For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–15660 Filed 7–21–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95312; File No. SR–NYSE–2022–14]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Modify Certain Pricing Limitations for Securities Listed on the Exchange Pursuant to a Primary Direct Floor Listing

July 18, 2022.

I. Introduction

On April 7, 2022, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify certain pricing limitations for securities listed on the Exchange pursuant to a direct listing with a primary offering in which the company will sell shares itself in the opening auction on the first day of trading on the Exchange. The proposed rule change was published for comment in the **Federal Register** on April 19, 2022.[3] On May 26, 2022, pursuant to Section 19(b)(2) of the Exchange Act,[4] the Commission designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received one comment on the proposal.[6] This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act[7] to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposal

Section 102.01B, Footnote (E) of the of the Listed Company Manual (the ''Manual'') provides that, in certain cases, a company that has not previously had its common equity securities registered under the Exchange Act may wish to list its common equity securities on the Exchange at the time of effectiveness of a registration statement[8] pursuant to which the company will sell shares itself on the first day of trading on the Exchange in addition to, or instead of, facilitating sales by selling shareholders (any such listing in which either (i) only the company itself is selling shares in the opening auction on the first day of trading or (ii) the company is selling shares and selling shareholders may also sell shares in such opening auction, is referred to as a ''Primary Direct Floor Listing'').[9] In the Exchange's prior approved proposal to initially allow for a Primary Direct Floor Listing, the Exchange also adopted Rule 7.31(c)(1)(D) defining an Issuer Direct Offering Order (''IDO Order'')[10] for use by a company that wishes to sell its shares through a Primary Direct Floor Listing. In addition, the Exchange modified Rule 7.35A to describe how the IDO Order would participate in a Direct Listing Auction, establish additional requirements for a Designated Market Maker (''DMM'') when conducting a Direct Listing Auction for a Primary Direct Floor Listing, and specify how the Indication Reference Price would be determined for a security to be opened in a Direct Listing.[11] The Exchange states that currently, under Rule 7.35A(g)(2), the DMM will not conduct a Direct Listing Auction for a Primary Direct Floor Listing if (i) the Auction Price[12] would be outside of the price range specified by the company in its effective registration statement (the ''Price Range Limitation'')[13] and (ii) there is insufficient interest to satisfy both the IDO Order and all better-priced sell orders in full.[14]

The Exchange has proposed to modify the Price Range Limitation to provide that a Direct Listing Auction for a Primary Direct Floor Listing may be conducted if the Auction Price is outside of the price range established by the company in its effective registration statement (the Issuer Price Range) but is either (i) at or above the price that is 20% below the lowest price or at or below the price that is 20% above the highest price of the Issuer Price Range[15] or (ii) above the price that is 20% above the highest price of the Issuer Price Range.[16] The Exchange states that, under its proposal, a Direct Listing Auction for a Primary Direct Floor Listing could proceed in these circumstances provided that the issuer has certified to the Exchange and publicly disclosed that: (i) it does not expect that the Auction Price would materially change the issuer's previous disclosure in its effective registration

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94708 (April 13, 2022), 87 FR 23300 (April 19, 2022) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 94991 (May 26, 2022), 87 FR 33518 (June 2, 2022). The Commission designated July 18, 2022, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

[6] *See* Letter from Andrew Robison, dated April 22, 2022, available at *https://www.sec.gov/comments/sr-nyse-2022-14/srnyse202214-20125830-286149.htm.* The comments expressed by the commenter are not relevant to the proposed rule change.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] The reference to a registration statement refers to a registration statement effective under the Securities Act of 1933 (''Securities Act'').

[9] *See* Section 102.01B, Footnote (E) of the Manual. *See also* Securities Exchange Act Release No. 90768 (December 22, 2020), 85 FR 85807 (December 29, 2020) (SR–NYSE–2019–67) (Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendment No. 2, to Amend Chapter One of the Listed Company Manual to Modify the Provisions Relating to Direct Listings) (''Approval Order'').

[10] An IDO Order is a Limit Order to sell that is to be traded only in a Direct Listing Auction. *See* Rule 7.31(c)(1)(D). *See also* Rule 7.31(a)(2) for the definition of ''Limit Order,'' Rule 7.35(a)(1) for the definition of ''Auction,'' and Rule 7.35(a)(1)(E) for the definition of ''Direct Listing Auction.'' The IDO Order has the following requirements: (i) only one IDO Order may be entered on behalf of the issuer and only by one member organization; (ii) the limit price of the IDO Order must be equal to the lowest price of the price range established by the issuer in its effective registration statement; (iii) the IDO Order must be for the quantity of shares offered by the issuer, as disclosed in the prospectus in the effective registration statement; (iv) an IDO Order may not be cancelled or modified; and (v) an IDO Order must be executed in full in the Direct Listing Auction. *See* Rule 7.31(c)(1)(D)(i)–(v).

[11] *See* Notice, *supra* note 3, 87 FR at 23300. *See* Rule 7.35A(d)(2)(A)(v) for a description about how the ''Indication Reference Price'' is determined for a security that is a Primary Direct Floor Listing.

[12] ''Auction Price'' means the price at which an Auction is conducted. *See* Rule 7.35(a)(6).

[13] The Exchange states that references in this rule filing to the price range established by the issuer in its effective registration statement are to the price range disclosed in the prospectus in such registration statement. *See* Notice, *supra* note 3, 87 FR at 23300 n.6. Currently, the Exchange defines the price range established by the issuer in its effective registration statement as the ''Primary Direct Floor Listing Auction Price Range.'' *See* Rule 7.31(c)(1)(D)(ii). As discussed further below, the Exchange proposes to redefine the price range established by the issuer in its effective registration statement as the ''Issuer Price Range.'' *See* proposed Rule 7.31(c)(1)(D)(ii). Throughout this order, we also refer to this ''Issuer Price Range'' as the ''disclosed price range.''

[14] *See* Notice, *supra* note 3, 87 FR at 23300.

[15] As discussed further below, the Exchange proposes to redefine the ''Primary Direct Floor Listing Auction Price Range'' as the price range that includes 20% below the lowest price and 20% above the highest price of the Issuer Price Range. *See* proposed Rule 7.31(c)(1)(D)(ii).

[16] *See* Notice, *supra* note 3, 87 FR at 23300. *See also* proposed Rule 7.35A(g)(2)(B).

statement; (ii) the price range in the preliminary prospectus included in the effective registration statement is a bona fide price range in accordance with Item 501(b)(3) of Regulation S–K; and (iii) such registration statement contains a sensitivity analysis explaining how the issuer's plans would change if the actual proceeds from the offering differ from the amount assumed in the price range established by the issuer in its effective registration statement.[17] The Exchange proposes that, for purposes of determining the Primary Direct Floor Listing Auction Price Range, the 20% threshold will be calculated based on the maximum offering price set forth in the registration fee table, consistent with the Instruction to paragraph (a) of Securities Act Rule 430A.[18]

The Exchange states its belief that, while many companies are interested in alternatives to the traditional initial public offering (''IPO''), companies and their advisors may be reluctant to use the Primary Direct Floor Listing under current Exchange rules because of concerns about the Price Range Limitation.[19] The Exchange states it believes that ''[t]he Price Range Limitation—which is imposed on a Primary Direct Floor Listing but not on an IPO—increases the probability of a failed offering because it contemplates there also being too much investor interest. In other words, if investor interest is greater than the company and its advisors anticipated, an offering would need to be delayed or cancelled.'' [20]

The Exchange states that, under current Exchange Rules, the DMM would not conduct a Direct Listing Auction for a security subject to a Primary Direct Floor Listing if the Auction Price determined is above the highest price of the price range established by the issuer in its effective registration statement.[21] The Exchange further states that, in this case, the offering would be cancelled or postponed until the company amends its effective registration statement, and at a minimum, such a delay could expose the company to risks associated with changing investor sentiment in the event of an adverse market event.[22] The Exchange states its belief that, as a result, companies may be reluctant to use this alternative method of going public despite its expected potential benefits because of the restrictions of the Price Range Limitation.[23]

The Exchange has proposed to modify the Price Range Limitation such that a Direct Listing Auction for a Primary Direct Floor Listing could proceed even if the Auction Price is outside of the Issuer Price Range, provided all other necessary conditions are met, if the Auction Price would not be more than 20% below the lowest price or more than 20% above the highest price of the Issuer Price Range and the company has, in its effective registration statement, specified the quantity of shares registered, as permitted by Securities Act Rule 457.[24] The Exchange also has proposed that a Direct Listing Auction could proceed if the Auction Price is a price that is greater than 20% above the highest price of the Issuer Price Range, provided that all other necessary conditions are satisfied, and the company has, in its effective registration statement, specified the quantity of shares registered, as permitted by Securities Act Rule 457.[25]

The Exchange proposes that when the Auction Price is either (i) outside of the Issuer Price Range but not more than 20% above or below such price range, or (ii) greater than 20% above the highest price of the Issuer Price Range, the Direct Listing Auction would not proceed unless the company has publicly disclosed and certified to the Exchange that (i) the company does not expect that such offering price would materially change the company's previous disclosure in its effective registration statement; (ii) the price range in the preliminary prospectus included in the effective registration statement is a bona fide price range in accordance with Item 501(b)(3) of Regulation S–K; and (iii) the company's registration statement contains a sensitivity analysis explaining how the company's plans would change if the actual proceeds from the offering differ from the amount assumed in the price range established by the issuer in its effective registration statement.[26] In such cases, the Exchange also proposes to provide the issuer with the opportunity to provide any necessary additional disclosures that are dependent on the price of the offering so that any such disclosures would be available to investors prior to the completion of the offering.[27] The Exchange proposes that a Direct Listing Auction for a Primary Direct Floor Listing would not take place until the issuer confirms to the Exchange that no additional disclosures are required under federal securities laws based on the Auction Price determined by the DMM.[28]

The Exchange states its belief that the additional requirements to permit a Direct Listing Auction to take place at an Auction Price that is outside of the Issuer Price Range (whether it is at or within the Primary Direct Floor Listing Auction Price Range or above the highest price of such price range), as proposed, would provide sufficient disclosures to allow investors to evaluate whether to participate in the Direct Listing Auction for a Primary Direct Floor Listing, including the opportunity to see how changes in share price may impact the company's disclosures.[29]

The Exchange states that it believes its proposal with respect to the Price Range Limitation for a Primary Direct Floor Listing is consistent with Securities Act Rule 430A and staff guidance, which, according to the Exchange, generally allow a company to price a public offering 20% outside of the disclosed price range without regard to the materiality of the changes to the disclosure contained in the company's registration statement.[30] According to the Exchange, the Exchange believes that such guidance would also allow for deviation of greater than 20% above the highest price of the price range in a company's registration statement, provided that such change would not materially change the previous disclosure.[31] The Exchange states that, accordingly, the Exchange believes that a company listing in connection with a Primary Direct Floor Listing could specify the quantity of shares registered, as permitted by Securities Act Rule 457, and, if an auction prices outside of the disclosed price range, use a Rule 424(b)

[17] *See* Notice, *supra* note 3, 87 FR at 23300. *See also* proposed Rule 7.35A(g)(2)(B)(i).

[18] *See* proposed Rule 7.31(c)(1)(D)(ii).

[19] *See* Notice, *supra* note 3, 87 FR at 23300.

[20] *Id.* at 23301.

[21] *See id.*

[22] *See* Notice, *supra* note 3, 87 FR at 23300.

[23] *See id.*

[24] *See id.*

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] *See id. See* proposed Rule 7.35A(g)(2)(B)(ii).

[29] *See* Notice, *supra* note 3, 87 FR at 23300.

[30] *See id.* The Exchange states that Securities Act Rule 457 permits issuers to register securities either by specifying the quantity of shares registered, pursuant to Rule 457(a), or the proposed maximum aggregate offering amount. The Exchange proposes to require that companies selling shares through a Primary Direct Floor Listing will register securities by specifying the quantity of shares registered and not a maximum offering amount. *See id.* at 23301 n.10. The Exchange also states that the Exchange believes that the proposed modification of the Price Range Limitation would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because, according to the Exchange, this approach is similar to the pricing of an IPO where an issuer is permitted to price outside of the disclosed price range in accordance with the SEC Staff's guidance. *See id.* at 23304.

[31] *See id.* at 23301–02.

prospectus, rather than a post-effective amendment, when either (i) the 20% threshold noted in Rule 430A is not exceeded, regardless of the materiality or non-materiality of resulting changes to the registration statement disclosure that would be contained in the Rule 424(b) prospectus, or (ii) there is a deviation above the price range beyond the 20% threshold noted in Rule 430A if such deviation would not materially change the previous disclosures, in each case assuming the number of shares issued is not increased from the number of shares disclosed in the prospectus.[32]

The Exchange states that given that, as proposed, there may be a Primary Direct Floor Listing that could price outside of the price range of the company's effective registration statement and that there may be no upper limit above which the Direct Listing Auction could not proceed, the Exchange proposes ''to support price discovery transparency by providing readily available, real time pricing information to investors.'' [33] Specifically, the Exchange represents that the DMM's pre-opening indications for a security to be opened in a Direct Listing Auction for a Primary Direct Floor Listing would continue to be published via the securities information processor (''SIP'') and proprietary data feeds.[34] The Exchange states that it would also make the Indication Reference Price available, free of charge, on a public website (such as *www.nyse.com*) on the day such auction is anticipated to take place.[35] The Exchange also proposes to require member organizations to provide to a customer, before that customer places an order to participate in a Direct Listing Auction for a Primary Direct Floor Listing, a notice describing the mechanics of pricing a security subject to a Direct Listing Auction for a Primary Direct Floor Listing, including information regarding the availability of pre-opening indications via the SIP and proprietary data feeds and the location of the public website where the Exchange would disseminate information relating to the Indication Reference Price.[36]

The Exchange further proposes to distribute, at least one business day prior to the commencement of trading of a security listing in connection with a Primary Direct Floor Listing, a regulatory bulletin that describes any special characteristics of the offering and the Exchange rules that apply to the pricing of a Primary Direct Floor Listing.[37] The Exchange states that the regulatory bulletin would also include information about the notice that member organizations would be required to provide customers, as proposed, and remind member organizations of their obligations pursuant to the Exchange rules that (1) require member organizations to use reasonable diligence in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer (Rule 2090); and (2) require member organizations in recommending transactions for a security subject to a Direct Listing Auction for a Primary Direct Floor Listing to have a reasonable basis to believe that: (i) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member organizations, and (ii) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in such security (Rule 2111).[38]

The Exchange states that these member organization requirements are intended to remind members of their obligations to ''know their customers'' and would also serve to increase transparency regarding the pricing mechanisms applicable to a Primary Direct Floor Listing and help provide investors with sufficient price discovery information.[39] The Exchange represents that, for each Primary Direct Floor Listing, the Exchange's regulatory bulletin would also inform market participants that the Auction Price could be up to 20% below the lowest price of the disclosed price range and would specify that price.[40] The Exchange also represents that this regulatory bulletin would indicate whether there is a price range outside of which the Direct Listing Auction for the Primary Direct Floor Listing could not proceed, based on the company's certification.[41]

The Exchange also proposes to amend certain aspects of the Manual. Specifically, Section 102.01B, Footnote (E) of the Manual currently provides that, with respect to a Primary Direct Floor Listing, the Exchange will deem a company to have met the applicable aggregate market value of publicly-held shares requirement [42] if the company will sell at least $100,000,000 in market value of shares in the Exchange's opening auction on the first day of trading on the Exchange. The Manual further provides that, where a company is conducting a Primary Direct Floor Listing and will sell shares in the opening auction with a market value of less than $100,000,000, the Exchange will determine that such company has met its market-value of publicly-held shares requirement if the aggregate market value of the shares the company will sell in the opening auction on the first day of trading and the shares that are publicly held immediately prior to the listing is at least $250,000,000 with such market value calculated using a price per share equal to the lowest price of the price range established by the issuer in its registration statement.[43]

The Exchange states that, to effect the changes to the Price Range Limitation and facilitate the possibility of a Direct Listing Auction for a Primary Direct Floor Listing pricing up to 20% below the disclosed price range, the Exchange proposes to modify Section 102.01B, Footnote (E) of the Manual to provide that the Exchange would calculate the market value of such company's shares using a price per share equal to the lowest price of the disclosed price range, minus an amount equal to 20% of the highest price included in such price range, which would be referred to as the ''Primary Direct Floor Listing Minimum Price.'' [44] The Exchange also proposes to amend Section 102.01B, Footnote (E) to include the requirement that a company listing its securities on the Exchange pursuant to a Primary Direct Floor Listing must have specified the quantity of shares registered, as permitted by Securities Act Rule 457, in its effective registration statement.[45]

The Exchange states that, to implement the changes to the Price Range Limitation described above, the

[32] *See id.* at 23302.

[33] *See id.*

[34] *See id. See also* proposed Rule 7.35A(d)(2)(A)(v).

[35] *See* Notice, *supra* note 3, 87 FR at 23302. The Commission observes that the Indication Reference Price for a security that is a Primary Direct Floor Listing is the lowest price of the Primary Direct Floor Listing Auction Price Range, which, as proposed, would be the price that is 20% below the lowest price of the disclosed price range. This price would be known before the opening process begins and would not change once established.

[36] *See id. See also* proposed Rule 7.35A, Commentary .20(3).

[37] *See* Notice, *supra* note 3, 87 FR at 23302. *See also* proposed Rule 7.35A, Commentary .20.

[38] *See* Notice, *supra* note 3, 87 FR at 23302. *See also* proposed Rule 7.35A, Commentary .20(1) and (2).

[39] *See* Notice, *supra* note 3, 87 FR at 23302.

[40] *See id.*

[41] *See id.*

[42] *See* Section 102.01B of the Manual.

[43] *See* Section 102.01B, Footnote (E) of the Manual.

[44] *See* Notice, *supra* note 3, 87 FR at 23302.

[45] *See id.*

Exchange is proposing the following changes to Rules 7.31 and 7.35A.[46]

The Exchange proposes to modify Rule 7.31(c)(1)(D)(ii) to provide that the limit price of an IDO Order would be equal to the lowest price of the Primary Direct Floor Listing Auction Price Range and to redefine the ''Primary Direct Floor Listing Auction Price Range'' as 20% below the lowest price and 20% above the highest price of the price range established by the issuer in its effective registration statement.[47] The Exchange also proposes to define ''Issuer Price Range'' as the price range established by the issuer in its effective registration statement.[48] The Exchange states that Rule 7.31(c)(1)(D)(ii), as modified, would facilitate the proposed changes to the Price Range Limitation by providing that the limit price of an IDO Order would be equal to the price that is 20% below the lowest price of the Issuer Price Range.[49]

Currently, Rule 7.35A(d)(2)(A)(v) provides that, for a security that is a Primary Direct Floor Listing, the Indication Reference Price will be the lowest price of the Primary Direct Floor Listing Auction Price Range.[50] The Exchange proposes to add the requirement that the Exchange disseminate the Indication Reference Price on a public website to Rule 7.35A(d)(2)(A)(v).[51]

Currently, Rule 7.35A(g)(2) specifies the circumstances under which a DMM may not conduct a Direct Listing Auction for a Primary Direct Floor Listing.[52] The Exchange proposes to amend Rule 7.35A(g)(2) such that the rule would specify requirements for a Direct Listing Auction for a Primary Direct Floor Listing to proceed, rather than specifying circumstances under which a DMM would not conduct a Direct Listing Auction for a Primary Direct Floor Listing.[53] The Exchange also proposes to modify Rule 7.35A(g)(2)(A) to specify that the Auction Price for a Direct Listing Auction for a Primary Direct Floor Listing may not be lower than the lowest price of the Primary Direct Floor Listing Auction Price Range.[54] The Exchange states that, based on the proposed revision to the definition of Primary Direct Floor Listing Auction Price Range in Rule 7.31(c)(1)(D)(ii): (i) the Indication Reference Price for a Primary Direct Floor Listing would be the price that is 20% below the lowest price of the Issuer Price Range; and (ii) Rule 7.35A(g)(2)(A) would provide that the Auction Price for a Direct Listing Auction for a Primary Direct Listing would not be more than 20% below the lowest price of the Issuer Price Range.[55]

The Exchange proposes to amend Rule 7.35A(g)(2)(B) to provide that, when the Auction Price is either (i) at or within the Primary Direct Floor Listing Price Range but outside of the Issuer Price Range, or (ii) above the highest price of the Primary Direct Floor Listing Auction Price Range, the Direct Listing Auction could proceed if the issuer has previously certified to the Exchange and publicly disclosed that: (a) the issuer does not expect that the Auction Price would materially change its previous disclosure in its effective registration statement (proposed Rule 7.35A(g)(2)(B)(i)(a)); (b) the price range in the preliminary prospectus included in the effective registration statement is a bona fide price range in accordance with Item 501(b)(3) of Regulation S–K (proposed Rule 7.35A(g)(2)(B)(i)(b)); and (c) the registration statement contains a sensitivity analysis explaining how the issuer's plans would change if the actual proceeds from the offering differ from the amount assumed in the price range established by the issuer in its effective registration statement (proposed Rule 7.35A(g)(2)(B)(i)(c)).[56]

The Exchange states that proposed Rule 7.35A(g)(2)(B)(ii) would further provide that, when the Auction Price determined by the DMM is at or within the Primary Direct Floor Listing Auction Price Range but outside of the Issuer Price Range or is above the highest price of the Primary Direct Floor Listing Auction Price Range, the issuer would be required to confirm to the Exchange that no additional disclosures are required under the federal securities laws based on such price.[57] According to the Exchange, this proposed change would permit issuers to comply with their disclosure obligations under federal securities laws and provide investors with access to the requisite disclosures before the offering would proceed.[58] The Exchange states that, upon receiving confirmation from the issuer that any such obligations have been met, the Exchange would relay that information to the DMM to proceed with the Direct Listing Auction.[59]

The Exchange states that proposed Rule 7.35A(g)(2)(C)(i) would reflect the requirement set forth in current Rule 7.35A(g)(2)(B) that the DMM may not conduct a Direct Listing Auction for a Primary Direct Floor Listing if there is insufficient buy interest to satisfy both the IDO Order and all better-priced sell orders in full.[60] The Exchange does not propose to change this requirement, other than adding clarifying text to specify that such orders would be satisfied at the Auction Price.[61]

The Exchange states that proposed Rule 7.35A(g)(2)(C)(ii) would provide that the DMM would not proceed with a Direct Listing Auction for a Primary Direct Floor Listing until it has been notified by the Exchange that the additional conditions set forth in new Commentary .20 to Rule 7.35A have been satisfied.[62] The Exchange also states that proposed Commentary .20 to Rule 7.35A would provide that the Direct Listing Auction for a Primary Direct Floor Listing for a security may not be conducted until the Exchange has notified the DMM that, at least one business day prior to the commencement of trading in such security, the Exchange has distributed a regulatory bulletin describing: (i) any special characteristics of the offering and the Exchange rules that apply to the pricing of the Primary Direct Floor Listing; (ii) the obligations of member organizations pursuant to Exchange Rules 2090 and 2111; and (iii) the requirement that a member organization provide its customers with a notice with information regarding the Direct Listing Auction for a Primary Direct Floor Listing.[63] The Exchange states that this proposed change would: (i) facilitate the requirements described above to provide member organizations with sufficient information so that they may in turn inform their customers; (ii) remind member organizations of their obligations to ''know their customers''; (iii) increase transparency around the pricing mechanisms of a Primary Direct Floor Listing; and (iv) help provide investors with sufficient price discovery information.[64]

[46] *See id.* at 23303.

[47] *See id.*

[48] *See id.*

[49] *See id.* The Exchange further proposes to specify in Rule 7.31(c)(D)(ii) that, for purposes of determining the Primary Direct Floor Listing Price Range, the 20% threshold would be calculated based on the maximum offering price set forth in the registration fee table, consistent with the Instruction to paragraph (a) of Securities Act Rule 430A. *See id.*

[50] *See id.*

[51] *See id.*

[52] *See id.*

[53] *See id.*

[54] *See id.*

[55] *See id.*

[56] *See id.*

[57] *See id.*

[58] *See id.*

[59] *See id.*

[60] *See id.* at 23303–04.

[61] *See id.* at 23304.

[62] *See id.*

[63] *See id. See also supra* notes 36–38 and accompanying text.

[64] *See* Notice, *supra* note 3, 87 FR at 23304.

Finally, the Exchange states that proposed Rule 7.35A(g)(2)(C)(iii) would provide that the DMM would not conduct a Direct Listing Auction for a Primary Direct Floor Listing if the Auction Price is outside of the Issuer Price Range and the issuer has not satisfied the conditions set forth in proposed Rules 7.35A(g)(2)(B)(i) and (ii).[65] The Exchange states that it proposes this rule to reinforce that a Direct Listing Auction for a Primary Direct Floor Listing could not proceed in these circumstances unless the issuer has made the requisite disclosures described in proposed Rule 7.35A(g)(2)(B).[66]

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSE–2022–14 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposal should be approved or disapproved.[67] Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved.

Pursuant to Section 19(b)(2)(B) of the Exchange Act, the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning the proposed rule change's consistency with the Exchange Act and, in particular, with Section 6(b)(5)[68] of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[69]

The Commission has consistently recognized the importance of national securities exchange listing standards. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.[70]

The Exchange is proposing to modify the rules concerning the opening transaction on the first day of trading for a Primary Direct Floor Listing so that the opening transaction is not constrained by the Price Range Limitation, which limits the price of the opening transaction to the price range disclosed in the issuer's effective registration statement. Instead, the proposal would allow the opening transaction to proceed, provided other requirements are satisfied, either (i) at or above the price that is 20% below the lowest price or at or below the price that is 20% above the highest price of the disclosed price range or (ii) above the price that is 20% above the highest price of the disclosed price range.

Specifically, under the proposal, to execute at a price outside of the disclosed price range, the issuer has to certify to the Exchange and publicly disclose that: (i) it does not expect that the Auction Price would materially change the issuer's previous disclosure in its effective registration statement; (ii) the price range in the preliminary prospectus included in the effective registration statement is a bona fide price range in accordance with Item 501(b)(3) of Regulation S–K; and (iii) such registration statement contains a sensitivity analysis explaining how the issuer's plans would change if the actual proceeds from the offering differ from the amount assumed in the disclosed price range.

In support of its proposal, the Exchange states that allowing an auction to be conducted when the Auction Price is not within the disclosed price range would, among other things, protect investors and the public interest because the proposed approach ''is similar to the pricing of an IPO, where the issuer is permitted to price outside of the price range disclosed in its effective registration statement.''[71] NYSE also states that various aspects of its proposal promote investor protection, including, among others, those that require that a company listing shares through a Primary Direct Floor Listing make applicable disclosures under the federal securities laws, support price discovery transparency by providing readily available, real time pricing information to investors, and provide member organizations with the necessary information to share with their customers regarding the Primary Direct Floor Listing.[72] NYSE also states its belief that allowing Direct Listing Auctions in connection with a Primary Direct Floor Listing to price up to 20% below the lowest price and at a price above the highest price of the disclosed price range would be consistent with Chair Gensler's recent call to treat ''like cases alike.''[73]

We have concerns about whether the Exchange has met its burden to demonstrate that its proposal to expand the conditions under which Primary Direct Floor Listings are permitted[74] is consistent with the protection of investors and the public interest, and other relevant provisions under Section 6(b)(5) of the Exchange Act and the rules and regulations thereunder. Under existing NYSE rules that permit Primary Direct Floor Listings, such offerings are required to price within the price range disclosed in the issuer's effective registration statement. When these rules were approved in 2020, the Commission considered that required feature and also stated that the related registration

[65] *See id.*

[66] *See id.*

[67] 15 U.S.C. 78s(b)(2)(B).

[68] 15 U.S.C. 78f(b)(5).

[69] *Id.*

[70] The Commission has stated in approving national securities exchange listing requirements that the development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to the financial markets and the investing public. In addition, once a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue to ensure that it continues to meet the exchange's standards for market depth and liquidity so that fair and orderly markets can be maintained. *See, e.g.,* Securities Exchange Act Release No. 91947 (May 19, 2021), 86 FR 28169, 28172 n.47 (May 25, 2021) (SR–NASDAQ–2020–057) (''Nasdaq 2021 Order''); Approval Order, *supra* note 9, 85 FR at 85811 n.55; Securities Exchange Act Release Nos. 82627 (February 2, 2018), 83 FR 5650, 5653 n.53 (February 8, 2018) (SR–NYSE–2017–30) (''NYSE 2018 Order''); 81856 (October 11, 2017), 82 FR 48296, 48298 (October 17, 2017) (SR–NYSE–2017–31); 81079 (July 5, 2017), 82 FR 32022, 32023 (July 11, 2017) (SR–NYSE–2017–11). The Commission has stated that adequate listing standards, by promoting fair and orderly markets, are consistent with Section 6(b)(5) of the Exchange Act, in that they are, among other things, designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest. *See, e.g.,* Nasdaq 2021 Order, 86 FR at 28172 n.47; Approval Order, *supra* note 9, 85 FR at 85811 n.55; NYSE 2018 Order, 83 FR at 5653 n.53; Securities Exchange Act Release Nos. 87648 (December 3, 2019), 84 FR 67308, 67314 n.42 (December 9, 2019) (SR–NASDAQ–2019–059); 88716 (April 21, 2020), 85 FR 23393, 23395 n.22 (April 27, 2020) (SR–NASDAQ–2020–001).

[71] *See* Notice, *supra* note 3, 87 FR at 23304.

[72] *See generally id.* at 23304–05.

[73] *See id.* at 23305.

[74] Under the NYSE rules for a Primary Direct Floor Listing approved by the Commission in December 2020, the DMM would not conduct a Direct Listing Auction for a Primary Direct Floor Listing if the Auction Price would be below the lowest price or above the highest price of the disclosed price range.

statements would include, among other disclosures, a bona fide price range.[75] The Exchange has indicated that it believes that some companies may be reluctant to use the existing rules for a Primary Direct Floor Listing because of concerns about the Price Range Limitation.[76] Permitting Primary Direct Floor Listings to price outside of the disclosed price range could increase the frequency of such offerings and may raise investor protection concerns.

While the Exchange has indicated that the proposal is intended to treat like cases alike with respect to pricing flexibility, it has not addressed certain differences between listings that would occur under this proposed rule change and firm commitment underwritten initial public offerings on the Exchange that may affect investor protection, including the lack of a named underwriter,[77] any challenges to bringing claims under Section 11 of the Securities Act due to the potential assertion of tracing defenses,[78] and how those differences could affect the consistency of the proposal with Section 6(b)(5) of the Exchange Act.[79] It is not clear from the proposal what consideration, if any, the Exchange has given to addressing these issues, or why it believes the proposal is consistent with investor protection, as required by Section 6(b)(5) of the Exchange Act, in light of the pricing flexibility proposed by the Exchange.

In a firm commitment underwritten initial public offering, issuers often adjust the price range disclosed in their registration statements prior to effectiveness in light of pricing feedback received from market analysts and potential investors. These revisions to the disclosed price range may provide valuable information to potential investors as to the issuer's valuation. If, under the proposal, the opening auction can proceed at any price above the disclosed price range, and up to 20% below the low end of the disclosed price range, it is not clear whether issuers pursuing Primary Direct Floor Listings would make similar revisions to the disclosed price range based on investor or market analyst sentiment, and whether the absence of any such corrective price signaling would detrimentally affect investors.

In the absence of a named underwriter in a direct listing where the opening price is executed outside of the disclosed price range, there may not be an adequate assurance that a party who may meet the definition of underwriter will review the information disclosed in the registration statement and take the steps necessary to claim a ''due diligence'' defense. To assert such a defense, a party must establish that, after reasonable investigation, the party had reasonable ground to believe and did believe, at the time the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.[80] Underwriters play a critical role in the securities offering process as gatekeepers to the public markets.[81]

The Exchange's proposed expansion of its rules permitting Primary Direct Floor Listings could potentially result in increased regulatory arbitrage, if and to the extent that issuers and intermediaries, including financial advisors, are not subject to equivalent liability standards in the direct listings context as they would be in traditional firm commitment underwritten initial public offerings. Any ability of issuers or intermediaries to minimize potential liability through choosing a direct listing over other methods to become listed on the Exchange could be inconsistent with Section 6(b)(5) of the Exchange Act.

Although financial advisors may, depending on the facts and circumstances, be held liable as statutory underwriters, absent greater clarity as to a financial advisor's status as a statutory underwriter in listings that would occur under this proposed rule change, investors would have no way to know whether financial advisors named as assisting with the direct listing would face Section 11 liability for the disclosure in the registration statement. Investors also may assume that financial advisors would incur equivalent liability, without any assurance that such is the case. Some legal observers have raised concerns that, without clarity on whether financial advisors would be held liable as statutory underwriters, any due diligence may not be as robust as that

[75] *See* Approval Order, *supra* note 9, 85 FR at 85813, 85815.

[76] *See* Notice, *supra* note 3, 87 FR at 23300.

[77] Section 2(a)(11) of the Securities Act defines ''underwriter'' to mean ''any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates, or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking.'' Given this broad definition of ''underwriter,'' a financial advisor to an issuer engaged in a Primary Direct Floor Listing may, depending on the facts and circumstances including the nature and extent of the financial advisor's activities, be deemed a statutory ''underwriter'' with respect to the securities offering, with attendant underwriter liabilities. *See* Approval Order, *supra* note 9, 85 FR at 85815. Whether or not any person would be considered a statutory underwriter would be evaluated based on the particular facts and circumstances, in light of the definition of underwriter contained in Section 2(a)(11). In the context of a firm commitment underwritten initial public offering, Item 508 of Regulation S–K requires the underwriters to be named in the registration statement.

[78] Where a Securities Act registration statement, at the time of effectiveness, contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading, Section 11(a) of the Securities Act provides a cause of action to ''any person acquiring such security,'' unless it is proved that at the time of the acquisition the person knew of such untruth or omission. Courts have interpreted this statutory provision to permit aftermarket purchasers (*i.e.,* those who acquire their securities in secondary market transactions rather than in the initial distribution from the issuer or underwriter) to recover damages under Section 11, but only if they can ''trace'' the acquired shares back to the offering covered by the false or misleading registration statement. *See, e.g.,* In re Century Aluminum Co. Sec. Litig., 729 F.3d 1104 (9th Cir. 2013). Tracing is not set forth in Section 11 and is a judicially-developed doctrine. The Commission has previously stated that shareholders' ability to pursue claims pursuant to Section 11 of the Securities Act due to traceability issues are not exclusive to nor necessarily inherent in direct listings with a primary capital-raising component, and that this issue is potentially implicated any time securities that are not the subject of a recently effective registration statement trade in the same market as the shares issued pursuant to the registration statement. *See* Approval Order, *supra* note 9, 85 FR at 85815–16. The Ninth Circuit has held that investors who purchase shares in a direct listing may bring claims pursuant to Section 11, even if they cannot prove that the shares they acquired were registered shares. *See* Pirani v. Slack Techs., Inc., 13 F.4th 940 (9th Cir. 2021).

[79] Tracing concerns may be more prevalent in direct listings than traditional underwritten initial public offerings. As compared to traditional firm commitment underwritten initial public offerings in which lock-up arrangements are routinely imposed, direct listings to date typically have not imposed lock-up arrangements. This raises a concern that there may be a heightened risk that investors in direct listings may face difficulties tracing their shares, potentially jeopardizing their ability to pursue Section 11 claims. *See supra* note 78. Given the limited judicial precedent addressing tracing requirements in the context of direct listings, and the typical absence of lock-up arrangements in connection with direct listings to date, we are considering whether the Exchange has met its burden of establishing that the proposal to allow a direct listing to proceed at a price outside of the disclosed price range is consistent with Section 6(b)(5) of the Exchange Act that requires the rules of the Exchange be designed to protect investors and the public interest.

[80] *See* U.S.C. 77k(b)(3).

[81] *See* Securities Act Release No. 7393 (February 20, 1997), 62 FR 9276 (February 28, 1997) (''The due diligence efforts performed by underwriters, accounting professionals and others play a critical role in the integrity of our disclosure system.''); Securities Act Release No. 6335 (August 6, 1981), 46 FR 42015 (August 18, 1981) (''[T]he Securities Act imposes a high standard of conduct on specific persons, including underwriters and directors, associated with a registered public offering of securities. Under Section 11, they must make a reasonable investigation and have reasonable grounds to believe the disclosures in the registration statement are accurate.'').

performed by named underwriters in traditional initial public offerings.[82] Less robust due diligence could result in reduced disclosure quality and lead investors to improperly value the securities offered under the proposed rules. As the proposed rules would permit direct listings to be conducted at prices outside of the disclosed price range, would investors be able to make reasonable pricing decisions without greater clarity as to whether financial advisors would face liability as statutory underwriters? Without increased clarity on this point, would the proposed rule change be inconsistent with investor protection and the public interest?

There are a number of additional questions relating to investor protection and Securities Act liability that merit examination in connection with our consideration of whether the Exchange has met its burden to demonstrate its proposal is consistent with Section 6(b)(5) of the Exchange Act. It is not clear what role a financial advisor would perform, in relation to price range disclosures, in a direct listing where the offering can price outside of the disclosed price range. Would additional transparency into the functions performed by financial advisors in a direct listing where the offering can price outside of the disclosed price range be necessary for investors to determine how much reliance to place on issuer disclosures?

Would any tracing concerns be exacerbated, thus raising investor protection concerns, in the context of direct listings where the offering can price outside of the disclosed price range?[83] What are the implications if the expansion of Primary Direct Floor Listings, as proposed by the Exchange, resulted in fewer investor protections in a direct listing? If under the proposal to modify the Price Range Limitation there is continued uncertainty as to whether a financial advisor would be liable as a statutory underwriter, is the liability of any other gatekeepers in the offering sufficient to protect investors?

The Commission also has concerns about the potential effect of the proposed rules on the usefulness of price range disclosure provided to investors in Securities Act registration statements.[84] Given the possibility under the proposed rules that the offering might price far outside the disclosed price range, would issuers be less likely to update their disclosed price ranges, compared to firm commitment underwritten initial public offerings?[85] Similarly, would disclosed price ranges for direct listings be less reliable as indicators of management's perceived valuation of the issuer? How would the ability to ultimately conduct the auction up to 20% below or anywhere above the disclosed price range affect issuer decisions as to what price range to disclose in the registration statement? Would this impact the usefulness of price range disclosure to potential investors or market analysts? If so, this raises concerns about the consistency of the proposal with investor protection and the public interest under Section 6(b)(5) of the Exchange Act.

Additionally, it is not clear whether the proposed changes would result in the Exchange using the minimum price at which the opening auction could occur as the per share price for purposes of evaluating whether the issuer satisfies the applicable market value of publicly-held shares requirement. The Exchange proposes to amend Section 102.01B, Footnote (E) of the Manual to provide that the Exchange would calculate the market value of publicly-held shares using a price per share equal to the lowest price of the price range established by the issuer in its registration statement ''minus an amount equal to 20% of the highest price included in such price range.''[86] The Exchange also proposes to specify in Rule 7.31(c)(1)(D)(ii) that, for purposes of determining the Primary Direct Floor Listing Auction Price Range, ''the 20% threshold would be calculated based on the maximum offering price set forth in the registration fee table, consistent with the Instruction to paragraph (a) of Securities Act Rule 430A.''[87] Further, the Exchange states its belief that ''the proposed change to Section 102.01B [Footnote] (E) to reflect that the market value calculation of a company's shares would be based on a price per share equal to the lowest price of the price range established by the issuer in its registration statement, less an amount equal to 20% of the highest price included in such price range . . . would update the Manual to align with the proposed changes to the Price Range Limitation.''[88] Is further clarification needed as to the precise manner of computing the 20% threshold under proposed Rule 7.31(c)(1)(D)(ii) and whether that computation would lead to the same minimum price contemplated by the proposed revisions to Section 102.01B, Footnote (E) of the Manual?

Finally, the Exchange proposes to amend Rule 7.35A(d)(2)(A)(v) to provide that the Exchange will disseminate, free of charge, the Indication Reference Price on a public website. As proposed, the Indication Reference Price for a security that is a Primary Direct Floor Listing would be the price that is 20% below the lowest price of the disclosed price range, and as such would be fixed during the course of the auction process. When certain conditions are met, the DMM publishes pre-opening indications that include the price range within which the auction price is anticipated to occur. As proposed, the DMM's pre-opening indications would continue to be published via the SIP and proprietary data feeds, all of which charge subscription fees. Would providing pricing information during the course of the auction process only through pre-opening indications via data feeds that charge subscription fees be consistent with ''providing readily available, real time pricing information to investors''?[89] If not, would the Exchange's proposal provide sufficient

[82] *See* Tuch, Andrew F. and Seligman, Joel, The Further Erosion of Investor Protection: Expanded Exemptions, SPAC Mergers and Direct Listings (December 15, 2021), at 70–71, Washington University in St. Louis Legal Studies Research Paper No. 22–01–03, available at SSRN: *https://ssrn.com/abstract=4020460* (questioning the extent of due diligence performed by financial advisors in direct listings); Horton, Brent J., Spotify's Direct Listing: Is It a Recipe for Gatekeeper Failure?, 72 SMU L.Rev. 177 (2019). In the Approval Order, the Commission stated that ''financial advisors to issuers in Primary Direct Floor Listings have incentives to engage in robust due diligence, given their reputational interests and potential liability, including as statutory underwriters under the broad definition of that term.'' Approval Order, supra note 9, 85 FR at 85815.

[83] *See* notes 78 and 79, *supra,* and accompanying text. The Commission disapproved a prior proposal of Nasdaq to expand the direct listing price range. *See* Securities Exchange Act Release No. 94311 (February 24, 2022). 87 FR 11780 (March 2, 2022) (SR–NASDAQ–2021–045) (''Disapproval Order''). In the Disapproval Order, the Commission stated that Nasdaq did not respond to one commenter's concerns, among others, that investors in direct listings, including direct listings with a capital raise, are likely to continue to have fewer legal rights than investors in a traditional public offering and concerns relating to ''tracing'' share purchases for purposes of Section 11 claims. *See* Disapproval Order, 87 FR at 11785 n.82.

[84] Under the proposed rule change, to execute at a price outside of the disclosed price range, the issuer must certify to NYSE and publicly disclose that: (a) it does not expect that the Auction Price would materially change the issuer's previous disclosure in its effective registration statement; (b) the price range in the preliminary prospectus included in the effective registration statement is a bona fide price range in accordance with Item 501(b)(3) of Regulation S–K; and (c) such registration statement contains a sensitivity analysis explaining how the issuer's plans would change if the actual proceeds from the offering differ from the amount assumed in the disclosed price range.

[85] The Exchange has stated that its proposal to permit more flexibility as to pricing would allow Primary Direct Floor Listings to be treated similarly to other initial public offerings. *See* Notice, *supra* note 3, 87 FR at 23304, 23305.

[86] *See* Notice, *supra* note 3, 87 FR at 23302.

[87] *See id.* at 23303.

[88] *Id.* at 23306.

[89] *Id.* at 23302.

price discovery transparency for investors to be consistent with the protection of investors and the public interest pursuant to Section 6(b)(5) of the Exchange Act?

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [90] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[91] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[92]

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [93] to determine whether the proposal should be approved or disapproved.

IV. Commission's Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written view of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Exchange Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[94]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by August 12, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by August 26, 2022.

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–2022–14 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–2022–14. 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 such 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–2022–14 and should be submitted on or before August 12, 2022. Rebuttal comments should be submitted by August 26, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[95]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–15656 Filed 7–21–22; 8:45 am]

BILLING CODE 8011–01–P

[90] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[91] *See id.*

[92] *See id.*

[93] 15 U.S.C. 78s(b)(2)(B).

[94] Section 19(b)(2) of the Exchange Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[95] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95301; File No. SR–NYSE–2022–31]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Current Pilot Program Related to Rule 7.10 (Clearly Erroneous Executions)

July 18, 2022.

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 July 13, 2022, 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 extend the current pilot program related to Rule 7.10 (Clearly Erroneous Executions) to the close of business on October 20, 2022. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.