106) (Notice of filing and immediate effectiveness of proposed rule change to extend the temporary period for Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C; and temporary rule relief in Rule 36.30 to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on April 30, 2021). [The Commission notes that, after Amendment No. 2 was filed, the Exchange extended the outside date for effectiveness of the temporary relief from April 30, 2021, to August 31, 2021. See Securities Exchange Act Release No. 91778 (May 5, 2021), 85 FR 25902 (May 11, 2021).]

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.

Commentary .06 to Rule 7.35A provides:

For a temporary period that begins on June 17, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2020, the Applicable Price Range specified in paragraphs (d)(3)(A) and (B) of this Rule is suspended and the Applicable Price Range will be 10% for securities with an Indication Reference Price higher than \$3.00 and \$0.30 for securities with an Indication Reference Price equal to or lower than \$3.00.

Commentary .01 to Rule 7.35B provides:

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 a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2020:

(a) The percentage price parameters in paragraph (c)(1)(G) of this Rule are suspended and a DMM may not effect a Closing Auction electronically if the Closing Auction Price will be more than 10% away from the Exchange Last Sale Price.

(b) The volume parameters in paragraph (c)(1)(H) of this Rule are suspended

Finally, Commentary .03 to Rule 7.35B provides:

For a temporary period that begins on June 17, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2020, Floor Broker Interest will not be eligible to participate in the Closing Auction.

### **Proposed Rule Changes**

#### **Proposed Changes to Parameters for DMM-Facilitated Electronic Auctions**

The Exchange proposes to make permanent the parameters for DMM-facilitated electronic auctions that are currently in effect on a temporary basis as set forth in Commentaries .01(a) and (b) to Rule 7.35A and Commentary .01 to Rule 7.35B, with one proposed change for Trading Halt Auctions.

Current Rules 7.35A(c)(1)(G) and (H) provide that a DMM may not effect a Core Open or Trading Halt Auction electronically if (i) the Auction Price will be more than 4% away from the Consolidated Last Sale Price,<sup>16</sup> or (ii) the paired volume for the Auction will be more than 1,500 round lots for securities with an average opening volume of 1,000 round lots or fewer in the previous calendar quarter, or 5,000 round lots for securities with an average opening volume of over 1,000 round lots in the previous calendar quarter. Rule 7.35A(c)(2) further provides that if as of 9:00 a.m., the E-mini S&P 500 Futures are +/- 2% from the prior day's closing price of the E-mini S&P 500 Futures, or if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and orderly market, a DMM may effect an opening or reopening

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<sup>16</sup> The term "Consolidated Last Sale Price" is defined in Rule 7.35 to mean the most recent consolidated last-sale eligible trade in a security on any market during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security.

electronically if the Auction Price will be up to 8% away from Consolidated Last Sale Price, without any volume limitations.

Current Rule 7.35B(c)(1)(G) and (H) provide that a DMM may not effect a Closing Auction electronically if (i) the Auction Price will be more than a designated percentage away from the Exchange Last Sale Price,<sup>17</sup> or (ii) the paired volume for the Closing Auction will be more than 1,000 round lots for such security. The designated percentages are currently as follows:

| <b>Exchange Last Sale Price</b> | <b>Designated Percentage</b> |
|---------------------------------|------------------------------|
| \$25.00 and below               | 5%                           |
| \$25.01 to \$50.00              | 4%                           |
| Above \$50.00                   | 2%                           |

The Exchange proposes to make the price percentage parameter 10% and eliminate the volume restrictions for DMM-facilitated Core Open Auctions and Closing Auctions. These parameters are currently in effect on a temporary basis pursuant to Commentaries .01(a) and (b) to Rule 7.35A and Commentary .01 to Rule 7.35B not only for Core Open Auctions and Closing Auctions, but also for Trading Halt Auctions. The Exchange believes that making these temporary Commentaries permanent would promote fair and orderly DMM-facilitated Core Open Auctions and Closing Auctions. For DMM-facilitated Trading Halt Auctions, the Exchange proposes to make the price parameter 5% (instead of 10%) and eliminate the volume restrictions.

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<sup>17</sup> The term “Exchange Last Sale Price” is defined in Rule 7.35 to mean the most recent trade on the Exchange of a round lot or more in a security during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security.

In particular, DMMs have been operating with the temporary parameters for Core Open, Trading Halt Auctions, and Closing Auctions since March 23, 2020. Accordingly, these temporary parameters have been in effect not only during the period when the Trading Floor was closed in full, but also for the period when the Trading Floor has partially reopened to reduced staff of DMM and Floor brokers firms. In addition, these temporary parameters have been in effect during periods of both extreme volatility and high trading volumes. Accordingly, DMMs have had over six months' of experience of electronically facilitating Auctions within these temporary parameters and apply them during varying market conditions.

The Exchange has observed that during the period when these temporary parameters have been in effect, DMMs have facilitated more Core Open Auctions electronically, resulting in a higher percentage of Core Open Auctions occurring within two seconds of 9:30 a.m. Eastern Time. For example, in February 2020, which was before the Trading Floor closed, DMMs effected electronically 85.9% of all Core Open Auctions and 75.9% of Core Open Auctions in S&P 500 securities. By contrast, for the period July 2020 through October 2020, after when DMMs had returned to the Trading Floor, DMMs effected electronically 96% of all Core Open Auctions and 89.6% of Core Open Auctions in S&P 500 securities. The increased number of DMM electronically-facilitated Core Open Auctions has resulted in more Core Open Auctions occurring close to the beginning of Core Trading Hours. For example, in February 2020, 85.9% of all Core Open Auctions, and 75.9% of Core Open Auctions in S&P 500 securities, occurred within two seconds of 9:30 a.m. Eastern Time. By contrast, for the period July 2020 through October 2020, 95.9% of all Core Open Auctions, and 89.6% of Core Open Auctions in S&P 500 securities, occurred within two seconds of 9:30 a.m. Eastern Time.



The Exchange has observed similar trends for Closing Auctions, with DMMs facilitating more Closing Auctions electronically, which means more Closing Auctions occurring closer to 4:00 p.m. Eastern Time. In February 2020, DMMs effected electronically 57% of all Closing Auctions and 5.5% of Closing Auctions in S&P 500 securities. By contrast, for the period July 2020 through October 2020, DMMs effected electronically 90.9% of all Closing Auctions, and 53.6% of Closing Auctions in S&P 500 securities. Currently, DMM electronically-facilitated Closing Auctions occur shortly after 4:00 p.m. Eastern Time.<sup>18</sup> Accordingly, the increased number of DMM electronically-facilitated Closing Auctions translates to an increase in the number of Closing Auctions that occur close to 4:00 p.m. Eastern Time. Because the temporary wider percentage parameters and eliminated volume parameters have resulted in more Core Open Auctions and Closing Auctions occurring at 9:30 a.m. Eastern Time or 4:00 p.m. Eastern Time, respectively, the Exchange believes that making these temporary parameters permanent would support the continued fair and orderly operation of Auctions on the Exchange.

The Exchange also notes that during the period when the temporary parameters have been in place, the Exchange has not observed greater auction price dislocation compared to the period immediately preceding implementation of these temporary parameters, and has even observed modest improvement. The Exchange defines auction price dislocation as the difference

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<sup>18</sup> When Floor Broker Interest was eligible to participate in the Closing Auction, DMM electronically-facilitated Closing Auctions occurred at 4:02 p.m. Eastern Time. Because there has been no Floor Broker Interest for the Closing Auction during the period while the Trading Floor has been temporarily closed, the Exchange moved the time for DMM electronically-facilitated Closing Auctions to closer to 4:00 p.m. With the proposed change, described below, to permanently eliminate Floor Broker Interest for the Closing Auction, the Exchange would continue to conduct DMM electronically-facilitated Closing Auctions shortly after 4:00 p.m., rather than revert to the 4:02 p.m. time for such auctions.

between the Core Open Auction price and the consolidated volume-weighted average price (“VWAP”) over the subsequent five-minute period, or the difference between the Closing Auction price and the consolidated VWAP over the two minutes preceding the Closing Auction; the lower the difference, the lower the auction price dislocation. In February 2020, the Exchange’s average Core Open Auction dislocation was 3.27x a security’s average spread; for the period July 2020 through October 2020 the average was 3.22x a security’s average spread.<sup>19</sup> Similarly, the median Core Open Auction dislocation fell from 1.84x a security’s average spread to 1.78x a security’s average spread.

The Exchange also observed similar trends in the Closing Auction price dislocation statistics. In February 2020, the Exchange’s average Closing Auction Price Dislocation was 0.82x a security’s average spread; for the period July 2020 through October 2020, the average was 0.69x a security’s average spread.<sup>20</sup> Median Closing Auction dislocation also dropped from 0.5x to 0.43x a security’s average spread in the respective periods. Because the temporary wider percentage parameters have not resulted in greater auction price dislocation, the Exchange believes that making these parameters permanent would continue to support fair and orderly Auctions on the Exchange.

To effect these changes, the Exchange proposes to:

- Amend Rule 7.35A(c)(1)(G) to replace the current 4% price parameter for Core Open Auctions with a 10% price parameter and amend Rule 7.35A(c)(1)(H) to

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<sup>19</sup> Market volatility was, on average, lower in February 2020 as compared to July 2020 - October 2020. Calculating the price dislocation metric in terms of a security’s average spread incorporates the wider spreads in the latter period and allows for a better comparison between the two periods.

<sup>20</sup> Closing Auction price dislocation is generally lower than Core Open Auction price dislocation, due to the relatively lower levels of volatility around the Closing Auction compared to the Core Open Auction.

replace the current 4% price parameter for Trading Halt Auctions with a 5% price parameter. Because the proposed price parameter would be 10% for Core Open Auctions, the Exchange believes that the need for the double-wide parameters set forth in Rule 7.35A(c)(2) for Core Open Auctions would no longer be necessary and the Exchange proposes to delete that text.

- Delete the volume parameters specified in Rule 7.35A(c)(1)(H).
- Amend Rule 7.35A(j)(1)(A) to delete reference to volume parameters.
- Amend Rule 7.35B(c)(1)(G) to replace the reference to “designated percentage” parameter for the Closing Auction with a 10% price parameter. The Exchange further proposes to delete the chart specifying the designated percentages for the Closing Auction.
- Delete Rule 7.35B(c)(1)(H).
- Delete Commentaries .01(a) and (b) to Rule 7.35A.
- Delete the entirety of Commentary .01 to Rule 7.35B.

The Exchange proposes to maintain Commentary .01(c) to Rule 7.35A, which provides that 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 a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2020, the requirement to publish a pre-opening indication pursuant to Rule 7.35A(d) before either a Core Open Auction or Trading Halt Auction is suspended. The Exchange proposes non-substantive amendments to

delete subparagraph (c) numbering and move the text of that subparagraph into the body of Commentary .01.<sup>21</sup>

Proposed Changes to Applicable Price Range for Pre-Opening Indications

The Exchange proposes to make permanent that the Applicable Price Range for determining whether to publish a pre-opening indication for a Core Open Auction would be 10% for securities with an Indication Reference Price higher than \$3.00 and \$0.30 for securities with an Indication Reference Price equal to or lower than \$3.00, which is currently in effect on a temporary basis, as set forth in Commentary .06 to Rule 7.35A. The Exchange further proposes that the Applicable Price Range for determining whether to publish a pre-opening indication for a Trading Halt Auction would be 5% for securities with an Indication Reference Price over \$3.00 and \$0.15 for securities with an Indication Reference Price equal to or lower than \$3.00.

Rule 7.35A(d)(1)(A) currently provides that a DMM will publish a pre-opening indication before a security opens or reopens if the Core Open or Trading Halt Auction is anticipated to be a change of more than the “Applicable Price Range,” as specified in Rule 7.35A(d)(3), from a specified “Indication Reference Price,” as specified in Rule 7.35A(d)(2).

Rule 7.35A(d)(3)(A) provides that the Applicable Price Range will be 5% for securities with an Indication Reference Price over \$3.00 and \$0.15 for securities with an Indication Reference Price equal to or lower than \$3.00. Rule 7.35A(d)(3)(B) further provides that,

If as of 9:00 a.m., the E-mini S&P 500 Futures are +/- 2% from the prior day's closing price of the E-mini S&P 500 Futures, when reopening trading following a market-wide

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<sup>21</sup> The Exchange notes that even though the requirement for pre-opening indications has been suspended, since June 17, 2020, when DMMs returned staff to the Trading Floor, DMMs have published pre-opening indications for IPO Auctions and the two Direct Listing Auctions on September 30, 2020.

trading halt under Rule 7.12, or if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and order market, the Applicable Price Range for determining whether to publish a pre-opening indication will be 10% for securities with an Indication Reference Price over \$3.00 and \$0.30 for securities with an Indication Reference Price equal to or lower than \$3.00.

Current Rule 7.35A(1)(A) further provides that a DMM may not effect a Core Open or Trading Halt Auction electronically if a pre-opening indication has been published for the Core Open Auction. Accordingly, Exchange Rules already provide for a correlation between pre-opening indications and whether a DMM may effect a Core Open or Trading Halt Auction electronically. Currently, that is achieved through similar, though not identical, percentage parameters: the price parameter for DMM-facilitated electronic Core Open and Trading Halt Auctions is 4% and the Applicable Price Range for pre-opening indications is 5%. When there is market-wide volatility, both are doubled.

The Exchange believes that because of this existing correlation, in connection with permanently widening the price parameters for DMM-facilitated electronic Core Open Auctions to 10%, the Applicable Price Range for determining whether to publish a pre-opening indication should similarly not only be widened, but also be aligned to 10%. Similarly, because the price parameters for DMM-facilitated electronic Trading Halt Auctions would be 5%, the Applicable Price Range for determining whether to publish a pre-opening indication should be aligned to be 5%. With these proposed changes, if there is a significant enough price movement to require a DMM to effect a Core Open or Trading Halt Auction manually, the DMM would be required to publish a pre-opening indication for such Core Open or Trading Halt Auction. The Exchange notes that if a DMM chooses to facilitate a Core Open Auction or Trading Halt Auction

manually (i.e., if there is less than a 10% price movement for a Core Open Auction or 5% price movement for a Trading Halt Auction), a DMM could still choose to publish a pre-opening indication in connection with such Auction, even if the Applicable Price Range has not been triggered. For example, DMMs generally publish pre-opening indications for IPO Auctions and Direct Listing Auctions regardless of whether the Applicable Price Range has been triggered.

The Exchange does not believe that permanently widening the Applicable Price Range for when a DMM is required to publish a pre-opening indication would reduce transparency in connection with Core Open Auctions. The Exchange currently disseminates Auction Imbalance Information for all Core Open Auctions.<sup>22</sup> Since August 2019, when the Exchange transitioned Exchange-listed securities to the Pillar trading platform, all Floor broker orders for the Core Open Auctions must be entered electronically. Accordingly, all such interest is reflected in the Auction Imbalance Information, which was not the case before the Exchange transitioned to Pillar. Accordingly, the Auction Imbalance Information includes information about all buy and sell orders entered in advance of such Auctions.<sup>23</sup>

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<sup>22</sup> Pursuant to Commentaries .01 and .02 to Rule 7.35, for the temporary period that ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2020, the Exchange includes IPOs and Direct Listings in the Auction Imbalance Information. The Exchange has filed a separate proposed rule change to include IPOs and Direct Listings in the Auction Imbalance Information on a permanent basis. See Securities Exchange Act Release No. 90387 (November 10, 2020) (SR-NYSE-2020-93) (Notice of Filing).

<sup>23</sup> Rule 7.35(a)(4) provides that DMM Auction Liquidity is never included in Auction Imbalance Information. By its terms, DMM Auction Liquidity, as defined in Rule 7.35(d)(8)(A), is entered by the DMM either manually or electronically as part of the DMM unit's electronic message to conduct an Auction. For an Auction effected electronically by the DMM, DMM Auction Liquidity is entered simultaneously with the DMM facilitating the Auction, which is why it is not included in the Auction Imbalance Information leading up to such Auction. For an Auction effected manually by the DMM, the DMM can factor such interest into the pre-opening indication price range. DMM Orders, as defined in Rule 7.35(d)(8)(B), that may be entered by the DMM in advance of such Auctions would be included in the Auction Imbalance Information.

To effect this change, the Exchange proposes to combine and amend current Rule 7.35A(d)(3)(A) and (B) to make it a single subparagraph (A) that would provide that the Applicable Price Range for determining whether to publish a pre-opening indication for a Core Open Auction would be 10% for securities with an Indication Reference Price over \$3.00 and \$0.30 for securities with an Indication Reference Price equal to or lower than \$3.00. The Exchange proposes to delete the introductory text to Rule 7.35A(d)(3)(B) regarding circumstances when the Exchange could widen the Applicable Price Range under the current Rule. The Exchange further proposes new text for Rule 7.35A(d)(3)(B) that would provide that the Applicable Price Range for determining whether to publish a pre-opening indication for a Trading Halt Auction would be 5% for securities with an Indication Reference Price over \$3.00 and \$0.15 for securities with an Indication Reference Price equal to or lower than \$3.00. The Exchange further proposes to delete Commentary .06 to Rule 7.35A.

#### Proposed Changes to Floor Broker Interest for the Closing Auction

The Exchange proposes to make permanent that Floor Broker Interest would not be eligible to participate in the Closing Auction, as set forth in Commentary .03 to Rule 7.35B. The term “Floor Broker Interest” is defined in Rule 7.35(a)(9) to mean orders represented orally by a Floor broker at the point of sale.

Rule 7.35B(a)(1) currently provides that Floor Broker Interest is eligible to participate in the Closing Auction provided that the Floor broker has electronically entered such interest before the Auction Processing Period for the Closing Auction begins. The Rule further provides that for such interest to be eligible to participate in the Closing Auction, a Floor broker must first, by the end of, but not after, Core Trading Hours, orally represent Floor Broker Interest at the point of sale, including symbol, side, size, and limit price, and then second, electronically enter such

interest after the end of Core Trading Hours. Current Rules 7.35B(a)(1)(B) and (C) set forth additional requirements relating to electronic acceptance of such interest by the DMM and circumstances when such interest can be cancelled.

On June 17, 2020, when the Exchange reopened the Trading Floor to limited numbers of DMMs, the Exchange added Commentary .03 to Rule 7.35B. Accordingly, from June 17, 2020 to the present, even though reduced numbers of DMMs and Floor brokers are present on the Trading Floor, Floor Broker Interest has not been eligible to participate in the Closing Auction.

During this period, the Exchange has observed that even in the absence of Floor Broker Interest, Floor broker participation in Closing Auctions has returned to similar levels of Floor broker participation in the Closing Auction for the period before March 23, 2020. For example, in February 2020, 34.5% of Auction-Only Orders for the Closing Auction were entered as Closing D Orders, which are available only to Floor brokers.<sup>24</sup> In October 2020, 38.8% of the Auction-Only Orders for the Closing Auction were Closing D Orders, which demonstrates that Floor broker participation in the Closing Auction has not only returned since the Trading Floor reopened, but has actually increased as compared to February 2020. Moreover, in February 2020, only 0.1% of total Floor broker orders for the Closing Auction was represented as Floor Broker Interest, and that Floor Broker Interest represented less than 0.01% of the total interest that participated in the Closing Auction. Based on both the relatively small levels of Floor Broker Interest that was participating in the Closing Auction before the Trading Floor closed and the

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<sup>24</sup> For Exchange-listed securities, Auction-Only Orders are defined in Rule 7.31 to mean a Limit or Market Order that is to be traded only in an auction pursuant to the Rule 7.35 Series. The Exchange accepts the following Auction-Only Orders for the Closing Auction: Limit-on-Close Order (“LOC Order”), Market-on-Close Order (“MOC Order”), Closing D Order, and Closing Imbalance Offset Orders. All four types of Auction-Only Orders are available to Floor brokers.



ongoing availability of Closing D Orders for Floor brokers, the Exchange does not believe that eliminating Floor Broker Interest for the Closing Auction would materially impact the ability of Floor brokers to represent customer orders for the Closing Auction.

Based on this experience, the Exchange proposes to make permanent Commentary .03 to Rule 7.35B. To effect this change, the Exchange proposes to amend Rule 7.35B(a)(1) to provide that Floor Broker Interest would not be eligible to participate in the Closing Auction. To provide clarity that a Floor broker would not be permitted to represent verbal interest intended for the Closing Auction, the Exchange further proposes to provide that Floor brokers must enter any orders for the Closing Auction, as defined in Rule 7.31, electronically during Core Trading Hours. The Exchange believes that the cross-reference to Rule 7.31 in the Rule would provide notice to Floor brokers and their customers of which order types are available for electronic entry by Floor brokers for the Closing Auction, which include both Auction-Only Orders described in Rule 7.31(c) and other orders that may be resting on the Exchange Book that are eligible to participate in the Closing Auction. The Exchange also proposes to delete Commentary .03 to Rule 7.35B.

The Exchange proposes to make related changes by deleting the clause “and Floor Broker Interest intended for the Closing Auction as defined in Rule 7.35B(a)(1)” from Rule 7.32. Similarly, the Exchange proposes to delete the text set forth in Rule 7.35C(a)(2) relating to Floor Broker Interest that provides that “Floor Broker Interest that has been electronically accepted by the DMM and that has not been cancelled as provided for in Rule 7.35B(a)(1)(C) will be eligible

to participate in an Exchange-facilitated Closing Auction.” The Exchange proposes to designate that sub-paragraph as “Reserved.”<sup>25</sup>

In addition, the Exchange proposes to delete Rule 46B and amend Rule 47(b). Under Rule 47, Floor Officials have the authority to “supervise and regulate active openings and unusual situations that may arise in connection with the making of bids, offers or transactions on the Floor.” The Exchange recently amended its rules to add Regulatory Trading Officials (“RTO”), which are defined in Rule 46B.<sup>26</sup> As described in the RTO Approval Order, unusual situations that may arise in connection with Floor Broker Interest for the Closing Auction could be “if the Floor broker hand-held device malfunctions or ceases to work or if a Floor broker is physically impeded, as a result of a crowd condition beyond that of normal traffic flow on the Exchange’s trading Floor or some other circumstance beyond the Floor broker’s control, in his or her ability to be present at a post before the DMM closes the security.”<sup>27</sup> The Exchange amended Rule 47 to add subparagraph (b), which provides that RTOs, instead of Floor Officials, would be responsible for supervising and regulating situations regarding whether a verbal bid or verbal offer is eligible for inclusion in the Closing Auction by the DMM.

Because the Exchange proposes to eliminate verbal bids or verbal offers for the Closing Auction, the Exchange proposes to delete the last clause of Rule 47(a) and subparagraph (b) to Rule 47.<sup>28</sup> As proposed, Rule 47 would revert to the rule text in effect prior to the RTO Approval

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<sup>25</sup> The Exchange has a pending proposed rule change to amend Rule 7.35C(a). See (SR-NYSE-2020-89).

<sup>26</sup> See Securities Exchange Act Release No. 88765 (April 29, 2020), 85 FR 26771 (May 5, 2020) (SR-NYSE-2020-03) (“RTO Approval Order”).

<sup>27</sup> Id. at 26772.

<sup>28</sup> RTOs were approved when the Trading Floor was temporarily closed. Id. Because Commentary .03 to Rule 7.35B was implemented when DMMs returned to the Trading

Order and would provide that “Floor Officials shall have power to supervise and regulate active openings and unusual situations that may arise in connection with the making of bids, offers or transactions on the Floor.” With this proposed change, RTOs would no longer have a role under Exchange rules. Therefore, the Exchange proposes to delete Rule 46B.

The Exchange also proposes to delete Commentary .02 to Rule 7.35B. This Commentary is obsolete because it has not been in effect since May 22, 2020.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>29</sup> in general, and furthers the objectives of Sections 6(b)(5) of the Act,<sup>30</sup> in particular, because 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

### Proposed Changes to Parameters for DMM-Facilitated Electronic Auctions

The Exchange believes that the proposed change to make permanent the parameters for DMM-facilitated electronic Core Open Auctions and Closing Auctions that are currently in effect on a temporary basis as set forth in Commentaries .01(a) and (b) to Rule 7.35A and

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Floor, there has not been any Floor Broker Interest for Closing Auctions since RTOs were created and therefore RTOs have not had to perform the functions as described in Rule 46(b).

<sup>29</sup> 15 U.S.C. 78f(b).

<sup>30</sup> 15 U.S.C. 78f(b)(5).

Commentary .01 to Rule 7.35B would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange believes that these updated parameters would promote fair and orderly Auctions on the Exchange. These temporary parameters have been in effect not only during the period when the Trading Floor was closed in full, but also for the period when the Trading Floor has partially reopened to reduced staff of DMM and Floor brokers firms. In addition, these temporary parameters have been in effect during periods of both extreme volatility and high trading volumes. Accordingly, DMMs have had over six months' of experience of electronically facilitating Auctions within these temporary parameters and applying them during varying market conditions.

During this period, the Exchange has observed that with these temporary parameters, a higher number of Core Open Auctions and Closing Auctions have been electronically facilitated by the DMM, which has resulted in a greater number of Core Open Auctions and Closing Auctions occurring shortly after 9:30 a.m. or 4:00 p.m., respectively. The Exchange has further observed that there have been modest improvements in auction price dislocation during the period when these temporary parameters have been in place. Accordingly, the Exchange believes that making these parameters permanent would promote the continued fair and orderly operation of Auctions for Exchange-listed securities.

In addition, the Exchange further believes that the proposed 5% percentage parameter for DMM-facilitated electronic Trading Halt Auctions would remove impediments to and perfect the mechanism of a free and open market and a national market system because this percentage parameter would be aligned with the initial collars applicable to electronic reopening auctions following a MWCB Halt or trading pause on the automated primary listing exchanges that do not

have trading floors.<sup>31</sup> On the Exchange, DMMs are required to facilitate manually a Trading Halt Auction following a regulatory halt issued under Section 2 of the Listed Company Manual. Accordingly, the proposed 5% percentage parameter would be applicable only to DMM-facilitated electronic Trading Halt Auctions following a trading pause or MWCB Halt. This proposed 5% percentage parameter would not require such Trading Halt Auctions to be priced within that range. Rather, if the Trading Halt Auction were to occur outside of that percentage parameter, the DMM would be required to facilitate such Trading Halt Auction manually. Regardless of whether a Trading Halt is facilitated by a DMM manually or electronically, the DMM would be required to determine the Auction Price as provided for in Rule 7.35A(g) and orders would be allocated as provided for in Rule 7.35A(h).

#### Proposed Changes to Applicable Price Range for Pre-Opening Indications

The Exchange believes that the proposed change to make permanent that the Applicable Price Range for determining whether to publish a pre-opening indication for a Core Open Auction would be 10% for securities with an Indication Reference Price higher than \$3.00 and \$0.30 for securities with an Indication Reference Price equal to or lower than \$3.00, which are currently in effect on a temporary basis, and to provide for an Applicable Price Range for Trading Halt Auctions of 5% for securities with an Indication Reference Price higher than \$3.00 and \$0.15 for securities with an Indication Reference Price equal to or lower than \$3.00 would remove impediments to and perfect the mechanism of a free and open market and a national market system because the Exchange believes that these updated Applicable Price Ranges would promote fair and orderly Auctions on the Exchange.

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<sup>31</sup> See, e.g., NYSE Arca, Inc. Rule 7.35-E(e)(7) (specifying initial Auction Collars for Trading Halt Auctions).

Exchange rules already provide for a correlation between the parameters for when a DMM may facilitate an Auction electronically and the Applicable Price Range for determining whether to disseminate a pre-opening indication. The Exchange believes that the proposed Applicable Price Ranges should be aligned with the Exchange's proposed parameters for when a DMM may facilitate an Auction electronically. Specifically, with this proposed change, if there is a significant enough price movement to require a DMM to effect a Core Open or Trading Halt Auction manually, the DMM would be required to publish a pre-opening indication for such Core Open or Trading Halt Auction. The Exchange notes that if a DMM chooses to facilitate a Core Open Auction or Trading Halt Auction manually (i.e., if there is less than a 10% price movement for a Core Open Auction or 5% for a Trading Halt Auction), a DMM could still choose to publish a pre-opening indication in connection with such Auction, even if the Applicable Price Range has not been triggered.

The Exchange does not believe that permanently widening the Applicable Price Range for when a DMM is required to publish a pre-opening indication would reduce transparency in connection with Core Open Auctions. The Exchange currently disseminates Auction Imbalance Information for Core Open Auctions and Trading Halt Auctions. Since August 2019, when the Exchange transitioned Exchange-listed securities to the Pillar trading platform, all Floor broker orders for the Core Open and Trading Halt Auctions must be entered electronically. Accordingly, all such interest is reflected in the Auction Imbalance Information, which was not the case before the Exchange transitioned to Pillar. Accordingly, the Auction Imbalance Information includes information about all buy and sell orders entered in advance of such Auctions.

### Proposed Changes to Floor Broker Interest for the Closing Auction

The Exchange believes that the proposed change to make permanent that Floor Broker Interest would not be eligible to participate in the Closing Auction, which is currently in effect on a temporary basis as set forth in Commentary .03 to Rule 7.35B, would remove impediments to and perfect the mechanism of a free and open market because it would promote fair and orderly Closing Auctions on the Exchange.

The Exchange has observed that even in the absence of Floor Broker Interest, Floor broker participation in the Closing Auction has returned, and indeed increased, as compared to the level of Floor broker participation in the Closing Auction for February 2020. Moreover, even when Floor Broker Interest was available to participate in Closing Auctions, such interest represented only 0.1% of total Floor broker orders that participated in Closing Auctions. Accordingly, the Exchange does not believe that the proposed change would materially alter Floor brokers' ability to meaningfully participate in the Closing Auction. Moreover, in the absence of Floor Broker Interest, the Exchange was able to move the time for DMM-facilitated electronic Closing Auctions from 4:02 p.m. to shortly after 4:00. By making this change permanent, DMM-facilitated electronic Closing Auctions would continue to occur shortly after 4:00.

The Exchange further believes that the proposed amendments to Rules 7.32, 7.35, 46B, and 47(b) would remove impediments to and perfect the mechanism of a free and open market and a national market system because such rules would no longer be necessary in the absence of Floor Broker Interest for the Closing Auction. Accordingly, these proposed rule changes would promote transparency and clarity by removing references that would be obsolete.

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

In accordance with Section 6(b)(8) of the Act,<sup>32</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issues. Instead, the proposed rule changes are designed to make permanent changes that have been implemented on a temporary basis relating to the functions of Auctions on the Exchange and that have contributed to the fair and orderly Auction process during the period that they have been in effect. The proposed rule change does not have any effect on intermarket competition because these proposed changes relate to Auctions in Exchange-listed securities for which the Exchange is the primary listing exchange.

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. Order Instituting Proceedings

In the Order Instituting Proceedings, the Commission requested comment on, among other things: (1) whether the primary listing exchanges should harmonize their respective processes for reopening trading by fully automated auction after a limit-up/limit-down (“LULD”) pause or a Level 1 or Level 2 market-wide circuit breaker (“MWCB”) halt;<sup>33</sup>

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<sup>32</sup> 15 U.S.C. 78f(b)(8).

<sup>33</sup> As originally proposed by the Exchange, Trading Halt Auctions facilitated electronically by DMMs would differ from other primary listing markets’ reopening processes after LULD pauses and MWCB halts in that they would permit a fully automated reopening of trading at prices up to 10% away from the auction reference price immediately after trading pauses or halts, whereas Nasdaq, NYSE Arca, and Cboe BZX establish 5% price bands for reopening and then widen those price bands in increments of 5%, with additional auction extension messages associated with each widening, until market interest can be satisfied.



(2) whether the NYSE should further harmonize its proposed Trading Halt Auction process for fully automated auctions facilitated electronically by DMMs to align with Nasdaq, NYSE Arca, and Cboe BZX regarding the establishment of permitted price bands, and/or the limit (or lack thereof) on price band adjustments; (3) whether the Exchange should permit a DMM to reopen a security up to 10% away from the reference price immediately after an LULD pause or MWCB halt without human intervention; (4) whether there are characteristics of the NYSE market structure that warrant divergence from the price parameters in place for other exchanges' fully automated reopening auctions immediately following an LULD pause or MWCB halt; and (5) whether the price parameters within which DMMs are permitted to electronically facilitate auctions should be the same for Core Open Auctions, Trading Halt Auctions, and Closing Auctions.<sup>34</sup> In response to the questions raised in the Order Instituting Proceedings, the Exchange submitted Amendment No. 2, which changed the percentage parameter that would be applicable to when a DMM may electronically facilitate a Trading Halt Auction or would be required to publish a pre-opening indication from 10%, as originally proposed, to 5%.

#### IV. Discussion and Commission Findings

After careful review, the Commission is approving the proposed rule change, as modified by Amendment No. 2, for the reasons discussed below.<sup>35</sup> The Commission finds that the proposed rule change, as modified, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, including Section 6(b)(5)

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<sup>34</sup> See Order Instituting Proceedings, supra note 6, 86 FR at 12993.

<sup>35</sup> In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

of the Exchange Act,<sup>36</sup> which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

#### Parameters for DMM-Facilitated Electronic Auctions

The Commission finds that the proposed change to establish wider permanent parameters for DMM-facilitated electronic Core Open Auctions and Closing Auctions is reasonably designed to promote fair and orderly Auctions on the Exchange. The Commission notes that DMMs have had over six months of experience of electronically facilitating Auctions within these parameters under temporary rules of the Exchange and that the Exchange's proposal includes statistics indicating that, during this six-month period, a higher percentage of Core Open Auctions and Closing Auctions have occurred shortly after 9:30 a.m. or 4:00 p.m., respectively, and that this increase has not been accompanied by an increase in auction price dislocation, but has instead been accompanied by a modest improvement.

The Commission also finds that the proposed 5% percentage parameter for DMM-facilitated electronic Trading Halt Auctions is reasonably designed to remove impediments to and perfect the mechanism of a free and open market and a national market system because this change would align the percentage parameters for immediate electronic reopening auctions after

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<sup>36</sup> 15 U.S.C. 78f(b)(5).

a MWCB halt or trading pause with the initial collars applicable to electronic reopening auctions on the other primary listing exchanges.<sup>37</sup>

#### Applicable Price Range for Pre-Opening Indications

The Exchange proposes to make permanent that the Applicable Price Range for determining whether to publish a pre-opening indication for a Core Open Auction would be 10% for securities with an Indication Reference Price higher than \$3.00 and \$0.30 for securities with an Indication Reference Price equal to or lower than \$3.00. The Exchange also proposes to change its rules to provide for an Applicable Price Range for Trading Halt Auctions of 5% for securities with an Indication Reference Price higher than \$3.00 and \$0.15 for securities with an Indication Reference Price equal to or lower than \$3.00. The Commission finds that these changes are reasonably designed to remove impediments to and perfect the mechanism of a free and open market and a national market system by promoting fair and orderly Auctions on the Exchange because they would align the parameters within which a DMM may facilitate an Auction electronically and the Applicable Price Range for determining whether to disseminate a pre-opening indication (which, under the Exchange's rules, prevents a DMM from facilitating an auction electronically). Additionally, the Commission does not believe that widening the Applicable Price Range that governs when a DMM is required to publish a pre-opening indication would reduce transparency in the market because all buy and sell orders entered in advance of Core Open and Trading Halt Auctions are already reflected in Auction Imbalance Information.

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<sup>37</sup> See, e.g., NYSE Arca, Inc. Rule 7.35-E(e)(7) (specifying initial Auction Collars for Trading Halt Auctions).

### Proposed Changes to Floor Broker Interest for the Closing Auction

The Commission finds that the proposal to make permanent that Floor Broker Interest—orders represented orally by a Floor broker at the point of sale—would not be eligible to participate in the Closing Auction is reasonably designed to remove impediments to and perfect the mechanism of a free and open market by promoting fair and orderly Closing Auctions on the Exchange, because precluding participation by Floor Broker Interest has enabled the exchange to hold DMM-facilitated electronic Closing Auctions more quickly after the 4:00 p.m. scheduled close of trading and because Floor brokers will remain able to participate in the Closing Auction through the use of Closing D Orders.<sup>38</sup>

For the reasons discussed above, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and in particular Section 6(b)(5) because it is reasonably 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.

#### V. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

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<sup>38</sup> In fact, the Exchange represents that Floor broker participation in the Closing Auction has increased despite the absence of Floor Broker Interest, as compared to the level of Floor broker participation in the Closing Auction for February 2020.

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2020-95 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-2020-95. 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-2020-95 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Accelerated Approval of Amendment No. 2

As noted above, in Amendment No. 2, as compared to the original proposal,<sup>39</sup> the Exchange proposes to: (i) amend Rule 7.35A(c)(1)(H) to provide a 5% price parameter and eliminate the volume restrictions for DMM-facilitated Trading Halt Auctions; and (ii) amend Rule 7.35A(d)(3)(B) to provide that the Applicable Price Range for determining whether to publish a pre-opening indication for a Trading Halt Auction would be 5% for securities with an Indication Reference Price over \$3.00 and \$0.15 for securities with an Indication Reference Price equal to or lower than \$3.00. The Commission believes that the proposed 5% price parameter for DMM-facilitated Trading Halt Auctions is consistent with the Act because this percentage parameter would be aligned with the initial collars applicable to electronic reopening auctions following a MWCB Halt or trading pause on the automated primary listing exchanges that do not have trading floors. The Commission believes it is reasonable to also align the price parameter for DMM-facilitated Trading Halt Auctions with the parameter for publishing a pre-opening indication because Rule 7.35A(c)(1)(A) prohibits a DMM from effecting a Core Open or Trading Halt Auction electronically if a pre-opening indication has been published for the Core Open Auction.

Therefore, the Commission finds that Amendment No. 2 to the proposal raises no novel regulatory issues, that it is reasonably designed to protect investors and the public interest, and that it is consistent with the requirements of the Act. Accordingly, the Commission finds good

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<sup>39</sup> See Notice, supra note **Error! Bookmark not defined.**

cause, pursuant to Section 19(b)(2) of the Act,<sup>40</sup> to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>41</sup> that the proposed rule change (SR-NYSE-2020-95), as modified by Amendment No. 2, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>42</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>40</sup> 15 U.S.C. 78s(b)(2).

<sup>41</sup> 15 U.S.C. 78s(b)(2).

<sup>42</sup> 17 CFR 200.30-3(a)(12).