

the Initial Adviser or any entity controlling, controlled by, or under common control with the Initial Adviser (any such entity, along with the Initial Adviser, included in the term “Adviser”); (b) operates as an ActiveShares ETF as described in the Reference Order; and (c) complies with the terms and conditions of the Order and the terms and conditions of the Reference Order that are incorporated by reference into the Order (each such company or series and each Initial Fund, a “Fund”).<sup>4</sup>

6. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policies of the registered investment company and the general purposes of the Act. Applicants submit that for the reasons stated in the Reference Order the requested relief meets the exemptive standards under sections 6(c) and 17(b) of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–90387; File No. SR–NYSE–2020–93]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Rules 7.35 and 7.35A

November 10, 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 November 3, 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 (1) amend Rule 7.35 to make permanent that the Exchange would disseminate Auction Imbalance Information if a security is an IPO or Direct Listing and has not had its IPO Auction or Direct Listing Auction; and (2) amend Rule 7.35A regarding consultations in connection with an IPO or Direct Listing. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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.

<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.

#### 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 (1) amend Rule 7.35 to make permanent that the Exchange would disseminate Auction Imbalance Information if a security is an IPO or Direct Listing and has not had its IPO Auction or Direct Listing Auction;<sup>4</sup> and (2) amend Rule 7.35A regarding consultations in connection with an IPO or Direct Listing.

##### Proposed Rule Changes

##### Rule 7.35—Auction Imbalance Information

In connection with the closing of the Trading Floor facilities located at 11 Wall Street in New York City as of March 23, 2020 and moving the Exchange, on a temporary basis, to fully electronic trading,<sup>5</sup> and subsequent reopening of the Trading Floor on a limited basis first to Floor Brokers on May 26, 2020<sup>6</sup> and then to DMMs on June 15, 2020,<sup>7</sup> the Exchange added Commentaries to Rule 7.35.<sup>8</sup> Currently, these Commentaries are in effect until the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2020.<sup>9</sup>

<sup>4</sup> See Rules 7.35(a)(1)(D) (defining the term “IPO Auction” to mean the Core Open Auction for the first day of trading on the Exchange of a security that is an IPO) and 7.35(a)(1)(E) (defining the term “Direct Listing Auction” to mean the Core Open Auction for the first day of trading on the Exchange of a security that is a Direct Listing).

<sup>5</sup> Pursuant to Rule 7.1(e), the CEO notified the Board of Directors of the Exchange of her determination under Rule 7.1(c)(3). The Exchange’s rules establish how the Exchange will function fully-electronically. See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/press-releases/all-categories/2020/03-18-2020-204202110>.

<sup>6</sup> See Securities Exchange Act Release No. 88933 (May 22, 2020), 85 FR 32059 (May 28, 2020) (SR–NYSE–2020–47) (Notice of filing and immediate effectiveness of proposed rule change).

<sup>7</sup> See Securities Exchange Act Release No. 89086 (June 17, 2020) (SR–NYSE–2020–52) (Notice of filing and immediate effectiveness of proposed rule change).

<sup>8</sup> See Securities Exchange Act Release Nos. 88725 (April 22, 2020), 85 FR 23583 (April 28, 2020) (SR–NYSE–2020–37) (amending Rule 7.35 to add Commentary .01 (“IPO Filing”) and 89925 (September 18, 2020), 85 FR 60276 (September 24, 2020) (SR–NYSE–2020–75) (amending Rule 7.35 to add Commentary .02 (“Direct Listing Filing”).

<sup>9</sup> See Securities Exchange Act Release No. 90005 (September 25, 2020), 85 FR 61999 (October 1, 2020) (SR–NYSE–2020–78) (Notice of filing and immediate effectiveness of proposed rule change to extend the temporary period for Commentaries to Rules 7.35, 7.35A, 7.35B, and 7.35C; and temporary rule relief in Rule 36.30 to end on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2020 (“Extension Filing”).

<sup>4</sup> All entities that currently intend to rely on the Order are named as applicants. Any other entity that relies on the Order in the future will comply with the terms and conditions of the Order and the terms and conditions of the Reference Order that are incorporated by reference into the Order.

Specifically, the Exchange added Commentary .01 to Rule 7.35, which provides:

For a temporary period that begins on April 21, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2020, for an IPO Auction, paragraph (c)(3) of this Rule will not be in effect, and the Exchange will disseminate Auction Imbalance Information if a security is an IPO and has not had its IPO Auction. Such Auction Imbalance Information will be disseminated in the same manner that Auction Imbalance Information is disseminated for a Core Open Auction, as set forth in Rule 7.35A(e)(1)–(3), except that with respect to an IPO Auction, references to the term “Consolidated Last Sale Price” in Rule 7.35A(e)(3) and subparagraphs (A)–(C) of that Rule will be replaced with the term “the security’s offering price.”

In addition, the Exchange added Commentary .02 to Rule 7.35, which provides:

For a temporary period that begins on September 4, 2020 and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2020, for a Direct Listing Auction, paragraph (c)(3) of this Rule will not be in effect, and the Exchange will disseminate Auction Imbalance Information if a security is a Direct Listing and has not had its Direct Listing Auction. Such Auction Imbalance Information will be disseminated in the same manner that Auction Imbalance Information is disseminated for a Core Open Auction, as set forth in Rule 7.35A(e)(1)–(3), except that with respect to a Direct Listing Auction, references to the term “Consolidated Last Sale Price” in Rule 7.35A(e)(3) and subparagraphs (A)–(C) of that Rule will be replaced with the term “the security’s Indication Reference Price as determined under Rule 7.35A(d)(2)(A)(iv).”

The Exchange proposes to make permanent that the Exchange would disseminate Auction Imbalance Information if a security is an IPO or Direct Listing and has not had its IPO Auction or Direct Listing Auction.

Rule 7.35(c)(3) provides that the Exchange will not disseminate Auction Imbalance Information if a security is an IPO or Direct Listing and has not had its IPO Auction or Direct Listing Auction. This Rule is based on a change that the Exchange made in 2015 to reflect that Exchange systems would not publish Order Imbalance Information for an IPO.<sup>10</sup> In 2015, the rationale provided for excluding IPOs from Order Imbalance Information was because

Exchange systems at the time did not have access to interest represented in the crowd by Floor brokers. Since the Exchange transitioned to Pillar in August 2019, all Floor broker interest intended for a Core Open Auction, IPO Auction, or Direct Listing Auction must be entered electronically<sup>11</sup> and therefore Exchange systems are able to include such orders in the Auction Imbalance Information.

The Exchange believes that because Floor broker interest is now entered electronically and can be included in Auction Imbalance Information for all Core Open Auctions, the original rationale provided in 2015 for excluding IPO Auctions has become moot. Accordingly, the Exchange proposes to amend Rule 7.35 to eliminate, on a permanent basis, the current restriction on the Exchange disseminating Auction Imbalance Information if a security is an IPO or Direct Listing and has not had its IPO Auction or Direct Listing Auction. With this change, beginning at 8:00 a.m. Eastern Time, the following information would be disseminated in the Auction Imbalance Information in advance of an IPO Auction or Direct Listing Auction: Total Imbalance, Side of Total Imbalance, Paired Quantity, and Continuous Book Clearing Price, as these terms are defined in Rule 7.35(a)(4).<sup>12</sup>

To effect this change, the Exchange proposes to delete Rule 7.35(c)(3), which specifically excludes IPOs and Direct Listings from the Auction Imbalance Information. By deleting this text, IPOs and Direct Listings would no longer be treated differently than other Core Open Auctions with respect to Auction Imbalance Information, and therefore would be included in the Auction Imbalance Information. The Exchange believes that disseminating Auction Imbalance Information in advance of an IPO Auction or Direct Listing Auction would promote transparency in advance of such Auctions, which would benefit investors and other market participants.

As part of this proposed change, the Exchange proposes that the Imbalance Reference Price for either an IPO Auction or a Direct Listing Auction would continue to be determined in the same manner as provided for under the temporary Commentaries .01 and .02 to Rule 7.35, respectively. Specifically, the Imbalance Reference Price for determining the Auction Imbalance

Information for a Core Open Auction under Rule 7.35A(e)(3) is the Consolidated Last Sale Price,<sup>13</sup> bound by the bid and offer of any published pre-opening indication.<sup>14</sup> Because this definition of Imbalance Reference Price does not currently specify what the Consolidated Last Sale Price would be for an IPO Auction or Direct Listing Auction (which does not exist because the security has not been previously listed on an exchange), temporary Commentaries .01 and .02 to Rule 7.35 establish that the security’s offering price (for an IPO) or Indication Reference Price (for a Direct Listing) would be used instead of the Consolidated Last Sale Price for determining the Imbalance Reference Price for such Auctions.

Accordingly, in conjunction with deleting paragraph (c) of Rule 7.35 to make permanent the dissemination of Auction Imbalance Information for IPOs and Direct Listings, the Exchange proposes to amend the definition of Consolidated Last Sale Price in Rule 7.35(a)(11)(A) to provide that: (i) For an IPO that has not had its IPO Auction, the Consolidated Last Sale Price would mean the security’s offering price; and (ii) for a Direct Listing that has not had its Direct Listing Auction, the Consolidated Last Sale Price would mean the Indication Reference Price for such security.

To effect this change, the Exchange proposes to make the last sentence of current Rule 7.35(a)(11)(A) (relating to transferred securities) as new Rule 7.35(a)(11)(A)(i) and then add the provisions relating to IPO Auctions and Direct Listing Auctions, described above, as new Rules 7.35(a)(11)(A)(ii) and (iii), respectively. With this proposed rule change, the Consolidated Last Sale Price would be defined differently only for that period of time leading up to an IPO Auction or Direct Listing Auction. Once such Auctions

<sup>13</sup> The term “Consolidated Last Sale Price” is defined in Rule 7.35(a)(11)(A) to mean: “The most recent consolidated last-sale eligible trade in a security on any market during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security. For a transferred security, the Consolidated Last Sale Price means the most recent consolidated last-sale eligible trade in a security on any market during Core Trading Hours on that trading day, and if none, the official closing price from the prior trading day for that security from the exchange from which the security was transferred.”

<sup>14</sup> As provided for in Rule 7.35A(e)(3), the Imbalance Reference Price changes if a pre-opening indication has been published for such Auction. For example, if the security’s Consolidated Last Sale Price were lower than the bid price of a pre-opening indication, the Imbalance Reference Price for that Core Open Auction would be the pre-opening indication bid price, and not the Consolidated Last Sale Price. See, e.g., Rule 7.35A(e)(3)(A).

<sup>10</sup> See Securities Exchange Act Release No. 74837 (April 29, 2015), 80 FR 25741 (May 5, 2015) (SR-NYSE-2015-19) (Notice of filing and immediate effectiveness of proposed rule change). The Exchange added Direct Listings in 2018. See Securities Exchange Act Release No. 82627 (February 2, 2018), 83 FR 5650 (February 8, 2018) (SR-NYSE-2017-30) (Approval Order).

<sup>11</sup> See Securities Exchange Act Release No. 85962 (May 29, 2019), 84 FR 26188, 26208 at n. 73 (June 5, 2019) (SR-NYSE-2019-05) (Approval Order).

<sup>12</sup> See Rule 7.35A(e)(2) (specifying the content of the Auction Imbalance Information that is disseminated in advance of a Core Open Auction).

have concluded, the Consolidated Last Sale Price for such securities would be determined under the first sentence of Rule 7.35(a)(11)(A), which is not changing.

Because these proposed changes would make permanent Commentaries .01 and .02 to Rule 7.35, the Exchange proposes to delete these Commentaries.

#### Rule 7.35A—DMM Consultations

Pursuant to Rule 7.35A(g), the DMM assigned to an Exchange-listed security is responsible for determining the Auction Price for Core Open Auctions. In connection with the temporary closure of the Trading Floor to prevent the spread of COVID-19, the Exchange filed proposed rule changes that noted that during the period when there has been reduced staff on the Trading Floor, communications from an underwriter or financial advisor to a DMM may be conveyed via Exchange staff to the DMM rather than via a Floor broker.<sup>15</sup> Such communications from an underwriter or financial advisor<sup>16</sup> had previously been conveyed to the DMM via a Floor broker,<sup>17</sup> in part because Rule 36.30 restricts telephone communications for DMMs while they are on the Trading Floor.<sup>18</sup>

Because the Trading Floor continues to operate with reduced DMM and Floor broker staff, underwriters and financial

advisors have continued to have the choice to use Exchange staff to convey information to the DMM in connection with such Core Open Auctions.<sup>19</sup>

The Exchange believes that going forward, even once the Trading Floor is fully open to DMM and Floor broker staff, underwriters or financial advisors should be able to choose whether to use a Floor broker or Exchange staff to convey information to the DMM. In particular, because the information conveyed from an underwriter or financial advisor to a DMM is purely factual, and does not involve performing broker-dealer services, the Exchange believes that such information can be conveyed to a DMM via Exchange staff without any difference in scope of information than what would have otherwise been conveyed by a Floor broker.<sup>20</sup>

Current Exchange rules do not specify the consultations a DMM may have with an underwriter or financial advisor for initial listings that are not Direct Listings or for follow-on offerings. To provide clarity and transparency in Exchange rules, the Exchange proposes to amend Rule 7.35A(g)(1) to include the current process for DMM consultations with an underwriter or financial advisor for initial listings and follow-on offerings. The Exchange further proposes to specify that any such consultations may be conveyed to the DMM via either a Floor broker or Exchange staff.

To effect this change, proposed Rule 7.35A(g)(1) would provide (proposed additions italicized, deleted text bracketed):

*In order to effect a fair and orderly opening on the first day of trading of a security having its initial listing on the Exchange or for a follow-on offering, a DMM may consult with an underwriter or financial advisor for the issuer of such security provided that, [W]hen facilitating the opening on the first day of trading of a Direct Listing that has not had recent sustained history of trading in a Private Placement Market prior to listing, the*

<sup>15</sup> As of the date of this filing, underwriters and financial advisors have chosen to convey information to the DMM via Exchange staff for over 30% of the IPO Auctions and the two Direct Listing Auctions on September 30, 2020.

<sup>20</sup> The Exchange notes that on the Nasdaq Stock Market, LLC (“Nasdaq”), an underwriter for an IPO communicates directly with Nasdaq staff and in such communications, the underwriter advises Nasdaq staff that a security is “ready to trade.” Nasdaq displays an expected price to the underwriter, the underwriter is responsible for approving proceeding with the auction, and the underwriter can determine to postpone and reschedule the IPO. See Nasdaq Rule 4120(c)(8)(A) and (B). Under Nasdaq Rule 4120(c)(9), for any other security with an initial listing on Nasdaq, a financial advisor performs the role of an underwriter as prescribed in Nasdaq Rule 4120(c)(8).

DMM will consult with a financial advisor to the issuer of such security [in order to effect a fair and orderly opening of such security]. *Any such consultations will be conducted by an underwriter or financial advisor relaying information to the DMM via either a Floor broker or Exchange staff.*

The Exchange notes that the proposed changes to what would be the first sentence of amended Rule 7.35A(g)(1) reflect long-standing practice relating to the type of consultations that a DMM may have with an underwriter or financial advisor. As with current practice, the only consultations that would be required in Exchange rules would be in connection with a Direct Listing that has not had recent sustained history of trading in a Private Placement Market prior to listing. The Exchange believes that this proposed rule text would promote transparency and clarity in Exchange rules by specifying the existing process whereby a DMM may consult with an underwriter or financial advisor in connection with a security having its initial listing on the Exchange or for a follow-on offering.

The proposed second sentence would reflect the proposed new process, which is currently in place on a temporary basis during the period when the Trading Floor is operating with reduced DMM and Floor broker staff to reduce the spread of COVID-19, that for such consultations, an underwriter or financial advisor may choose to relay information to the DMM via either a Floor broker or Exchange staff.

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>21</sup> in general, and furthers the objectives of Sections 6(b)(5) of the Act,<sup>22</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

<sup>21</sup> 15 U.S.C. 78f(b).

<sup>22</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> See Securities Exchange Act Release Nos. 88488 (March 26, 2020), 85 FR 18286 (April 1, 2020) (SR-NYSE-2020-23) (“In addition, Exchange staff on the Trading Floor will be in communication with the lead underwriter or financial advisor, as applicable, for such IPO Auction and will convey to the DMM information that the underwriter would normally convey to the DMM via a Floor broker, such as when the underwriter has entered all interest for such auction.”), and 88546 (April 2, 2020), 85 FR 19782 (April 8, 2020) (SR-NYSE-2020-28) (“Exchange staff would be in communication with the lead underwriter and would convey to the DMM information that the underwriter would normally convey to the DMM via a Floor broker, such as when the underwriter has entered all interest for such auction.”)

<sup>16</sup> Rule 7.35A(g)(1) requires the DMM to consult with a financial advisor to the issuer of a security that is having a Direct Listing and has not had recent sustained history of trading in a Private Placement Market prior to listing.

<sup>17</sup> In many instances, the Floor broker conveying such information to the DMM works for the same broker-dealer that is functioning as the underwriter or financial advisor for the issuer. If the underwriter or financial advisor does not have a Floor broker operation, they can retain an independent Floor broker to provide such services.

<sup>18</sup> Rule 36.30 prescribes the circumstances when a DMM on the Trading Floor may use a telephone and provides that, with the approval of the Exchange, a DMM unit may maintain a telephone line at its stock trading post location to the off-floor offices of the DMM unit, the unit’s clearing firm, or to persons providing non-trading relating services and that such telephone connections shall not be used for the purpose of transmitting to the Floor orders for the purchase or sale of securities. DMMs are permitted to use cellular phones outside of the Trading Floor only. See Rule 36.23.

### Rule 7.35—Auction Imbalance Information

The Exchange believes that the proposed change to make permanent that the Exchange would disseminate Auction Imbalance Information if a security is an IPO or Direct Listing and has not had its IPO Auction or Direct Listing Auction would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote fair and orderly IPO Auctions and Direct Listing Auctions. Specifically, because such Auction Imbalance Information would include Floor broker interest eligible to participate in an IPO Auction or Direct Listing Auction (and therefore the original rationale for excluding such information is now moot), the Exchange believes that including such information in the Auction Imbalance Information on the same terms that such information is disseminated for other Core Open Auctions would provide more granular information in advance of an IPO Auction or Direct Listing Auction. As described above, the Auction Imbalance Information for an IPO Auction or Direct Listing Auction would begin being published at 8:00 a.m. Eastern Time, would be published every second, and would include Total Imbalance, Side of Total Imbalance, Paired Quantity, and Continuous Book Clearing Price information. The Exchange therefore believes that proposed rule change would promote transparency in advance of an IPO Auction or Direct Listing Auction, which would benefit investors and the public.

### Rule 7.35A—DMM Consultations

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 make permanent the ability of an underwriter or financial advisor to convey information to the DMM in connection with initial listings and follow-on offerings via either a Floor broker or Exchange staff. The Exchange believes that because the purpose of such consultations is to convey information to the DMM, Exchange staff or a Floor broker can perform this function. The Exchange further notes that the type of information being conveyed via Exchange staff is similar to the scope of information provided to Nasdaq staff by an underwriter or financial advisor pursuant to Nasdaq Rules 4120(c)(8) and (9). Moreover, the proposed change has been in operation on a temporary basis during the period when there have been reduced DMM and Floor broker staff on

the Trading Floor to prevent the spread of COVID-19 and underwriters and financial advisors have chosen to convey information to the DMM via Exchange staff for over 30% of the IPOs and the two Direct Listings. Accordingly, broker-dealers functioning as underwriters and financial advisors, DMMs, and Exchange staff are already experienced in using Exchange staff to perform this function. The Exchange therefore believes it would promote fair and orderly Core Open Auctions on the Exchange for underwriters and financial advisors to be provided the option to continue using this method of conveying information to a DMM in connection with initial listings or follow-on offerings.

The Exchange further believes that the proposed change to Rule 7.35A(g)(1) to specify the long-standing practice for DMM consultations with the underwriter or financial advisor of an issuer of a security in connection with initial listings and follow-on offerings would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would promote transparency and clarity in Exchange rules. More specifically, this proposed rule change would not result in any changes to how a DMM would determine the Auction Price for Core Open Auctions under Rule 7.35A(g), and therefore this proposed change would not result in any substantive differences to the Exchange's auction rules.

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

In accordance with Section 6(b)(8) of the Act,<sup>23</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issues. Instead, the proposed rule changes are designed to (i) promote transparency by including information about IPO Auctions and Direct Listing Auctions in Auction Imbalance Information on a permanent basis; and (ii) promote transparency and clarity in Exchange rules by specifying the existing process for DMM consultations with the underwriter or financial advisor of an issuer of a security in connection with initial listings and follow-on offerings and making permanent that Exchange staff, in addition to Floor brokers, may be used for such consultations.

<sup>23</sup> 15 U.S.C. 78f(b)(8).

### 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

Within 45 days of the date of publication of this notice in the **Federal Register** or such longer period *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-NYSE-2020-93 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-2020-93. 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-2020-93 and should be submitted on or before December 8, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2020-25268 Filed 11-16-20; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90391; File No. SR-NYSE-2020-92]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List

November 10, 2020.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 2, 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, 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.

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

The Exchange proposes to amend its Price List to extend through December

2020 the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations implemented for April through October 2020. The Exchange proposes to implement the fee changes effective November 2, 2020. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://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 amend its Price List to extend through December 2020 the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations implemented for April through October 2020.

The proposed changes respond to the current volatile market environment that has resulted in unprecedented average daily volumes and the temporary closure of the Trading Floor, which are both related to the ongoing spread of the novel coronavirus ("COVID-19").

The Exchange proposes to implement the fee changes effective November 2, 2020.

###### Background

Beginning on March 16, 2020, in order to slow the spread of COVID-19 through social distancing measures, significant limitations were placed on large gatherings throughout the country. As a result, on March 18, 2020, the Exchange determined that beginning March 23, 2020, the physical Trading Floor facilities located at 11 Wall Street in New York City would close and that the Exchange would move, on a

temporary basis, to fully electronic trading.<sup>4</sup> Following the temporary closure of the Trading Floor, the Exchange waived certain equipment fees for the booth telephone system on the Trading Floor and associated service charges for the months of April and May.<sup>5</sup>

On May 14, 2020, the Exchange announced that on May 26, 2020 trading operations on the Trading Floor would resume on a limited basis to a subset of Floor brokers, subject to health and safety measures designed to prevent the spread of COVID-19.<sup>6</sup> On June 15, 2020, the Exchange announced that on June 17, 2020, the Trading Floor would reintroduce a subset of DMMS, also subject to health and safety measures designed to prevent the spread of COVID-19.<sup>7</sup> Following this partial reopening of the Trading Floor, the Exchange extended the equipment fee waiver for the months of June, July, August, September and October.<sup>8</sup> The Trading Floor continues to operate with reduced headcount and additional health and safety precautions.<sup>9</sup>

###### Proposed Rule Change

The proposed rule change responds to the unprecedented events surrounding the spread of COVID-19 by extending the waiver of equipment and related service charges and trading license fees for NYSE Trading Floor-based member organizations for the remainder of 2020.

As noted, for the months of April, May, June, July, August, September and October, the Exchange waived the Annual Telephone Line Charge of \$400 per phone number and the \$129 fee for

<sup>4</sup> See Press Release, dated March 18, 2020, available here: <https://ir.theice.com/press/press-releases/allcategories/2020/03-18-2020-204202110>.

<sup>5</sup> See Securities Exchange Act Release No. 88602 (April 8, 2020), 85 FR 20730 (April 14, 2020) (SR-NYSE-2020-27); Securities Exchange Act Release No. 88874 (May 14, 2020), 85 FR 30743 (May 20, 2020) (SR-NYSE-2020-29). See footnote 11 of the Price List.

<sup>6</sup> See Trader Update, dated May 14, 2020, available here: <https://www.nyse.com/traderupdate/history#110000251588>.

<sup>7</sup> See Trader Update, dated June 15, 2020, available here: <https://www.nyse.com/traderupdate/history#110000272018>.

<sup>8</sup> See Securities Exchange Act Release No. 89050 (June 11, 2020), 85 FR 36637 (June 17, 2020) (SR-NYSE-2020-49); Securities Exchange Act Release No. 89324 (July 15, 2020), 85 FR 44129 (July 21, 2020) (SR-NYSE-2020-59); Securities Exchange Act Release No. 89754 (September 2, 2020), 85 FR 55550 (September 8, 2020) (SR-NYSE-2020-71); Securities Exchange Act Release No. 89798 (September 9, 2020), 85 FR 57263 (September 15, 2020) (SR-NYSE-2020-72); and Securities Exchange Act Release No. 90161 (October 13, 2020), 85 FR 66370 (October 19, 2020) (SR-NYSE-2020-81).

<sup>9</sup> See Trader Update, dated June 15, 2020, available here: <https://www.nyse.com/traderupdate/history#110000272018>. DMMS continue to support a subset of NYSE-listed securities remotely.

<sup>24</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.