

to their market makers. The Commission notes that the proposed rule change does not present any unique or novel regulatory issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.²¹

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 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 email to rule-comments@sec.gov. Please include File Number SR-CboeBZX-2020-037 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-CboeBZX-2020-037. This file number should be included on the subject line if email 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

²¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-CboeBZX-2020-037 and should be submitted on or before June 2, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88829; File No. SR-NYSE-2020-41]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Add Commentary .02 to Rule 7.35B

May 6, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on May 4, 2020, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Commentary .02 to Rule 7.35B to provide that, for a temporary period that begins on May 6, 2020 and ends on the

earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, the Exchange would make available specified Closing Auction Imbalance Information to member organizations beginning one hour before the end of Core Trading Hours. 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 it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange proposes to add Commentary .02 to Rule 7.35B to provide that, for a temporary period that begins on May 6, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or after the Exchange closes on May 15, 2020, the Exchange would make available specified Closing Auction Imbalance Information to member organizations beginning one hour before the end of Core Trading Hours.

Background

In its listed securities, the Exchange disseminates Auction Imbalance Information⁴ for the Closing Auction, as provided for in Rule 7.35B(e), beginning at the Closing Auction Imbalance Freeze Time, which is 10 minutes before the scheduled end of Core Trading Hours.⁵

⁴ The term "Auction Imbalance Information" means the information that is disseminated by the Exchange for an Auction (see Rule 7.35(a)(4)) and, depending on the Auction, can include Total Imbalance (Rule 7.35(a)(4)(A)(i)); Closing Imbalance (Rule 7.35(a)(4)(A)(ii)); Paired Quantity, Unpaired Quantity, and Side of Unpaired Quantity (Rule 7.35(a)(4)(B)); Continuous Book Clearing Price (Rule 7.35(a)(4)(C)); and Closing Interest Only Clearing Price (Rule 7.35(a)(4)(D)).

⁵ For the Closing Auction, the Exchange begins disseminating the following Auction Imbalance Information at the Closing Auction Imbalance

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

In addition to disseminating Auction Imbalance Information on its proprietary data feeds, specified Auction Imbalance Information is also made available to member organizations via the NYSE Pillar Trade Ops Portal, which is a free web-based management tool for member organizations to manage their interaction with the Exchange.⁶

Auction Imbalance Information for the Closing Auction becomes available on the NYSE Pillar Trade Ops Portal at the Closing Auction Imbalance Freeze time, as provided for in Rule 7.35B(e)(1)(A), and includes the following content: Total Imbalance, Side of Total Imbalance, Paired Quantity, Continuous Book Clearing Price, and Closing Interest Only Clearing Price. On the portal, such data is updated every 30 seconds, and once updated, overwrites the prior data available on the portal. To access such Auction Imbalance Information, users of the NYSE Pillar Trade Ops Portal must manually query the tool to view Auction Imbalance Information.⁷

In addition, pursuant to Rule 7.35B(e)(1)(B), beginning two hours before the end of Core Trading Hours (e.g., beginning at 2 p.m. Eastern Time) up to the Closing Auction Imbalance Freeze Time (e.g., 3:50 p.m. Eastern Time), the Exchange makes available Total Imbalance, Side of Total Imbalance, Paired Quantity, Unpaired Quantity, Side of Unpaired Quantity, and if published, Manual Closing Imbalance, to Floor brokers for any security (i) in which a Floor broker has entered an order or (ii) as specifically requested by a Floor broker. This Auction Imbalance Information is provided in a manner that does not permit electronic distribution. Specifically, this information is

Freeze Time: Total Imbalance, Side of Total Imbalance, Paired Quantity, Unpaired Quantity, Side of Unpaired Quantity, Continuous Book Clearing Price, Closing Interest Only Clearing Price, and Regulatory Closing Imbalance. See Rules 7.35B(e)(1)(A) and 7.35B(e)(2). See also Rule 7.35(a)(7) (specifying the Closing Auction Imbalance Freeze Time).

⁶ Through the NYSE Pillar Trade Ops Portal, NYSE member organizations can view their executed trade details, review their Pillar order entry and drop copy sessions, and view their firm's volume by liquidity tag. To gain access, a member organization's compliance department must submit a form to establish which individuals at that firm are authorized to become users of the NYSE Pillar Trade Ops Portal. Information about the NYSE Pillar Trade Ops Portal is available here: <https://www.nyse.com/pillar/trade-ops-portal>.

⁷ See User Guide for the NYSE Trade Ops Portal, available here: https://www.nyse.com/publicdocs/nyse/NYSE_Trade_Ops_Portal_User_Guide.pdf. The static information that is displayed can be manually exported to an Excel table, but is not otherwise not available for real-time distribution of the data.

displayed on the trading systems that Floor Brokers use on the Trading Floor.

Temporary Floor Closure Impacts Floor Brokers and Their Customers

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

On March 18, 2020, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that, beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New York City would close and the Exchange would move, on a temporary basis, to fully electronic trading.⁸ Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of this determination.

Because the Trading Floor is temporarily closed, Floor brokers are not present on the Trading Floor and do not have access to their Floor-based systems for trading and cannot enter orders available to Floor brokers, such as Closing D Orders. Unlike Market-on-Close ("MOC") and Limit-on-Close ("LOC") Orders, Closing D Orders can be entered into Exchange systems up to ten seconds before the end of Core Trading Hours.⁹ By contrast, MOC and LOC Orders can be entered in the last ten minutes of trading only to offset a published Regulatory Closing Imbalance.¹⁰ Accordingly, while the Trading Floor is closed, customers of Floor brokers seeking to participate in the Closing Auction must arrange to have their closing-only interest entered before 3:50 p.m.

Notwithstanding the temporary closure of the Trading Floor, Floor brokers continue to provide services to their institutional investor customers. For such customers, Floor brokers continue to play an important role for those transactions that require the expertise of a professional trading agent, and a key component of that role as agent for these sophisticated customers is to provide market "color," including providing imbalance information

⁸ 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>.

⁹ See Rule 7.35B(f)(3).

¹⁰ See Rule 7.35B(f)(1).

leading into the close. However, because Floor brokers do not have access to their Floor-based systems, they no longer have access to the systems that display Auction Imbalance Information, as provided for under Rule 7.35B(e)(1)(B). As such, during this temporary period, Floor brokers are no longer able to provide their customers with the same level of market color about the Closing Auction as they would when the Trading Floor is open.

Proposed Rule Change

Both Floor brokers and their customers have requested that, during the temporary period while the Trading Floor is closed, be provided access to Auction Imbalance before 3:50 p.m. so that Floor brokers can provide a similar level of service that they provide when the Trading Floor is open. The Exchange has been advised that Floor brokers' lack of access to imbalance information is particularly impactful because Floor brokers cannot use Closing D Orders during this temporary period, and Floor broker customers need to enter their closing-only interest before 3:50 p.m. if they want to participate in the Closing Auction.

The Exchange has identified a temporary, interim technology solution to provide Floor brokers with Auction Imbalance Information before the Closing Auction Imbalance Freeze Time so that Floor brokers can continue to provide the type of service to their customers that they provided before the Trading Floor was temporarily closed. Specifically, the Exchange proposes to temporarily change the NYSE Pillar Trade Ops Portal to make the Closing Auction Imbalance Information available on that portal beginning at 3:00 p.m., rather than at the Closing Auction Imbalance Freeze Time at 3:50 p.m. Because the NYSE Pillar Trade Ops Portal is available to all member organizations, any User authorized to access the portal, including non-Floor brokers, would have access to this Auction Imbalance Information beginning at 3:00 p.m.

Because the Exchange would be leveraging different technology, the Auction Imbalance Information would differ from what is available to Floor brokers on the Trading Floor pursuant to Rule 7.35B(e)(1)(B). As described above, the portal would include Total Imbalance, Side of Total Imbalance, and Paired Quantity, which are provided under Rule 7.35B(e)(1)(B), and would also include Continuous Book Clearing Price and Closing Interest Only Clearing Price, which are not provided under Rule 7.35B(e)(1)(B). In addition, the portal does not support Unpaired

Quantity or Side of Unpaired Quantity, which are provided under Rule 7.35B(e)(1)(B).

As described above, the Exchange provides data pursuant to Rule 7.35B(e)(1)(B) in a manner that does not permit electronic redistribution. Auction Imbalance Information made available before the Closing Auction Imbalance Freeze Time would be similarly limited. To view the data on the NYSE Pillar Trade Ops Portal, a User must manually query the tool, and the data is updated only every 30 seconds. Once the data is updated on a 30-second interval, the tool overwrites the last set of data that was available for display. The tool permits export of the data to an Excel file, but that export must be performed manually, and it only exports the static information that is available to be viewed at that given time. Accordingly, the NYSE Pillar Trade Ops Portal does not permit real-time electronic redistribution of the data. The purpose of this proposed rule change is to provide Floor brokers with a tool to provide preliminary guidance to their customers of whether to enter MOC or LOC Orders, and on which side of the market, earlier in the trading session. It would not replace or supersede the data that is distributed via the Exchange's proprietary data feeds beginning at the Closing Auction Imbalance Freeze Time.

Finally, this Auction Imbalance Information would be available beginning at 3:00 p.m., not 2:00 p.m. This proposed time period is consistent with the period when Auction Imbalance Information is made available on NYSE Arca, Inc. ("NYSE Arca")¹¹ and NYSE American LLC ("NYSE American"), which both operate electronic auctions without a Trading Floor.¹² For example, NYSE American similarly restricts entry of MOC and LOC Orders after 3:50 p.m.,¹³ and makes its Auction Imbalance Information available beginning at 3:00 p.m. The Exchange believes that providing such imbalance information beginning at 3:00 p.m. during this temporary period would provide sufficient time for member organizations and their customers to enter MOC and LOC Orders before the Closing Auction Imbalance Freeze Time.

To effect this change, the Exchange proposes to add Commentary .02 to Rule 7.35B, which would provide:

For a temporary period that begins on May 6, 2020 and ends on the earlier of the reopening of the Trading Floor facilities or

after the Exchange closes on May 15, 2020, beginning one hour before the end of Core Trading Hours up to the Closing Auction Imbalance Freeze Time, the Exchange will make available Total Imbalance, Side of Total Imbalance, Paired Quantity, Continuous Book Clearing Price, and Closing Interest Only Clearing Price to member organizations. This Auction Imbalance Information will be provided in a manner that does not permit electronic real-time distribution and will be updated every 30 seconds.

At the Closing Auction Imbalance Freeze Time, Auction Imbalance Information for the Closing Auction would be made available as provided for under Rule 7.35B(e)(1)(A). Accordingly, this proposed rule text addresses only what would be different during the temporary period while the Trading Floor is closed, *i.e.*, that specified Auction Imbalance Information would be available to member organizations for the period 3:00 p.m. to 3:50 p.m. Eastern Time.

The Exchange has tested the technology change to begin disseminating such Auction Imbalance Information via the NYSE Pillar Trade Ops Portal at 3:00 p.m. Eastern Time. In addition, when the Trading Floors were temporarily closed, numerous Floor brokers received authorization to become Users of the NYSE Pillar Trade Ops Portal, and therefore already have connectivity to that portal to access Auction Imbalance Information. Accordingly, the Exchange would be able to implement the proposed rule change immediately when the technology is available, which is anticipated for May 6, 2020.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁵ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

As a result of uncertainty related to the ongoing spread of COVID-19, the U.S. equities markets are experiencing unprecedented market volatility. In addition, social-distancing measures have been implemented throughout the country, including in New York City, to reduce the spread of COVID-19. Directly related to such social-

distancing measures, the CEO of the Exchange made a determination under Rule 7.1(c)(3) that beginning March 23, 2020, the Trading Floor facilities located at 11 Wall Street in New 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, during the temporary period while the Trading Floor is closed and Floor brokers do not have access to Auction Imbalance Information as provided for in Rule 7.35B(e)(1)(B), providing Auction Imbalance Information to member organizations via the NYSE Pillar Trade Ops Portal beginning at 3:00 p.m. would allow Floor brokers to provide their customers with similar levels of service with respect to providing market color about the Closing Auction as they would when the Trading Floor is open.

The proposed rule change is designed to be an interim, temporary solution that would be in effect only during the temporary period when the Trading Floor is closed. Because of the temporary nature of the proposed relief, the Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to leverage existing technology rather than attempt to reproduce the data that is provided to Floor brokers pursuant to Rule 7.35B(e)(1)(B) on the exact same terms. By using existing technology, the Exchange can provide this service to Floor brokers on an expedited basis.

In addition, 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 during the temporary period during which the Trading Floor is closed, Closing D Orders are not available, and therefore, unless a Regulatory Closing Imbalance has been published, MOC and LOC Orders must be entered by the Closing Auction Imbalance Freeze Time. The Exchange therefore believes that during this period when Closing D Orders are not available, providing all member organizations with access to the Auction Imbalance Information at 3:00 p.m. would assist them in making their closing-interest order entry decisions before 3:50 p.m.

The Exchange further believes that providing such information beginning at 3:00 p.m. would remove impediments to and perfect the mechanism of a free and open market and a national market

¹¹ See NYSE Arca Rule 7.35-E(d)(1).

¹² See NYSE American Rule 7.35E(d)(1).

¹³ See NYSE American Rule 7.35E(d)(2).

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

system because, similar to how NYSE American functions, providing such imbalance information beginning 50 minutes before the Closing Auction Imbalance Freeze Time would provide sufficient time for member organizations to make order entry decisions for the Closing Auction.

The Exchange also believes that it would remove impediments to and perfect the mechanism of a free and open market and a national market system to provide that the Auction Imbalance Information that would be available on the NYSE Pillar Trade Ops Portal would not be provided in a manner that permits electronic real-time distribution. This proposed rule change is designed to provide Floor brokers with a tool to provide guidance to their customers of whether to enter MOC or LOC Orders, and on which side of the market. It would not replace or supersede the data that is distributed via the Exchange's proprietary data feeds beginning at the Closing Auction Imbalance Freeze Time.

The Exchange believes that, by clearly stating that this relief will be in effect through the earlier of the reopening of the Trading Floor facilities or the close of the Exchange on May 15, 2020, market participants will have advance notice that the Exchange would disseminate Auction Imbalance Information via the NYSE Pillar Trade Ops Tool beginning at 3:00 p.m. for only a temporary period.

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 provide Floor brokers with a tool to provide guidance to their customers of whether to enter MOC or LOC Orders, and on which side of the market, before the Closing Auction Imbalance Freeze Time. The proposed rule change is designed to be in effect only 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 and, as a result, Floor brokers do not have access to information as provided for in Rule 7.35B(e)(1)(B) and cannot enter Closing D Orders.

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

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, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the operative delay would be consistent with the protection of investors and the public interest because the proposed rule change is designed to be in effect only 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 and Floor brokers, as a result, do not have access to their Floor-based systems for trading and the information as provided for in Rule 7.35B(e)(1)(B) and cannot enter Closing D Orders. In addition, when the Trading Floors were temporarily closed, numerous Floor brokers received authorization to become Users of the NYSE Pillar Trade Ops Portal, and therefore already have connectivity to that portal to access Auction Imbalance Information. Moreover, the Exchange represents that it has tested, and will be

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the 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.

¹⁸ 17 CFR 240.19b-4(f)(6).

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

able to implement, the proposed interim technology change on May 6, 2020. For the foregoing reasons, the Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest and has determined to waive the 30-day operative date so that the proposal may take effect upon filing.²⁰

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2020-41 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-2020-41. This file number should be included on the subject line if email 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

²⁰ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78s(b)(2)(B).

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-2020-41 and should be submitted on or before June 2, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-10068 Filed 5-11-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88824; File No. S7-24-89]

Joint Industry Plan; Order Approving the Forty-Fourth Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis, as Modified by the Commission, Concerning Conflicts of Interest

May 6, 2020.

I. Introduction

On July 5, 2019,¹ the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis ("Nasdaq/UTP Plan" or "Plan")²

²² 17 CFR 200.30-3(a)(12).

¹ See Letter from Robert Books, Chair, Nasdaq/UTP Plan Operating Committee to Vanessa Countryman, Secretary, Commission, dated July 3, 2019 ("Transmittal Letter").

² The Plan governs the collection, processing, and dissemination on a consolidated basis of quotation information and transaction reports in Eligible Securities for its Participants. This consolidated

participants ("Participants")³ filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act"),⁴ and Rule 608 of Regulation National Market System ("NMS") thereunder,⁵ a proposal to amend the Nasdaq/UTP Plan. The amendment represents the 44th amendment to the Nasdaq/UTP Plan ("Amendment"). As described in the Amendment, the Participants proposed to make mandatory a conflicts of interest disclosure regime that currently is voluntary. The Amendment was published for comment in the **Federal Register** on January 14, 2020.⁶ This order approves the Amendment to the Plan, as modified by the Commission. The Commission concludes that the Amendment, as modified, is appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanism of a national market system, or is otherwise in furtherance of the purposes of the Act.⁷ A copy of the Amendment, as modified by the Commission, is attached as *Exhibit A* hereto.

II. Description of the Proposal

Under the current practice, which the Amendment proposed to make mandatory, the Participants,⁸ the

information informs investors of the current quotation and recent trade prices of Nasdaq securities. It enables investors to ascertain from one data source the current prices in all the markets trading Nasdaq securities. The Plan serves as the required transaction reporting plan for its Participants, which is a prerequisite for their trading Eligible Securities. See Securities Exchange Act Release No. 55647 (April 19, 2007), 72 FR 20891 (April 26, 2007).

³ The Participants are the national securities association and national securities exchanges that submit trades and quotes to the Plan and include: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., NYSE Chicago, Inc., Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (each a "Participant" and collectively, the "Participants"). Participants are also members of the Plan's Operating Committee.

⁴ 15 U.S.C. 78k-1.

⁵ 17 CFR 242.608.

⁶ See Securities Exchange Act Release No. 87908 (January 8, 2020), 85 FR 2202 (January 14, 2020) ("Notice"). Comments received in response to the Notice are available at <https://www.sec.gov/comments/s7-24-89/s72489.shtml>.

⁷ 17 CFR 242.608(b)(2).

⁸ See *supra* note 3 (listing the Participants).

Processor,⁹ the Administrator,¹⁰ and the members of the Advisory Committee¹¹ (collectively, the "Disclosing Parties")¹² voluntarily respond to a set of questions designed to provide transparency regarding potential conflicts of interest of such parties. Each of the Disclosing Parties' responses is made publicly available on the Plan's website and is updated at least annually.¹³ The Amendment would make this practice mandatory. The Participants stated that they believe that publicly providing these responses increases transparency and confidence in the governance of the Plan.¹⁴

According to the Participants, with exchanges permitted to offer both proprietary market data products and also acting as Participants in running the public market data stream, potential conflicts of interest are inherent.¹⁵ There may be instances in which representatives from the Participants and Advisory Committee members have responsibilities with respect to both proprietary data and Securities Information Processor ("SIP") data.¹⁶ Drawing on the expertise of persons with such overlapping responsibilities may give rise to potential conflicts of interest, and to address such potential conflicts of interest, the Participants adopted a voluntary conflicts disclosure regime with questions that are tailored to elicit responses that disclose potential conflicts of interest.

Under their current approach to disclosure, each self-regulatory organization ("SRO") discloses details about its ownership; whether it offers and charges for proprietary market data; the names of all representatives authorized to vote; and a narrative description of the representatives' role within the organization, including any direct responsibilities related to the development, dissemination, sale, or

⁹ The "Processor" is charged with collecting, processing and preparing for distribution or publication all Plan information. The Processor for the Nasdaq/UTP Plan is Nasdaq Stock Market LLC ("Nasdaq").

¹⁰ The "Administrator" is charged with administering the Plan to include data feed approval, customer communications, contract management, and related functions. The Administrator of the Plan is Nasdaq.

¹¹ The "Advisory Committee members" are natural persons who represent particular types of financial services firms or actors in the securities market, and who were selected by Plan participants to be on the Advisory Committee.

¹² A list of the Processor, Administrator, and Advisory Committee members, along with their conflict of interest disclosures, is available at <https://www.utpplan.com/governance>.

¹³ See *id.*

¹⁴ See Notice, *supra* note 6, 85 FR at 2203.

¹⁵ See *id.*

¹⁶ See *id.*