

less than 13%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition. The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to provide a degree of certainty and ease the financial burdens of the current unsettled market environment, and permit affected member organizations to continue to conduct market-making operations on the Exchange and avoid unintended costs of doing business on the Exchange while the Trading Floor is inoperative, which could make the Exchange a less competitive venue on which to trade as compared to other options exchanges.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)²² of the Act and subparagraph (f)(2) of Rule 19b-4²³ 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)²⁴ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2020-39 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-2020-39. 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-2020-39 and should be submitted on or before June 10, 2020.

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

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-10817 Filed 5-19-20; 8:45 am]

BILLING CODE 8011-01-P

²⁵ 17 CFR 200.30-3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88869; File No. SR-NYSEAMER-2020-35]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Its Price List To Offer New Credits

May 14, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on May 1, 2020, NYSE American LLC ("NYSE American" 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.

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 offer new credits for liquidity-providing displayed orders, MPL orders, and orders setting a new NYSE American BBO. The Exchange proposes to implement the rule change on May 1, 2020. The proposed 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

²² 15 U.S.C. 78s(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(2).

²⁴ 15 U.S.C. 78s(b)(2)(B).

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 offer a new tier of credits that would apply to displayed orders, Mid-Point Liquidity ("MPL") orders,⁴ and orders setting a new NYSE American best bid or offer ("BBO"), if such orders have an Adding ADV⁵ of at least 2,500,000 shares.

The proposed change responds to the current competitive environment where order flow providers have a choice of where to direct orders by offering further incentives for Equity Trading Permit ("ETP") Holders⁶ to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the rule change on May 1, 2020.

Competitive Environment

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."⁷

As the Commission itself recognized, the market for trading services in NMS stocks has become "more fragmented and competitive."⁸ Indeed, equity trading is currently dispersed across 13 exchanges,⁹ 31 alternative trading systems,¹⁰ and numerous broker-dealer

internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange has more than 19% of the market share of executed volume of equity trades (whether excluding or including auction volume).¹¹ Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's market share of trading in Tapes A, B, and C securities combined is less than 1%.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain products, in response to fee changes. With respect to non-marketable order flow that would provide liquidity on an exchange, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain the Exchange's transaction fees that relate to orders that would provide liquidity on an exchange.

In response to this competitive environment, the Exchange proposes to introduce incentives for its ETP Holders who submit orders that provide liquidity on the Exchange. The proposed fee change is designed to attract additional order flow to the Exchange and to encourage quoting and trading on the Exchange.

Proposed Rule Change

For transactions in securities priced at or above \$1.00, other than transactions by Electronic Designated Market Makers in assigned securities, the Exchange proposes to amend its Price List to offer the following new credits that would apply to ETP Holders with an Adding ADV of at least 2,500,000 shares during the billing month:

- For displayed orders and MPL orders that add liquidity, the Exchange proposes a \$0.0026 credit per displayed and MPL share.
- For orders that set a new BBO on NYSE American, the Exchange proposes a \$0.0027 credit per share. Orders that set a new BBO on the Exchange but do not meet the Adding ADV requirement of at least 2,500,000 shares will continue to receive a credit of \$0.0026 per share.

The credits applicable to displayed orders and MPL orders for ETP Holders with Adding ADV of at least 750,000 shares (\$0.0025 per share), and

otherwise (\$0.0024 per share), will remain unchanged.

This proposed change is intended to incentivize ETP Holders to increase the liquidity-providing orders they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. The Exchange believes that by correlating the level of credits to the level of executed providing volume on the Exchange, the Exchange's fee structure would encourage ETP Holders to submit more displayed, liquidity-providing orders to the Exchange that are likely to be executed, thereby increasing the potential for incoming marketable orders submitted to the Exchange to receive an execution.

As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders that add displayed liquidity to the Exchange. The Exchange believes that the proposed tiering of credits applicable to displayed orders, MPL orders, and orders setting a new NYSE American BBO, for ETP Holders that meet the Adding ADV requirement of at least 2,500,000 shares, would serve as an additional incentive for ETP Holders to send liquidity to and improve quoting on the Exchange in order to qualify for such credits.

The Exchange also proposes non-substantive changes to add headers to the table in Section I.A. of the Price List, which sets forth Transaction Fees and Credits, to more clearly describe the credits that would be applicable to (1) displayed and MPL orders adding liquidity, and (2) orders setting a new NYSE American BBO.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹³ 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.

⁴ See Rule 7.31E(d)(3) (description of MPL order).

⁵ As set forth in the Price List, Adding ADV means an ETP Holder's average daily volume of shares executed on the Exchange that provided liquidity.

⁶ See Rules 1.1E(m) (definition of ETP) & (n) (definition of ETP Holder).

⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (S7-10-04) (Final Rule) ("Regulation NMS").

⁸ See Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7-05-18) (Transaction Fee Pilot for NMS Stocks Final Rule).

⁹ See Cboe Global Markets, U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/. See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

¹⁰ See FINRA ATS Transparency Data, available at <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is available at <https://www.sec.gov/foia/docs/atstlist.htm>.

¹¹ See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(4) & (5).

The Proposed Change Is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”¹⁴

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide liquidity on an Exchange, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this current competitive environment, the Exchange believes that this proposal represents a reasonable attempt to attract additional order flow to, and increase quoting on, the Exchange. As noted above, the Exchange’s market share of trading in Tapes A, B, and C securities combined is under 1%.

Specifically, the Exchange believes that the proposed credits for displayed orders, MPL orders, and orders setting a new NYSE American BBO, with an Adding ADV of 2,500,000 shares or more, would provide incentives for ETP Holders to route additional liquidity-providing orders to the Exchange. As noted above, the Exchange operates in a highly competitive environment, particularly with respect to attracting order flow that provides liquidity on an exchange. The Exchange believes that it is reasonable to provide a higher credit for orders that provide additional liquidity and to provide an incremental credit for orders that meet the Adding ADV requirements as described above.

The Exchange believes that 6 ETP Holders currently qualify for the proposed new credits, and more ETP Holders could qualify for the proposed credit for setting a new BBO if they so choose. Without having a view of ETP Holders’ activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder directing orders to the Exchange in order to qualify for the new credits. However, the Exchange believes that the proposal represents a reasonable effort to provide an additional incentive for ETP Holders to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credit, thereby contributing to depth and market quality on the Exchange.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges¹⁵ and are reasonable, equitable, and non-discriminatory because that are available to all ETP Holders on an equal basis and provide additional credits that are reasonably related to the value to an exchange’s market quality and associated higher levels of market activity. The Exchange further notes that the proposed credits remain in line with credits currently offered on other markets to attract liquidity.¹⁶

Given the competitive environment in which the Exchange currently operates, the proposed rule change constitutes a reasonable attempt to increase liquidity on the Exchange and improve the Exchange’s market share relative to its competitors.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposed change equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace. The Exchange believes that the new credits for displayed orders, MPL orders, and orders that set a new NYSE American BBO, if an ETP Holder’s Adding ADV is at least 2,500,000 shares, are equitable

because the proposed credits are not unreasonably high in comparison to credits paid by other exchanges for orders that provide liquidity.¹⁷ The Exchange also believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality and price discovery.

As previously noted, the Exchange believes that 6 ETP Holders currently qualify for the proposed new credits, and all ETP Holders could qualify for the proposed credit for setting a new BBO if they so choose. Without having a view of ETP Holders’ activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder directing orders to the Exchange in order to qualify for the new credits. However, the Exchange believes that the proposed credits are reasonable, as they would provide an additional incentive for ETP Holders to direct order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the higher credits, thereby contributing to depth and market quality on the Exchange.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. Many ETP Holders would be eligible to qualify for the proposed credits by directing order flow to the Exchange that meets the Adding ADV requirement, and ETP Holders that currently qualify for credits associated with adding liquidity on the Exchange will continue to receive such credits when they provide liquidity to the Exchange. The Exchange believes that these opportunities for ETP Holders to receive additional credits when they provide liquidity will further attract order flow and liquidity to the Exchange for the benefit of investors generally. As to those market participants that do not presently qualify for the adding liquidity credits, the proposal will not adversely impact their existing pricing or their ability to qualify for these or other credits provided by the Exchange.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange’s pricing if they believe that alternatives offer them better value.

¹⁴ See Regulation NMS, 70 FR at 37499.

¹⁵ See, e.g., Cboe BZX U.S. Equities Exchange (“BZX”) Fee Schedule, Footnote 1, Add Volume Tiers, available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/ (tiers providing enhanced rebates between \$0.0028 and \$0.0032 per share for displayed orders where BZX members meet certain volume thresholds).

¹⁶ See, e.g., BZX Fee Schedule, Fee Codes and Associated Fees, available at https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/; Nasdaq Price List, Rebate to Add Displayed Designated Retail Liquidity, available at <http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2>.

¹⁷ See note 15, *supra*.

The Exchange believes it is not unfairly discriminatory to provide higher credits for ETP Holders' displayed orders, MPL orders, and orders setting a new BBO on NYSE American, who meet the Adding ADV requirement as described above, because the proposed credits would be provided on an equal basis to all similarly situated ETP Holders that add liquidity to the Exchange, who would all be eligible for the same credits if they meet such requirement on an equal basis.

The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. The Exchange believes the proposed credits would incentivize ETP Holders to send more orders to the Exchange and to increase quoting on the Exchange in order to qualify for the proposed credits, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders.

Finally, the submission of orders to the Exchange is optional for ETP Holders in that they can choose whether to submit orders to the Exchange and, if they do, the extent of activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing 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,¹⁸ 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. Instead, as discussed above, the Exchange believes that the proposed change would encourage the submission of additional liquidity and order flow to a public exchange, thereby promoting market depth, price discovery, and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes "more efficient pricing of individual stocks for all types of orders, large and small."¹⁹

Intramarket Competition. The proposed change is designed to attract additional order flow to the Exchange. The Exchange believes that the proposed change would continue to incentivize market participants to direct providing order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages ETP Holders to send orders, thereby contributing to robust levels of liquidity for the benefit of all market participants. The proposed credits would be available to all similarly-situated market participants, and thus, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchanges and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of trading in Tapes A, B, and C securities combined is less than 1%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)²⁰ of the Act and subparagraph (f)(2) of Rule 19b-4²¹

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)²² of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-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-NYSEAMER-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

¹⁸ 15 U.S.C. 78f(b)(8).

¹⁹ Regulation NMS, 70 FR at 37498-99.

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f)(2).

²² 15 U.S.C. 78s(b)(2)(B).

business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEAMER-2020-35 and should be submitted on or before June 10, 2020.

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

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2020-10813 Filed 5-19-20; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

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

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

May 14, 2020.

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

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

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

provide a temporary exception through June 30, 2020 from the application of certain of the shareholder approval requirements set forth in Sections 312.03 and 303A.08 of the Manual. The proposed rule change is available on the Exchange’s website at *www.nyse.com*, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

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

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

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

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

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

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

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

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

Continued

²³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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