

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-NYSEAMER-2020-35 and should be submitted on or before June 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88875; File No. SR-NYSE-2020-43]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt New Section 312.03T of the NYSE Listed Company Manual To Provide a Temporary Exception Through June 30, 2020 From the Application of Certain Shareholder Approval Requirements Set Forth in Sections 312.03 and 303A.08 of the Manual

May 14, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on May 13, 2020, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to [sic] new Section 312.03T of the NYSE Listed Company Manual (the “Manual”) to

provide a temporary exception through June 30, 2020 from the application of certain of the shareholder approval requirements set forth in Sections 312.03 and 303A.08 of the Manual. 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 new Section 312.03T of the Manual to provide a temporary exception through June 30, 2020 from the application of certain of the shareholder approval requirements under Sections 312.03 and 303A.08 as described below.

The U.S. and global economies have experienced unprecedented disruption as a result of the ongoing spread of COVID-19, including severe limitations on companies’ ability to operate their businesses, dramatic market declines and volatility in the U.S. and global equity markets, and severe disruption in the credit markets. Many listed companies are experiencing urgent liquidity needs during this period of crisis due to lost revenues and maturing debt obligations. In these circumstances, listed companies frequently need to access additional capital that may not be available in the public equity or credit markets.

In response to this unprecedented emergency and to facilitate companies in quickly accessing necessary capital, the Exchange proposes to temporarily modify certain of its shareholder approval requirements for share issuances.⁴ Specifically, the Exchange

proposes to adopt Section 312.03T to provide a limited temporary, exception to the shareholder approval requirements in Section (c)⁵ and, in certain narrow circumstances, a limited exception to 312.03(b)⁶ and the

312.03(b) limiting a Related Party or other purchaser affiliated with a Related Party to purchasing securities representing no more than 5% of the company’s then-outstanding shares or 5% of the company’s voting power before the issuance in a transaction meeting the Minimum Price Test; and (ii) certain of the requirements for meeting the Bona Fide Financing exception to Section 312.03(c) (*i.e.*, the requirements that there must be multiple purchasers in the transaction and that no purchaser may acquire securities representing more than 5% of the company’s then-outstanding shares or 5% of its voting power before the issuance). See Exchange Act Release No. 34-88572 (April 6, 2020); 85 FR 20323 (April 10, 2020) (SR-NYSE-2020-30).

⁵ Section 312.03(c) requires shareholder approval prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions if: (1) The common stock has, or will have upon issuance, voting power equal to or in excess of 20 percent of the voting power outstanding before the issuance of such stock or of securities convertible into or exercisable for common stock; or (2) the number of shares of common stock to be issued is, or will be upon issuance, equal to or in excess of 20 percent of the number of shares of common stock outstanding before the issuance of the common stock or of securities convertible into or exercisable for common stock. However, shareholder approval will not be required for any such issuance involving: Any public offering for cash; any bona fide private financing, if such financing involves a sale of: Common stock, for cash, at a price at least as great as the Minimum Price; or securities convertible into or exercisable for common stock, for cash, if the conversion or exercise price is at least as great as the Minimum Price.

Section 312.04(i) defines the Minimum Price as follows: “Minimum Price” means a price that is the lower of: (i) The Official Closing Price immediately preceding the signing of the binding agreement; or (ii) the average Official Closing Price for the five trading days immediately preceding the signing of the binding agreement. Section 312.04(j) defines the Official Closing Price as follows: “Official Closing Price” of the issuer’s common stock means the official closing price on the Exchange as reported to the Consolidated Tape immediately preceding the signing of a binding agreement to issue the securities. For example, if the transaction is signed after the close of the regular session at 4:00 p.m. Eastern Standard Time on a Tuesday, then Tuesday’s official closing price is used. If the transaction is signed at any time between the close of the regular session on Monday and the close of the regular session on Tuesday, then Monday’s official closing price is used.

⁶ Section 312.03(b) of the Manual requires shareholder approval prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions, to: (1) A director, officer or substantial security holder of the company (each a “Related Party”); (2) a subsidiary, affiliate or other closely-related person of a Related Party; or (3) any company or entity in which a Related Party has a substantial direct or indirect interest; if the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either one percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance.

Continued

²³ 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.

⁴ The Exchange waived certain of the requirements under Section 312.03 through June 30, 2020 pursuant to an earlier rule filing. Specifically, the Exchange waived: (i) The provision in Section

requirements with respect to equity compensation set forth in Sections 312.03(a) and 303A.08 of the Manual.⁷

Difficulties Posed by Shareholder Approval Requirements in Current Crisis

One unavoidable consequence of the actions being taken to reduce the spread of COVID-19 is a reduction, or complete interruption, in revenue for many companies. For example, many communities have mandated that all restaurants and entertainment facilities close for a period of time. Similarly, companies in the travel sector have seen significant declines in bookings even if they are allowed to continue to operate. Thus, these businesses have no or greatly reduced revenue to offset the operating costs or increased costs associated with the crisis. As such, investors may be reluctant to enter into new equity transactions, unless they are compensated for the risk through discounts to the trading price of a security, and companies may be forced by current circumstances to raise money through equity financings that require shareholder approval under the Exchange's rules. At the same time, other companies have sudden, unexpected cash needs as they undertake new or accelerated initiatives designed to address the loss of business and supply shortages caused by COVID-19.

While an exception is currently available under Section 312.05 of the Manual for companies in financial distress where the delay in securing stockholder approval would seriously jeopardize the financial viability of the company, that exception is not helpful in most situations arising from the COVID-19 pandemic.⁸ For example,

However, if the Related Party involved in the transaction is classified as such solely because such person is a substantial security holder, and if the issuance relates to a sale of stock for cash at a price at least as great as the Minimum Price, then shareholder approval will not be required unless the number of shares of common stock to be issued, or unless the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance. Section 312.03(b) includes an exemption for companies that meet the Exchange's definition of an Early Stage Company.

⁷ Section 303A.08 requires shareholder approval, with certain exceptions, prior to the issuance of securities when a stock option or purchase plan is to be established or materially amended or other equity compensation arrangement made or materially amended, pursuant to which stock may be acquired by officers, directors, employees, or consultants. Section 312.03(a) incorporates the requirements of Section 303A.08 into Section 312.03.

⁸ Section 312.05 provides as follows: Exceptions may be made to the shareholder approval policy in

while a company may need additional cash so that it can continue to pay employees during a period of decreased or no revenue, the company's viability may not otherwise be in jeopardy. Further, the accelerated need for funds, as well as the significantly curtailed operations of many businesses, may make impractical the requirement to mail notice to all shareholders.

Proposed COVID-19 Exception

In light of the difficulties experienced by certain listed companies during the current crisis, the Exchange proposes a limited, temporary exception from the shareholder approval requirements in Section 312.03(c), accompanied, in certain narrow circumstances, by a limited exception from Sections 312.03(a) and (b) and Section 303A.08. This proposed exception in Section 312.03T would be available until and including June 30, 2020. To rely on this exception, the company must submit the related supplemental listing application and certification pursuant to Section 312.03T(b)(5)(A) (as described below) and obtain the Exchange's approval of its utilization of the exception pursuant to Section 312.03T(b)(5)(B) (as described below) and thereafter sign a binding agreement no later than June 30, 2020. If the company satisfies such conditions, the issuance of the securities governed by such agreement in reliance on the exception in Section 312.03T may occur after June 30, 2020, provided the issuance takes place no later than 30 calendar days following the date of the binding agreement. If the company does not issue securities within 30 calendar days, as described above, it may no longer rely on the exception in Section 312.03T.

Under proposed Section 312.03T, the exception would be limited to circumstances where the delay in securing shareholder approval would (i) have a material adverse impact on the company's ability to maintain operations under its pre-COVID-19 business plan; (ii) result in workforce reductions; (iii) adversely impact the company's ability to undertake new initiatives in response to COVID-19; or

Para. 312.03 upon application to the Exchange when (1) the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise and (2) reliance by the company on this exception is expressly approved by the Audit Committee of the Board. A company relying on this exception must mail to all shareholders not later than 10 days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required under the policy of the Exchange and indicating that the Audit Committee of the Board has expressly approved the exception.

(iv) seriously jeopardize the financial viability of the enterprise. In addition to demonstrating that the transaction meets one of the foregoing requirements, the company would have to demonstrate to the Exchange that the need for the transaction is due to circumstances related to COVID-19, that the proceeds would not be used to fund any acquisition transaction, and that the company undertook a process designed to ensure that the proposed transaction represents the best terms available to the company. The Exchange also proposes, similar to the requirement for the financial viability exception, to require that the company's audit committee or a comparable committee comprised solely of independent, disinterested directors expressly approve reliance on this exception. The Exchange also proposes to require such committee or a comparable committee comprised solely of independent, disinterested directors to determine that the transaction is in the best interest of shareholders.⁹

The company must submit a supplemental listing application as required by Section 703.01(part one)(A) in relation to the applicable transaction along with a certification to the Exchange that it complies with all requirements of Section 312.03T(b) (and Section 312.03T(c) if applicable) and describing with specificity how it complies. In such certification, the Exchange expects such company to describe with specificity how it complies with Section 312.03T(b) and (c), if applicable. The Exchange must approve all transactions by countersigned application in advance of any issuance of securities in reliance on Section 312.03T and such approval of a company's reliance on the exception will be based on a review of whether the company has established that it complies with the requirements of Section 312.03T(b) (and Section 312.03T(c) if applicable). Given the fact that the Exchange must undertake a detailed review before approving any use of this exception, the Exchange advises companies to commence discussions with the Exchange and provide the required documentation as far in advance of the proposed transaction as is possible.

Section 312.03T(e) will provide that issuances pursuant to Section 312.03T must comply with all other requirements of applicable Exchange rules, except as provided for therein.

⁹ The Exchange notes that the proposed relief will not override any requirements arising under applicable laws or a company's own governance documents that would otherwise require a company to obtain shareholder approval for a transaction.

Such requirements include the shareholder approval requirements in Sections 312.03(b) and (c) in relation to issuances other than sales of securities for cash, the change of control provision of Section 312.03(d) and the equity compensation requirements set forth in sections 312.03(a) and 303A.08 subject to the limited exceptions set forth therein. In addition, funds raised from the issuance of securities pursuant to Section 312.03T may not be used to fund acquisition transactions.

To provide shareholders with advance notice of the transaction, the Exchange proposes Section 312.03T(d), which would require a company relying on the proposed exception to make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release disclosing as promptly as possible, but no later than two business days before the issuance of the securities:

- The terms of the transaction (including the number of shares of common stock that could be issued and the consideration received);
- that shareholder approval would ordinarily be required under Exchange shareholder approval rules; and
- that the audit committee or a comparable committee comprised solely of independent, disinterested directors expressly approved reliance on the exception and determined that the transaction is in the best interest of shareholders.¹⁰

In addition to the limitations on issuances to related parties set forth in Section 312.03(b), the Exchange has long interpreted Section 303A.08 to require shareholder approval for certain sales to officers, directors, employees, or consultants when such issuances could be considered a form of “equity compensation.” The Exchange has heard from market participants that investors often require a company’s senior management to put their personal capital at risk and participate in a capital raising transaction alongside the unaffiliated investors. The Exchange believes that as a result of uncertainty related to the ongoing spread of the COVID-19 virus, listed companies seeking to raise capital may face such requests. Accordingly, the Exchange proposes that the temporary exception allow such investments under limited circumstances.

To that end, the Exchange proposes Section 312.03T(c), which would provide for an exception from

shareholder approval under Sections 312.03(b) and Sections 312.03(a) and 303A.08 for participation in the transaction described in Section 312.03T(b) by any person whose participation would otherwise be subject to shareholder approval under Section 312.03(b) or Sections 312.03(a) and 303A.08 (an “Affiliated Purchaser”), provided the Affiliated Purchaser’s participation in the transaction was specifically required by unaffiliated investors. In addition, to further protect against self-dealing, proposed Section 312.03T(c) would limit such participation to a *de-minimis* level—each Affiliated Purchaser’s participation must be less than 5% of the transaction and all Affiliated Purchasers’ participation collectively must be less than 10% of the transaction. Finally, any Affiliated Purchaser investing in the transaction must not have participated in negotiating the economic terms of the transaction.

Finally, the Exchange proposes to aggregate issuances of securities in reliance on the exception in Section 312.03T with any subsequent issuance by the company, other than a public offering for cash, at a discount to the Minimum Price¹¹ if the binding agreement governing the subsequent issuance is executed within 90 days of the prior issuance. Accordingly, if, following the subsequent issuance, the aggregate issuance (including shares issued in reliance on the exception) equals or exceeds 20% of the total shares or the voting power outstanding before the initial issuance, then shareholder approval would be required under Section 312.03(c) before the issuance can occur.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5) of the Act,¹³ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect the public interest and the interests of investors, and because it is not designed to permit

unfair discrimination between customers, issuers, brokers, or dealers. As a result of uncertainty related to the ongoing spread of the COVID-19 virus, the prices of securities listed on U.S. exchanges are experiencing significant volatility. The Exchange believes that the proposed rule change is designed to remove an impediment to companies addressing certain immediate capital needs as a result of the COVID-19 pandemic and reduce uncertainty regarding the ability of companies to raise money quickly through equity financings during the current highly unusual market conditions and general economic disruptions. The Exchange believes that in this way, the proposed rule change will protect investors, facilitate transactions in securities, and remove an impediment to a free and open market. All companies listed on the Exchange would be eligible to take advantage of the proposed rule.

In addition, the Exchange believes the proposed rule change is designed to protect investors by limiting the exception from the shareholder approval requirements to situations where the need for the transaction is due to circumstances related to COVID-19 and the proceeds will not be used to fund any acquisition transactions [sic] that the company undertook a process designed to ensure that the proposed transaction represents the best terms available to the company. The exception is also limited to circumstances where the delay in securing shareholder approval would (i) have a material adverse impact on the company’s ability to maintain operations under its preCOVID-19 business plan; (ii) result in workforce reductions; (iii) adversely impact the company’s ability to undertake new initiatives in response to COVID-19; or (iv) seriously jeopardize the financial viability of the enterprise. Further, the proposed rule requires that the company’s audit committee or a comparable committee comprised solely of independent, disinterested directors expressly approve reliance on this exception and determine that the transaction is in the best interest of shareholders.

Notwithstanding the proposed exception from certain shareholder approval requirements, as described above, important investor protections will remain as the proposed exception would not be available for the shareholder approval requirements related to equity compensation in Section 312.03(a) and Section 303A.08 (except for the limited circumstances described above for insider participation in transactions covered by the proposed exception), transactions other than sales

¹⁰ See Section 312.05 requiring similar disclosure, for a transaction for which a company relied on the financial viability exception, alerting shareholders to the omission to seek the shareholder approval that would otherwise be required.

¹¹ See footnote 6 [sic] *supra* for the definition of Minimum Price.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

of securities for cash under Sections 312.03(b) and (c) and a change of control under Section 312.03(d). In addition, funds raised from the issuance of securities pursuant to Section 312.03T may not be used to fund acquisition transactions.

Finally, the Exchange notes that the proposed rule is a temporary exception from certain shareholder approval requirements, as described above, operative through, and including, June 30, 2020.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. All companies listed on the Exchange would be eligible to take advantage of the proposed rule. In addition, the proposed rule change is not designed to have any effect on intermarket competition but instead seeks to address concerns the Exchange has observed surrounding the application of the shareholder approval requirements, as described above, to companies listed on the Exchange. Other exchanges can craft relief based on their own rules and observations.¹⁴

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 foregoing 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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶

¹⁴ Nasdaq has already adopted relief under its comparable shareholder approval requirements. See SR-NASDAQ-2020-025.

¹⁵ 15 U.S.C. 78s(b)(3)(A).

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

A proposed rule change filed under Rule 19b-4(f)(6)¹⁷ normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁸ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Exchange stated that waiver of the operative delay would allow companies to quickly raise money through equity financings to maintain operations, avoid jeopardizing its financial viability, compensate its workforce, or undertake new initiatives in response to COVID-19 during the current highly unusual market and economic conditions and ongoing uncertainty relating to the global spread of the COVID-19 virus. In addition, the Exchange stated that the proposed exception from the shareholder approval requirements is limited to situations where the need for the transaction is due to circumstances related to COVID-19, the proceeds will not be used to fund any acquisition transactions, and the company undertook a process designed to ensure that the proposed transaction represents the best terms available to the company. The Exchange stated that the proposed exception is further limited to circumstances where the delay in securing shareholder approval would (i) have a material adverse impact on the company's ability to maintain operations under its pre-COVID-19 business plan; (ii) result in workforce reductions; (iii) adversely impact the company's ability to undertake new initiatives in response to COVID-19; or (iv) seriously jeopardize the financial viability of the enterprise. The Exchange also noted that the proposed rule requires that the company's audit committee or a comparable committee comprised solely of independent, disinterested directors expressly approve reliance on this exception and determine that the transaction is in the best interest of shareholders. Finally, the Exchange stated that the proposed exception would not be available for the shareholder approval requirements related to equity compensation in Sections 312.02(a) and 303A.08 (except for the limited circumstances described above for insider participation in transactions covered by the proposed exception), transactions other than sales of securities for cash under Sections 312.03(b) and (c) and a change of

control under Section 312.03(d). In addition, funds raised from the issuance of securities pursuant to Section 312.03T may not be used to fund acquisition transactions.

The Commission notes that while the proposed rule change would provide a temporary exception to certain shareholder approval requirements, it is limited to situations where the need for the transaction is related to COVID-19 circumstances and the proceeds will not be used to fund any acquisition transaction, and only where the delay in obtaining shareholder approval meets one of the four specified conditions for the transaction set forth in the temporary rule and described above. In addition, the Commission notes that there are important investor protections built into the proposed temporary rule. For example, the Exchange must approve all transactions in advance of any issuance of securities in reliance on Section 312.03T and the Exchange has stated that it will undertake a detailed review of whether the company has established that it complies with the requirements of Section 312.03T(b) (and Section 312.03T(c) if applicable) before approving any use of the exception. Additionally, the exception from the shareholder approval requirements is limited to situations where the company undertook a process designed to ensure that the proposed transaction represents the best terms available to the company. The proposed rule change also requires that the company's audit committee or a comparable committee comprised solely of independent, disinterested directors expressly approve reliance on the exception and determine that the transaction is in the best interest of shareholders. Further, the Commission notes that shareholder approval would continue to be required for transactions that do not qualify for the proposed temporary exception, such as for equity compensation (Sections 312.02(a) and 303A.08), except for the limited circumstances described above for insider participation in transactions covered by the proposed exception); transactions other than sales of securities for cash under Sections 312.03(b) and (c); a change of control under Section 312.03(d). In addition, funds raised from the issuance of securities pursuant to Section 312.03T may not be used to fund acquisition transactions. Therefore, securities issued to raise capital to fund an acquisition would be subject, as such transactions currently are, to any applicable Exchange shareholder approval requirements. The Commission also notes that the proposal

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 17 CFR 240.19b-4(f)(6)(iii).

is a temporary measure designed to allow companies to raise necessary capital quickly in response to current, unusual market conditions. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.¹⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)²⁰ 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-2020-43 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-2020-43. 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 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-2020-43 and should be submitted on or before June 10, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-087, OMB Control No. 3235-0078]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Extension:

Rule 15c3-3

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 15c3-3 (17 CFR 240.15c3-3), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB") for extension and approval. Furthermore, notice is given regarding new collections of information that were

previously proposed in Rule 18a-4 (OMB No. 3235-0700) and that are being moved to this Rule 15c3-3 (OMB No. 3235-0078) based on comments received during the rulemaking process.

With respect to the extension of the previously approved collection of information, Rule 15c3-3 requires that a broker-dealer that holds customer securities obtain and maintain possession and control of fully-paid and excess margin securities they hold for customers. In addition, the Rule requires that a broker-dealer that holds customer funds make either a weekly or monthly computation to determine whether certain customer funds need to be segregated in a special reserve bank account for the exclusive benefit of the firm's customers. It also requires that a broker-dealer maintain a written notification from each bank where a Special Reserve Bank Account is held acknowledging that all assets in the account are for the exclusive benefit of the broker-dealer's customers, and to provide written notification to the Commission (and its designated examining authority) under certain, specified circumstances. Finally, broker-dealers that sell securities futures products ("SFP") to customers must provide certain notifications to customers and make a record of any changes of account type.

A broker-dealer required to maintain the Special Reserve Bank Account prescribed by Rule 15c3-3 must obtain and retain a written notification from each bank in which it has a Special Reserve Bank Account to evidence the bank's acknowledgement that assets deposited in the Account are being held by the bank for the exclusive benefit of the broker-dealer's customers. In addition, a broker-dealer must immediately notify the Commission and its designated examining authority if it fails to make a required deposit to its Special Reserve Bank Account. Finally, a broker-dealer that effects transactions in SFPs for customers also will have paperwork burdens to make a record of each change in account type.

The Commission staff estimates a total annual time burden of approximately 625,490 hours and a total annual cost burden of approximately \$1,440,513 to comply with the existing information collection requirements of the rule.

With respect to the new collections of information, in 2019, the Commission adopted amendments to establish segregation and notice requirements for broker-dealers with respect to their security-based swap activity. The Commission staff estimates a total annual time burden of approximately 96,601 hours and a total annual cost

¹⁹For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰15 U.S.C. 78s(b)(2)(B).

²¹17 CFR 200.30-3(a)(12).