

to the Commission (or its representatives), upon request;

(4) Section 17(b) of the Exchange Act, and the rules and regulations thereunder, as it relates to the obligation of MGEX, in its capacity as a national securities exchange, to make itself available to inspection and examination by the Commission (or its representatives), upon request; and

(5) the requirement that MGEX register with the Commission as a clearing agency, as set forth in Section 17A of the Exchange Act, and the rules and regulations thereunder, including the exemption from registration in paragraph (b)(7) of that section.

Such exemptions are subject to the conditions set forth below. To the extent that one or more of these conditions is no longer satisfied, the exemptions set forth in this order will no longer apply three calendar months after the end of the month in which any condition was no longer satisfied.

(1) SPIKES measures the magnitude of changes in the level of the price of the units of the SPDR® S&P 500® ETF Trust ("SPY") over a defined period of time, which magnitude is calculated using the prices of options on the SPY and represents: (a) An annualized standard deviation of percent changes in the price of the units of the SPY; (b) an annualized variance of percent changes in the price of the units of the SPY; or (c) on a non-annualized basis either the standard deviation or the variance of percent changes in the price of the units of the SPY.

(2) The average daily dollar volume in the units of the SPY is at least \$10 billion calculated over the preceding 180 days.

(3) Units of the SPY are listed and traded on a national securities exchange registered under section 6(a) of the Exchange Act.

(4) The aggregate average daily notional volume in options on the SPY is at least \$400 million calculated over the preceding 180 days.

(5) Options on the SPY are listed and traded on a national securities exchange registered under section 6(a) of the Exchange Act.

(6) The SPY is a "unit investment trust," as defined in Section 4(2) of the Investment Company Act of 1940, and is registered with the Commission as an investment company under the Investment Company Act of 1940.

(7) The SPY holds a portfolio of common stocks designed to provide investment returns that, before expenses, correspond generally to the price and yield performance of the S&P 500 Index.

(8) The annualized tracking error between the net asset value ("NAV") of the SPY and the S&P 500 Index does not meet or exceed 1%; *provided, however*, that if over two consecutive trading days the returns used to calculate annualized tracking error can be netted, such that the annualized tracking error falls below 1%, then any such exceedance shall be deemed not to have occurred on those two consecutive trading days for purposes of this condition. For purposes of this condition, the term "annualized tracking error" should be calculated by taking the weekly return differences between the NAV of the SPY and the S&P 500 Index for the trailing 12 months (with each week beginning and ending on a Friday), taking into account dividends (as applicable), and then multiplying the standard deviation of those return differences by the square root of 52.

(9) The official closing price of the SPY, as determined pursuant to the rules of its primary listing exchange, does not deviate from the NAV of the SPY by more than 20 basis points for five or more consecutive trading days.

(10) MGEX shall monitor the daily closing prices and the NAV of the SPY and the corresponding returns of the S&P 500 Index. If (i) at any time the annualized tracking error between the NAV of the SPY and the S&P 500 Index exceeds 0.5% or (ii) for two or more consecutive trading days the official closing price of the SPY, as determined pursuant to the rules of its primary listing exchange, deviates from the NAV of the SPY by more than 20 basis points, MGEX shall (A) promptly notify the Commission of such divergence, in a form and manner acceptable to the Commission, and (B) conduct an investigation in an attempt to determine its cause.

Dated: November 24, 2020.

By the Commission.

**Vanessa A. Countryman,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90495; File No. SR-NYSE-2020-95]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Make Permanent Commentaries to Rule 7.35A and Commentaries to Rule 7.35B and Make Related Changes to Rules 7.32, 7.35C, 46B, and 47

November 24, 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 13, 2020, New York Stock Exchange LLC ("NYSE" or "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 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 make permanent Commentaries .01(a) and (b) and .06 to Rule 7.35A and Commentaries .01 and .03 to Rule 7.35B and make related changes to Rules 7.32, 7.35C, 46B, and 47. 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 make permanent Commentaries .01(a) and (b) and .06 to Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions) and Commentaries .01 and .03 to Rule 7.35B (DMM-Facilitated Closing Auctions) and make related changes to Rules 7.32 (Order Entry), 7.35C (Exchange-Facilitated Closing Auctions), 46B (Regulatory Trading Official), and 47 (Floor Officials—Unusual Situations).

Background

In connection with the closing of the Trading Floor facilities located at 11 Wall Street in New York City as of March 23, 2020 and moving the Exchange, on a temporary basis, to fully electronic trading,<sup>4</sup> and subsequent reopening of the Trading Floor on a limited basis first to Floor Brokers on May 26, 2020<sup>5</sup> and then to DMMs on June 15, 2020,<sup>6</sup> the Exchange added Commentaries .01 and .06 to Rule 7.35A and Commentaries .01 and .03 to 7.35B.<sup>7</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>8</sup>

Specifically, Commentary .01 to Rule 7.35A provides:

<sup>4</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>5</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>6</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>7</sup> See Securities Exchange Act Release Nos. 88444 (March 20, 2020), 85 FR 17141 (March 26, 2020) (SR-NYSE-2020-22) (amending Rules 7.35A to add Commentary .01, 7.35B to add Commentary .01, and 7.35C to add Commentary .02) and 89086 (June 17, 2020), 85 FR 37712 (SR-NYSE-2020-52) (amending Rules 7.35A to add Commentary .06, 7.35B to add Commentary .03, 76 to add Supplementary Material 20, and Supplementary Material .30 to Rule 36).

<sup>8</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).

For a temporary period that begins March 23, 2020, when the Trading Floor facilities have been closed pursuant to Rule 7.1(c)(3), and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2020:

(a) The percentage price parameters in paragraph (c)(1)(G) and (c)(2) of this Rule are suspended and a DMM may not effect a Core Open or Trading Halt Auction electronically if the Core Open or Trading Halt Auction Price will be more than 10% away from the Consolidated Last Sale Price.

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

(c) The requirement to publish a pre-opening indication pursuant to paragraph (d) of this Rule before either a Core Open or Trading Halt Auction is suspended.

Commentary .06 to Rule 7.35A provides:

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

Commentary .01 to Rule 7.35B provides:

For a temporary period that begins March 23, 2020, when the Trading Floor facilities have been closed pursuant to Rule 7.1(c)(3), and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2020:

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

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

Finally, Commentary .03 to Rule 7.35B provides:

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

Proposed Rule Changes

Proposed Changes to Parameters for DMM-Facilitated Electronic Auctions

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

Current Rules 7.35A(c)(1)(G) and (H) provide that a DMM may not effect a Core Open or Trading Halt Auction electronically if (i) the Auction Price will be more than 4% away from the Consolidated Last Sale Price,<sup>9</sup> or (ii) the paired volume for the Auction will be more than 1,500 round lots for securities with an average opening volume of 1,000 round lots or fewer in the previous calendar quarter, or 5,000 round lots for securities with an average opening volume of over 1,000 round lots in the previous calendar quarter. Rule 7.35A(c)(2) further provides that if as of 9:00 a.m., the E-mini S&P 500 Futures are +/– 2% from the prior day's closing price of the E-mini S&P 500 Futures, or if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and orderly market, a DMM may effect an opening or reopening electronically if the Auction Price will be up to 8% away from Consolidated Last Sale Price, without any volume limitations.

Current Rule 7.35B(c)(1)(G) and (H) provide that a DMM may not effect a Closing Auction electronically if (i) the Auction Price will be more than a designated percentage away from the Exchange Last Sale Price,<sup>10</sup> or (ii) the paired volume for the Closing Auction will be more than 1,000 round lots for such security. The designated percentages are currently as follows:

Exchange last sale price	Designated percentage
\$25.00 and below .....	5%
\$25.01 to \$50.00 .....	4%
Above \$50.00 .....	2%

The Exchange proposes to make the price percentage parameter 10% and eliminate the volume restrictions for all DMM-facilitated Auctions. These

<sup>9</sup> The term "Consolidated Last Sale Price" is defined in Rule 7.35 to mean the most recent consolidated last-sale eligible trade in a security on any market during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security.

<sup>10</sup> The term "Exchange Last Sale Price" is defined in Rule 7.35 to mean the most recent trade on the Exchange of a round lot or more in a security during Core Trading Hours on that trading day, and if none, the Official Closing Price from the prior trading day for that security.

parameters are currently in effect on a temporary basis pursuant to Commentaries .01(a) and (b) to Rule 7.35A and Commentary .01 to Rule 7.35B. The Exchange believes that making these temporary Commentaries permanent would promote fair and orderly DMM-facilitated Auctions.

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

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

The Exchange has observed similar trends for Closing Auctions, with DMMs facilitating more Closing Auctions electronically, which means more Closing Auctions occurring closer to 4:00 p.m. Eastern Time. In February 2020, DMMs effected electronically 57%

of all Closing Auctions and 5.5% of Closing Auctions in S&P 500 securities. By contrast, for the period July 2020 through October 2020, DMMs effected electronically 90.9% of all Closing Auctions, and 53.6% of Closing Auctions in S&P 500 securities. Currently, DMM electronically-facilitated Closing Auctions occur shortly after 4:00 p.m. Eastern Time.<sup>11</sup> Accordingly, the increased number of DMM electronically-facilitated Closing Auctions translates to an increase in the number of Closing Auctions that occur close to 4:00 p.m. Eastern Time. Because the temporary wider percentage parameters and eliminated volume parameters have resulted in more Core Open Auctions and Closing Auctions occurring at 9:30 a.m. Eastern Time or 4:00 p.m. Eastern Time, respectively, the Exchange believes that making these temporary parameters permanent would support the continued fair and orderly operation of Auctions on the Exchange.

The Exchange also notes that during the period when the temporary parameters have been in place, the Exchange has not observed greater auction price dislocation compared to the period immediately preceding implementation of these temporary parameters, and has even observed modest improvement. The Exchange defines auction price dislocation as the difference between the Core Open Auction price and the consolidated volume-weighted average price ("VWAP") over the subsequent five-minute period, or the difference between the Closing Auction price and the consolidated VWAP over the two minutes preceding the Closing Auction; the lower the difference, the lower the auction price dislocation. In February 2020, the Exchange's average Core Open Auction dislocation was 3.27x a security's average spread; for the period July 2020 through October 2020 the average was 3.22x a security's average spread.<sup>12</sup> Similarly, the median Core

<sup>11</sup> When Floor Broker Interest was eligible to participate in the Closing Auction, DMM electronically-facilitated Closing Auctions occurred at 4:02 p.m. Eastern Time. Because there has been no Floor Broker Interest for the Closing Auction during the period while the Trading Floor has been temporarily closed, the Exchange moved the time for DMM electronically-facilitated Closing Auctions to closer to 4:00 p.m. With the proposed change, described below, to permanently eliminate Floor Broker Interest for the Closing Auction, the Exchange would continue to conduct DMM electronically-facilitated Closing Auctions shortly after 4:00 p.m., rather than revert to the 4:02 p.m. time for such auctions.

<sup>12</sup> Market volatility was, on average, lower in February 2020 as compared to July 2020–October 2020. Calculating the price dislocation metric in terms of a security's average spread incorporates the wider spreads in the latter period and allows for a better comparison between the two periods.

Open Auction dislocation fell from 1.84x a security's average spread to 1.78x a security's average spread.

The Exchange also observed similar trends in the Closing Auction price dislocation statistics. In February 2020, the Exchange's average Closing Auction Price Dislocation was 0.82x a security's average spread; for the period July 2020 through October 2020, the average was 0.69x a security's average spread.<sup>13</sup> Median Closing Auction dislocation also dropped from 0.5x to 0.43x a security's average spread in the respective periods. Because the temporary wider percentage parameters have not resulted in greater auction price dislocation, the Exchange believes that making these parameters permanent would continue to support fair and orderly Auctions on the Exchange.

To effect these changes, the Exchange proposes to:

- Amend Rule 7.35A(c)(1)(G) to replace the current 4% price parameter for Core Open and Trading Halt Auctions with a 10% price parameter. Because the proposed price parameter would be 10%, the Exchange believes that the need for the double-wide parameters set forth in Rule 7.35A(c)(2) for Core Open and Trading Halt Auctions would no longer be necessary and the Exchange proposes to delete that text.
- Delete Rule 7.35A(c)(1)(H).
- Amend Rule 7.35A(j)(1)(A) to delete reference to volume parameters and Rule 7.35A(c)(1)(H).
- Amend Rule 7.35B(c)(1)(G) to replace the reference to "designated percentage" parameter for the Closing Auction with a 10% price parameter. The Exchange further proposes to delete the chart specifying the designated percentages for the Closing Auction.
- Delete Rule 7.35B(c)(1)(H).
- Delete Commentaries .01(a) and (b) to Rule 7.35A.
- Delete the entirety of Commentary .01 to Rule 7.35B.

The Exchange proposes to maintain Commentary .01(c) to Rule 7.35A, which provides that for a temporary period that begins March 23, 2020, when the Trading Floor facilities have been closed pursuant to Rule 7.1(c)(3), and ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2020, the requirement to publish a pre-opening indication pursuant to Rule 7.35A(d) before either a Core Open Auction or Trading Halt

<sup>13</sup> Closing Auction price dislocation is generally lower than Core Open Auction price dislocation, due to the relatively lower levels of volatility around the Closing Auction compared to the Core Open Auction.

Auction is suspended. The Exchange proposes non-substantive amendments to delete subparagraph (c) numbering and move the text of that subparagraph into the body of Commentary .01.<sup>14</sup>

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

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

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

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

If as of 9:00 a.m., the E-mini S&P 500 Futures are  $\pm 2\%$  from the prior day's closing price of the E-mini S&P 500 Futures, when reopening trading following a market-wide trading halt under Rule 7.12, or if the Exchange determines that it is necessary or appropriate for the maintenance of a fair and order market, the Applicable Price Range for determining whether to publish a pre-opening indication will be 10% for securities with an Indication Reference Price over \$3.00 and \$0.30 for securities with an Indication Reference Price equal to or lower than \$3.00.

Current Rule 7.35A(1)(A) further provides that a DMM may not effect a Core Open or Trading Halt Auction electronically if a pre-opening indication has been published for the Core Open Auction. Accordingly, Exchange Rules already provide for a correlation between pre-opening indications and whether a DMM may effect a Core Open or Trading Halt Auction electronically. Currently, that is

achieved through similar, though not identical, percentage parameters: The price parameter for DMM-facilitated electronic Core Open and Trading Halt Auctions is 4% and the Applicable Price Range for pre-opening indications is 5%. When there is market-wide volatility, both are doubled.

The Exchange believes that because of this existing correlation, in connection with permanently widening the price parameters for DMM-facilitated electronic Core Open and Trading Halt Auctions to 10%, the Applicable Price Range for determining whether to publish a pre-opening indication should similarly not only be widened, but also be aligned to 10%. With this proposed change, if there is a significant enough price movement to require a DMM to effect a Core Open or Trading Halt Auction manually, the DMM would be required to publish a pre-opening indication for such Core Open or Trading Halt Auction. The Exchange notes that if a DMM chooses to facilitate a Core Open Auction or Trading Halt Auction manually (*i.e.*, if there is less than a 10% price movement), a DMM could still choose to publish a pre-opening indication in connection with such Auction, even if the Applicable Price Range has not been triggered. For example, DMMs generally publish pre-opening indications for IPO Auctions and Direct Listing Auctions regardless of whether the Applicable Price Range has been triggered.

The Exchange does not believe that permanently widening the Applicable Price Range for when a DMM is required to publish a pre-opening indication would reduce transparency in connection with Core Open and Trading Halt Auctions. The Exchange currently disseminates Auction Imbalance Information for all Core Open Auctions and Trading Halt Auctions.<sup>15</sup> Since August 2019, when the Exchange transitioned Exchange-listed securities to the Pillar trading platform, all Floor broker orders for the Core Open and Trading Halt Auctions must be entered electronically. Accordingly, all such interest is reflected in the Auction Imbalance Information, which was not the case before the Exchange transitioned to Pillar. Accordingly, the

Auction Imbalance Information includes information about all buy and sell orders entered in advance of such Auctions.<sup>16</sup>

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

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

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

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

<sup>16</sup> Rule 7.35(a)(4) provides that DMM Auction Liquidity is never included in Auction Imbalance Information. By its terms, DMM Auction Liquidity, as defined in Rule 7.35(d)(8)(A), is entered by the DMM either manually or electronically as part of the DMM unit's electronic message to conduct an Auction. For an Auction effected electronically by the DMM, DMM Auction Liquidity is entered simultaneously with the DMM facilitating the Auction, which is why it is not included in the Auction Imbalance Information leading up to such Auction. For an Auction effected manually by the DMM, the DMM can factor such interest into the pre-opening indication price range. DMM Orders, as defined in Rule 7.35(d)(8)(B), that may be entered by the DMM in advance of such Auctions would be included in the Auction Imbalance Information.

<sup>14</sup> The Exchange notes that even though the requirement for pre-opening indications has been suspended, since June 17, 2020, when DMMs returned staff to the Trading Floor, DMMs have published pre-opening indications for IPO Auctions and the two Direct Listing Auctions on September 30, 2020.

<sup>15</sup> Pursuant to Commentaries .01 and .02 to Rule 7.35, for the temporary period that ends on the earlier of a full reopening of the Trading Floor facilities to DMMs or after the Exchange closes on December 31, 2020, the Exchange includes IPOs and Direct Listings in the Auction Imbalance Information. The Exchange has filed a separate proposed rule change to include IPOs and Direct Listings in the Auction Imbalance Information on a permanent basis. See Securities Exchange Act Release No. 90387 (November 10, 2020) (SR–NYSE–2020–93) (Notice of Filing).

interest by the DMM and circumstances when such interest can be cancelled.

On June 17, 2020, when the Exchange reopened the Trading Floor to limited numbers of DMMs, the Exchange added Commentary .03 to Rule 7.35B.

Accordingly, from June 17, 2020 to the present, even though reduced numbers of DMMs and Floor brokers are present on the Trading Floor, Floor Broker Interest has not been eligible to participate in the Closing Auction.

During this period, the Exchange has observed that even in the absence of Floor Broker Interest, Floor broker participation in Closing Auctions has returned to similar levels of Floor broker participation in the Closing Auction for the period before March 23, 2020. For example, in February 2020, 34.5% of Auction-Only Orders for the Closing Auction were entered as Closing D Orders, which are available only to Floor brokers.<sup>17</sup> In October 2020, 38.8% of the Auction-Only Orders for the Closing Auction were Closing D Orders, which demonstrates that Floor broker participation in the Closing Auction has not only returned since the Trading Floor reopened, but has actually increased as compared to February 2020. Moreover, in February 2020, only 0.1% of total Floor broker orders for the Closing Auction was represented as Floor Broker Interest, and that Floor Broker Interest represented less than 0.01% of the total interest that participated in the Closing Auction. Based on both the relatively small levels of Floor Broker Interest that was participating in the Closing Auction before the Trading Floor closed and the ongoing availability of Closing D Orders for Floor brokers, the Exchange does not believe that eliminating Floor Broker Interest for the Closing Auction would materially impact the ability of Floor brokers to represent customer orders for the Closing Auction.

Based on this experience, the Exchange proposes to make permanent Commentary .03 to Rule 7.35B. To effect this change, the Exchange proposes to amend Rule 7.35B(a)(1) to provide that Floor Broker Interest would not be eligible to participate in the Closing Auction. To provide clarity that a Floor broker would not be permitted to represent verbal interest intended for the Closing Auction, the Exchange

further proposes to provide that Floor brokers must enter any orders for the Closing Auction, as defined in Rule 7.31, electronically during Core Trading Hours. The Exchange believes that the cross-reference to Rule 7.31 in the Rule would provide notice to Floor brokers and their customers of which order types are available for electronic entry by Floor brokers for the Closing Auction, which include both Auction-Only Orders described in Rule 7.31(c) and other orders that may be resting on the Exchange Book that are eligible to participate in the Closing Auction. The Exchange also proposes to delete Commentary .03 to Rule 7.35B.

The Exchange proposes to make related changes by deleting the clause “and Floor Broker Interest intended for the Closing Auction as defined in Rule 7.35B(a)(1)” from Rule 7.32. Similarly, the Exchange proposes to delete the text set forth in Rule 7.35C(a)(2) relating to Floor Broker Interest that provides that “Floor Broker Interest that has been electronically accepted by the DMM and that has not been cancelled as provided for in Rule 7.35B(a)(1)(C) will be eligible to participate in an Exchange-facilitated Closing Auction.” The Exchange proposes to designate that subparagraph as “Reserved.”<sup>18</sup>

In addition, the Exchange proposes to delete Rule 46B and amend Rule 47(b). Under Rule 47, Floor Officials have the authority to “supervise and regulate active openings and unusual situations that may arise in connection with the making of bids, offers or transactions on the Floor.” The Exchange recently amended its rules to add Regulatory Trading Officials (“RTO”), which are defined in Rule 46B.<sup>19</sup> As described in the RTO Approval Order, unusual situations that may arise in connection with Floor Broker Interest for the Closing Auction could be “if the Floor broker hand-held device malfunctions or ceases to work or if a Floor broker is physically impeded, as a result of a crowd condition beyond that of normal traffic flow on the Exchange’s trading Floor or some other circumstance beyond the Floor broker’s control, in his or her ability to be present at a post before the DMM closes the security.”<sup>20</sup> The Exchange amended Rule 47 to add subparagraph (b), which provides that RTOs, instead of Floor Officials, would be responsible for supervising and regulating situations regarding whether

a verbal bid or verbal offer is eligible for inclusion in the Closing Auction by the DMM.

Because the Exchange proposes to eliminate verbal bids or verbal offers for the Closing Auction, the Exchange proposes to delete the last clause of Rule 47(a) and subparagraph (b) to Rule 47.<sup>21</sup> As proposed, Rule 47 would revert to the rule text in effect prior to the RTO Approval Order and would provide that “Floor Officials shall have power to supervise and regulate active openings and unusual situations that may arise in connection with the making of bids, offers or transactions on the Floor.” With this proposed change, RTOs would no longer have a role under Exchange rules. Therefore, the Exchange proposes to delete Rule 46B.

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

## 2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,<sup>22</sup> in general, and furthers the objectives of Sections 6(b)(5) of the Act,<sup>23</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

The Exchange believes that the proposed change to make permanent the parameters for DMM-facilitated electronic auctions that are currently in effect on a temporary basis as set forth in Commentaries .01(a) and (b) to Rule 7.35A and Commentary .01 to Rule 7.35B would remove impediments to and perfect the mechanism of a free and open market and a national market

<sup>17</sup> For Exchange-listed securities, Auction-Only Orders are defined in Rule 7.31 to mean a Limit or Market Order that is to be traded only in an auction pursuant to the Rule 7.35 Series. The Exchange accepts the following Auction-Only Orders for the Closing Auction: Limit-on-Close Order (“LOC Order”), Market-on-Close Order (“MOC Order”), Closing D Order, and Closing Imbalance Offset Orders. All four types of Auction-Only Orders are available to Floor brokers.

<sup>18</sup> The Exchange has a pending proposed rule change to amend Rule 7.35C(a). See (SR-NYSE-2020-89).

<sup>19</sup> See Securities Exchange Act Release No. 88765 (April 29, 2020), 85 FR 26771 (May 5, 2020) (SR-NYSE-2020-03) (“RTO Approval Order”).

<sup>20</sup> *Id.* at 26772.

<sup>21</sup> RTOs were approved when the Trading Floor was temporarily closed. *Id.* Because Commentary .03 to Rule 7.35B was implemented when DMMs returned to the Trading Floor, there has not been any Floor Broker Interest for Closing Auctions since RTOs were created and therefore RTOs have not had to perform the functions as described in Rule 46(b).

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

<sup>23</sup> 15 U.S.C. 78f(b)(5).

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

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

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

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

Exchange rules already provide for a correlation between the parameters for when a DMM may facilitate an Auction electronically and the Applicable Price Range for determining whether to disseminate a pre-opening indication. The Exchange believes that the proposed Applicable Price Range should be aligned with the Exchange's proposed parameters for when a DMM

may facilitate an Auction electronically. Specifically, with this proposed change, if there is a significant enough price movement to require a DMM to effect a Core Open or Trading Halt Auction manually, the DMM would be required to publish a pre-opening indication for such Core Open or Trading Halt Auction. The Exchange notes that if a DMM chooses to facilitate a Core Open Auction or Trading Halt Auction manually (*i.e.*, if there is less than a 10% price movement), a DMM could still choose to publish a pre-opening indication in connection with such Auction, even if the Applicable Price Range has not been triggered.

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

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

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

The Exchange has observed that even in the absence of Floor Broker Interest, Floor broker participation in the Closing Auction has returned, and indeed increased, as compared to the level of Floor broker participation in the Closing Auction for February 2020. Moreover, even when Floor Broker Interest was available to participate in Closing Auctions, such interest represented only 0.1% of total Floor broker orders that participated in Closing Auctions. Accordingly, the Exchange does not

believe that the proposed change would materially alter Floor brokers' ability to meaningfully participate in the Closing Auction. Moreover, in the absence of Floor Broker Interest, the Exchange was able to move the time for DMM-facilitated electronic Closing Auctions from 4:02 p.m. to shortly after 4:00. By making this change permanent, DMM-facilitated electronic Closing Auctions would continue to occur shortly after 4:00.

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

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

In accordance with Section 6(b)(8) of the Act,<sup>24</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issues. Instead, the proposed rule changes are designed to make permanent changes that have been implemented on a temporary basis relating to the functions of Auctions on the Exchange and that have contributed to the fair and orderly Auction process during the period that they have been in effect. The proposed rule change does not have any effect on intermarket competition because these proposed changes relate to Auctions in Exchange-listed securities for which the Exchange is the primary listing exchange.

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

No written comments were solicited or received with respect to the proposed rule change.

#### **III. 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 within 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

<sup>24</sup> 15 U.S.C. 78f(b)(8).

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-2020-95 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2020-95. This file number should be included on the subject line if 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-2020-95 and should be submitted on or before December 22, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

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

[FR Doc. 2020-26399 Filed 11-30-20; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90509; File No. SR-CboeEDGX-2020-056]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend Its Early Trading Session

November 24, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 16, 2020, Cboe EDGX Exchange, Inc. (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, 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

Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") proposes to extend its Early Trading Session. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/options/regulation/rule\\_filings/edgx/](http://markets.cboe.com/us/options/regulation/rule_filings/edgx/)), at the Exchange's Office of the Secretary, 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 Exchange 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 these

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 aspects of such statements.

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

##### 1. Purpose

The Exchange proposes to extend its Early Trading Session hours. The Exchange currently offers four distinct trading sessions where the Exchange accepts orders for potential execution: (1) The "Early Trading Session," which begins at 7:00 a.m. Eastern Time ("ET") and continues until 8:00 a.m. ET,<sup>3</sup> (2) the "Pre-Opening Session," which begins at 8:00 a.m. ET and continues until 9:30 a.m. ET,<sup>4</sup> (3) "Regular Trading Hours," which begin at 9:30 a.m. ET and continue until 4:00 p.m. ET,<sup>5</sup> and (4) the "Post-Closing Trading Session," which begins at 4:00 p.m. ET and continues until 8:00 p.m. ET.<sup>6</sup> Users<sup>7</sup> may designate when their orders are eligible for execution by selecting their desired Time-in-Force instruction.<sup>8</sup> The proposed rule change amends Rule 1.5(ii), which defines the Early Trading Session, to allowing trading to begin at 4:00 a.m. ET. In addition to this, the proposed rule change amends the time when orders may start to be entered into the System prior to the Early Trading Session in Rule 11.1(a)(1), from 6:00 a.m. ET to 3:30 a.m. ET. The proposed rule change also updates Rule 11.1(a)(1) and Rule 14.1(c)(2) to reflect the proposed Early Trading Session and order acceptance times, where applicable. Orders entered for participation in the Early Trading Session will continue to be handled in the same manner as they are today. The proposed rule change merely permits the Exchange to begin order acceptance and commence trading at earlier times, thereby providing additional time for market participants to source and access liquidity on the Exchange outside of Regular Trading Hours. The Exchange

<sup>3</sup> "Early Trading Session" means the time between 7:00 a.m. and 8:00 a.m. ET. See Rule 1.5(ii).

<sup>4</sup> "Pre-Opening Session" means the time between 8:00 a.m. and 9:30 a.m. ET. See Rule 1.5(s).

<sup>5</sup> "Regular Trading Hours" means the time between 9:30 a.m. and 4:00 p.m. ET. See Rule 1.5(y).

<sup>6</sup> "Post-Closing Trading Session" means the time between 4:00 p.m. and 8:00 p.m. ET. See Rule 1.5(r).

<sup>7</sup> "User" means any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3. See Rule 1.5(ee).

<sup>8</sup> See Rule 11.8.

<sup>25</sup> 17 CFR 200.30-3(a)(12).

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

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