

proposed rule change will apply to all market participants in the same manner. All market participants will be able to effect off-floor position transfers pursuant to Rule 7160(a)(2) on a recurring or routine basis without providing the Exchange with notice of such transfers. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because it relates solely to the notice required for off-floor transfers that may occur today, and the frequency with which those transfers may occur. These transfers will continue to not result in a change in ownership or netting, and thus will have no impact on outstanding options positions.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on 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 Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup>

A proposed rule change filed under Rule 19b-4(f)(6)<sup>14</sup> normally does not become operative for 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>15</sup> 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 to so that it may adopt the proposed position transfer rules as soon as possible which, according to the Exchange, would benefit investors and the general public

because it will provide Participants with the ability to request a transfer, for limited, non-recurring types of transfers, without the need for exposing those orders on the Exchange. The proposed rule change does not present any unique or novel regulatory issues and is substantively identical to provisions in Cboe Rule 6.7. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.<sup>16</sup>

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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

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

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BOX-2020-35 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-BOX-2020-35. 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-BOX-2020-35 and should be submitted on or before September 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020-19052 Filed 8-28-20; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-89652; File No. SR-NYSEArca-2020-74]

**Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Temporary Waiver of the Co-Location Hot Hands Fee**

August 25, 2020.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on August 11, 2020, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III 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.

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

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 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.

<sup>14</sup> 17 CFR 240.19b-4(f)(6).

<sup>15</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>16</sup> 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).

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

The Exchange proposes to extend the temporary waiver of the co-location "Hot Hands" fee. 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 extend of the temporary waiver of the co-location<sup>4</sup> "Hot Hands" fee through the reopening of the Mahwah, New Jersey data center ("Data Center"). The waiver of the Hot Hands fee is scheduled to expire on August 31, 2020.<sup>5</sup>

The Exchange is an indirect subsidiary of Intercontinental Exchange, Inc. ("ICE"). Through its ICE Data Services ("IDS") business, ICE operates the Data Center, from which the Exchange provides co-location services to Users.<sup>6</sup> Among those services is a

<sup>4</sup> The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission ("Commission") in 2010. See Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR-NYSEArca-2010-100).

<sup>5</sup> See Securities Exchange Act Release No. 89174 (June 29, 2020), 85 FR 40349 (July 6, 2020) (SR-NYSEArca-2020-58).

<sup>6</sup> For purposes of the Exchange's co-location services, a "User" means any market participant that requests to receive co-location services directly from the Exchange. See Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR-NYSEArca-2015-82). As specified in the NYSE Arca Options Fees and Charges and the NYSE Arca Equities Fees and Charges (together, the "Fee Schedules"), a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York

"Hot Hands" service, which allows Users to use on-site Data Center personnel to maintain User equipment, support network troubleshooting, rack and stack a server in a User's cabinet; power recycling; and install and document the fitting of cable in a User's cabinet(s).<sup>7</sup> The Hot Hands fee is \$100 per half hour.

ICE previously announced to Users that the Data Center would be closed to third parties starting on March 16, 2020, to help avoid the spread of COVID-19, which could negatively impact Data Center functions. Prior to the closure of the Data Center, the Chief Executive Officer of the Exchange took the actions required under NYSE Arca Rules 7.1-E and 7.1-O to close the co-location facility of the Exchange to third parties. The closure period was extended three times, through August 31, 2020 (the "Initial Closure").<sup>8</sup>

ICE has announced to Users that, because the concerns that led to the Initial Closure still apply, the closure of the Data Center will be extended, with the date of the reopening announced through a customer notice.

If a User's equipment requires work while a Rules 7.1-E and 7.1-O closure is in effect, the User has to use the Hot Hands service and, absent a waiver, incurs Hot Hands fees for the work. Given that, the Exchange waived all Hot Hands fees for the duration of the Initial Closure.<sup>9</sup> Because the period has been extended, the Exchange proposes to extend the waiver of the Hot Hands Fee for the length of the period. To that end, the Exchange proposes to revise the footnote to the Hot Hands Fee in the Fee Schedules as follows (deletions bracketed, additions underlined):

† Fees for Hot Hands Services will be waived beginning on March 16, 2020 through [the earlier of August 31, 2020 and] the reopening of the Mahwah, New Jersey data center. *The date of the reopening will be announced through a customer notice.*

The Exchange believes that there will be sufficient Data Center staff on-site to

Stock Exchange LLC, NYSE American LLC, NYSE Chicago, Inc., and NYSE National, Inc. (together, the "Affiliate SROs"). See Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR-NYSEArca-2013-80). Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. See SR-NYSE-2020-69, SR-NYSEArca-2020-63, SR-NYSEArca-2020-25, and SR-NYSEArca-2020-26.

<sup>7</sup> See Securities Exchange Act Release No. 72720 (July 30, 2014), 79 FR 45577 (August 5, 2014) (SR-NYSEArca-2014-81).

<sup>8</sup> See Securities Exchange Act Release Nos. 88398 (March 17, 2020), 85 FR 16398 (March 23, 2020) (SR-NYSEArca-2020-22); 88520 (March 31, 2020), 85 FR 19208 (April 6, 2020) (SR-NYSEArca-2020-26); and 88961 (May 27, 2020), 85 FR 33755 (June 2, 2020) (SR-NYSEArca-2020-47).

<sup>9</sup> See 85 FR 40349, *supra* note 5.

comply with User requests for Hot Hands service.

The proposed extension of the waiver would apply equally to all Users. The proposed extension of the fee waiver would not apply differently to distinct types or sizes of market participants. Rather, it would continue to apply uniformly to all Users.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>10</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>11</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. In addition, it is designed 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.

#### The Proposed Rule Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable for the following reasons.

Given that the closure of the Data Center has been extended, the Exchange believes that it is reasonable to grant the proposed corresponding extension of the waiver of the Hot Hands Fee. While a Rules 7.1-E and 7.1-O closure is in effect, User representatives are not allowed access to the Data Center. If a User's equipment requires work during such period, the User has to use the Hot Hands service. Absent a waiver, the User would incur Hot Hands fees for the work.

The proposed extension of the waiver would allow a User to have work carried out on its equipment notwithstanding

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(4) and (5).

the closure of the Data Center without incurring Hot Hands fees.

The Exchange does not know when the Mahwah data center will be reopened, and so believes it is reasonable to leave the date open ended. Adding a revised potential reopening date to the footnote may create an expectation that the closure has a stated end point. The Exchange believes that it is more reasonable to state that the waiver will continue until the data center is reopened, and to inform Users how they will receive notice of the reopening. The change would also be consistent with the announcement that ICE has made to Users.

#### The Proposed Rule Change Is Equitable

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits for the following reasons.

The proposed extension of the waiver would apply equally to all Users. The proposed extension would not apply differently to distinct types or sizes of market participants. Rather, it would apply uniformly to all Users.

The Exchange believes that the proposal is equitable because the extension of the waiver would mean that for the duration of the closure of the Data Center all similarly-situated Users would not be charged a fee to use the Hot Hands service.

#### The Proposed Change Is Not Unfairly Discriminatory and Would Protect Investors and the Public Interest

The Exchange believes that the proposed change is not unfairly discriminatory for the following reasons.

The proposed extension of the waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the extension of the Data Center closure would have the resulting fees waived, and the extension of the waiver would apply uniformly to all Users during the period. For the reasons above, the proposed changes do not unfairly discriminate between or among market participants.

In addition, the Exchange believes that the proposed rule change would perfect the mechanisms of a free and open market and a national market system and, in general, protect investors and the public interest because it would allow a User to have work carried out on its equipment notwithstanding a Rules 7.1–E and 7.1–O closure without incurring Hot Hands fees. Accordingly, the Exchange believes that the requested extension of the waiver is designed to perfect the mechanisms of a free and

open market and a national market system and, in general, protect investors and the public interest by facilitating the uninterrupted availability of Users' equipment.

For all of the above reasons, the Exchange believes that the proposal is consistent with the Act.

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

In accordance with Section 6(b)(8) of the Act,<sup>12</sup> the Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate.

The proposed extension of the waiver is not designed to affect competition, but rather to provide relief to Users that, while a Rules 7.1–E and 7.1–O closure is in effect, have no option but to use the Hot Hands service.

The proposed extension of the waiver would not apply differently to distinct types or sizes of market participants. Rather, all Users whose equipment requires work during the extension of the Data Center closure would have the resulting fees waived, and the extension of the waiver would apply uniformly to all Users during the period.

#### Intermarket Competition

The Exchange does not believe that the proposed change would impose any burden on intermarket competition that is not necessary or appropriate.

The Exchange believes that the proposed change would not affect the competitive landscape among the national securities exchanges, as the Hot Hands service is solely charged within co-location to existing Users, and would be temporary.

For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

#### 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.

<sup>12</sup> 15 U.S.C. 78f(b)(8).

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>13</sup> of the Act and subparagraph (f)(2) of Rule 19b–4<sup>14</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

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)<sup>15</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR–NYSEArca-2020–74 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–NYSEArca-2020–74. 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

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b–4(f)(2).

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

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-NYSEArca-2020-74 and should be submitted on or before September 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Jill M. Peterson,**  
Assistant Secretary.

[FR Doc. 2020-19046 Filed 8-28-20; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89659; File No. TP 20-02]

### Order Granting Exemptions From Certain Rules Related to the Sale and Delivery of Physical Securities Under Regulation SHO Related to COVID-19

August 25, 2020.

#### I. Introduction

The Depository Trust & Clearing Corporation ("DTCC") has intermittently suspended physical securities processing services provided by the Depository Trust Company ("DTC"), its subsidiary, due to ongoing concerns related to the effects of COVID-19.<sup>1</sup> While DTCC has resumed limited services for new physical securities transactions,<sup>2</sup> there are likely

to be delays in settlement for the sales of equity securities that the seller is "deemed to own" pursuant to Rule 200(b) of Regulation SHO,<sup>3</sup> and for which settlement is dependent on the delivery of physical certificates ("owned physical securities"), which may result in extended failures to deliver<sup>4</sup> and have resulting implications for compliance with Regulation SHO under the Securities Exchange Act of 1934 (the "Exchange Act").<sup>5</sup> The Securities Industry and Financial Markets Association ("SIFMA") has requested on behalf of its member firms exemptive relief from certain provisions of Regulation SHO<sup>6</sup> in connection with the intermittent suspension of physical securities processing at DTC due to ongoing concerns related to COVID-19.<sup>7</sup>

The Commission is providing certain exemptive relief from the "locate" and

V5TVRSailsInQioiJPSzFvVE1qM0ZWTWdXR1ZzZiB3c1pNYWJmOWZUUh1Qyt0b29sYmV4cnlwWWWRYXdWTjQrSXNaOHpyYwQ1RINIwVfQeGhoYTN3cDJaRFwvb1JPRGdzR2c9PSJ9. DTC has requested that participants only submit urgent time-sensitive transactions. "Partial Resumption of DTC Physical Securities Processing," Important Notice B# 13402-20 (May 14, 2020) available at <https://www.dtcc.com/-/media/Files/pdf/2020/5/14/13402-20.pdf>.

<sup>3</sup> 17 CFR 242.200(b).

<sup>4</sup> Specifically, failures to deliver securities may occur at the Continuous Net Settlement system, or "CNS," which is operated by the National Securities Clearing Corporation ("NSCC"), a subsidiary of DTCC. Rule 204 of Regulation SHO applies specifically to failures to deliver in equity securities occurring at CNS. 17 CFR 242.204.

<sup>5</sup> 17 CFR 242.200 *et seq.*

<sup>6</sup> Letter from Robert Toomey, Managing Director & Associate General Counsel, SIFMA, dated May 21, 2020. SIFMA stated in its request that the Commission granted similar exemptive relief in 2012 in the aftermath of Hurricane Sandy. See Order Granting Exemptions From Certain Rules of Regulation SHO Related to Hurricane Sandy, Release No. 34-68419 (Dec. 12, 2012) (the "2012 Hurricane Sandy Order"), available at <https://www.sec.gov/rules/exorders/2012/34-68419.pdf>. The 2012 Hurricane Sandy Order granted exemptions from certain provisions of Regulation SHO related to the inaccessibility of physical certificates that resulted from water damage incurred at DTCC's vault used as part of its Custody Service for safekeeping of physical certificates.

<sup>7</sup> DTCC suspended but recently resumed processing of physical securities. "Partial Resumption of DTC Physical Securities Processing," Important Notice B# 13402-20 (May 14, 2020) available at <https://www.dtcc.com/-/media/Files/pdf/2020/5/14/13402-20.pdf>. However, based on conversations with SIFMA, we understand that regular processing may be intermittent during the current crisis, and that there may be delays in processing certain physical securities after DTCC resumes processing after a suspension. See, e.g., letter from Robert Toomey, *supra* note 6 ("While DTCC has resumed limited services in connection with processing physical securities . . . we believe the requested relief continues to be appropriate and should also provide, given the ongoing uncertainties in connection with the COVID-19 crisis, mechanisms that would allow market participants to rely on the relief should there be further intermittent suspensions of physical securities processing during this crisis period.").

close-out requirements of Regulation SHO, as described in more detail below, for sales of owned physical securities.

#### II. Regulation SHO

##### A. Rule 200 Marking Requirement and Rule 203 "Locate" Requirement

Rule 200(g) of Regulation SHO<sup>8</sup> provides that broker-dealers must mark all sell orders of any equity security as "long," "short," or "short exempt." Under Rule 200(g)(1), a broker-dealer may mark an order to sell "long" only if the seller is "deemed to own" the security being sold pursuant to paragraphs (a) through (f) of Rule 200 and either: (1) the security to be delivered is in the physical possession or control of the broker-dealer; or (2) it is reasonably expected that the security will be in the physical possession or control of the broker-dealer no later than the settlement of the transaction.

Due to the intermittent inaccessibility of physical certificates at DTC as a result of ongoing concerns related to the effects of COVID-19, sell orders for owned physical securities may not qualify for "long" order marking under Rule 200(g)(1).<sup>9</sup> Specifically, a broker-dealer may not have a reasonable expectation that such securities will be in the physical possession or control of the broker-dealer by the settlement date.<sup>10</sup> Therefore, the broker-dealer would be required to mark such sale orders as "short" or, if eligible for Rule 201(c) or (d), "short exempt."<sup>11</sup>

Pursuant to Rule 203(b) of Regulation SHO, a broker-dealer may not accept a short sale order in an equity security from another person, or effect a short sale in an equity security for its own account, unless the broker-dealer has: (1) Borrowed the security, or entered into a *bona fide* arrangement to borrow the security; or (2) reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due.<sup>12</sup> This requirement is known as the "locate" requirement, and must be met and

<sup>8</sup> 17 CFR 242.200(g).

<sup>9</sup> See Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48012, 48015 (Aug. 6, 2004) ("Regulation SHO Adopting Release"). As noted below, sales marked "short" and "short exempt" are generally subject to the Rule 203(b) locate requirement absent an exception.

<sup>10</sup> 17 CFR 242.200(g)(1)(ii).

<sup>11</sup> Certain sales of owned physical securities may also qualify under Rule 201(d)(1) to be marked "short exempt" provided that the broker-dealer executing the transaction makes the required determination regarding the seller's ownership of the security, and that the seller intends to deliver the security as soon as the current restrictions on delivery have been removed. 17 CFR 242.201(d)(1).

<sup>12</sup> 17 CFR 242.203(b).

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> E.g., "Temporary Suspension of DTC Physical Securities Processing as of Close of

Business on April 8, 2020," Important Notice B# 13276-20 (Apr. 8, 2020) available at <https://www.dtcc.com/-/media/Files/pdf/2020/4/8/13276-20.pdf>; "Update on Temporary Suspension of DTC Physical Securities Processing," Important Notice B#13352-20 (Apr. 30, 2020) available at <https://www.dtcc.com/-/media/Files/pdf/2020/4/30/13353-20.pdf>.

<sup>2</sup> "Coronavirus Client FAQ," DTCC (Aug. 4, 2020) available at [https://www.dtcc.com/-/media/Files/PDFs/Email-Files/Client-FAQ-Coronavirus.pdf?mkt\\_tok=eyJjoiTURFellqVXhPR0](https://www.dtcc.com/-/media/Files/PDFs/Email-Files/Client-FAQ-Coronavirus.pdf?mkt_tok=eyJjoiTURFellqVXhPR0)