

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80019; File No. SR-NYSE-2017-03)

February 10, 2017

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending Rule 98

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 January 26, 2017, 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, 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 Rule 98 to provide that, while on the Trading Floor, Designated Market Makers (“DMM”) must trade DMM securities at their assigned stock trading post location and may not trade any security that is a related product of their DMM securities. 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.

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

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

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

1. Purpose

The Exchange proposes to amend Rule 98 to provide that, while on the Trading Floor, DMMs must trade DMM securities at their assigned stock trading post location and may not trade any security that is a related product of their DMM securities.⁴

Background

Rule 98 governs the operation of a DMM unit and paragraph (c)(3) of that rule specifies restrictions on trading for member organizations operating a DMM unit. More

⁴ As defined in Rule 2(i), the term “DMM” means an individual member, officer, partner, employee or associated person of a Designated Market Maker Unit who is approved by the Exchange to act in the capacity of a DMM. The term “DMM securities” is defined in Rule 98(a)(2) to mean any securities allocated to the DMM unit pursuant to Rule 103B or other applicable rules. The term “related products” is defined in Rule 98(a)(7) to mean any derivative instrument that is related to a DMM security, including options, warrants, hybrid securities, single-stock futures, security-based swap agreement, a forward contract, or any other instrument that is exercisable into or whose price is based upon or derived from a security traded at the Exchange.

specifically, Rule 98(c)(3)(B) provides that, while on the Trading Floor⁵ of the Exchange, employees of the DMM unit:

- (i) except as provided for in Rule 36.30,⁶ may trade only DMM securities only on or through the systems and facilities of the Exchange as permitted by Exchange rules.
- (ii) except as provided for in Rules 36.30, may not communicate with individuals or systems responsible for making trading decisions for related products or for away-market trading in their assigned DMM securities.
- (iii) shall not have access to customer information or the DMM unit's position in related products.

Accordingly, under current Rule 98, while on the Trading Floor, DMMs may only trade DMM securities and, thus, may not trade any other securities, including securities that are related products to their DMM securities.

⁵ As defined in Rule 6A, the term "Trading Floor" means the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the "Main Room" and the "Buttonwood Room" and does not include (i) the areas in the "Buttonwood Room" designated by the Exchange where NYSE Amex-listed options are traded, which, for the purposes of the Exchange's Rules, shall be referred to as the "NYSE Amex Options Trading Floor" or (ii) the physical area within fully enclosed telephone booths located in 18 Broad Street at the Southeast wall of the Trading Floor.

⁶ Rule 36.30 permits a DMM unit that is registered in an Investment Company Unit (as defined in Section 703.16 of the Listed Company Manual) or a Trust Issued Receipt (as that term is defined in Rule 1200) to use a telephone connection or order entry terminal at the DMM unit's post to enter proprietary orders in the Unit or receipt in another market center, in a Component Security of such a Unit or receipt, or an options or futures contract related to such Unit or receipt, and may use the post telephone to obtain market information with respect to such Units, receipts, options, futures or Component Securities.

Proposed Rule Change

The Exchange proposes to amend Rule 98 to remove restrictions to DMM operations on the Trading Floor that are unrelated to the unique role of DMMs at the Exchange. Specifically, as described in Rule 104, DMMs have specified obligations with respect to their DMM securities and have access to specified non-public order information regarding their DMM securities.⁷ However, DMMs do not have a unique role or access to any non-public order information with respect to securities that are not assigned to them under Rule 103B. The Exchange therefore believes that the current Rule 98 restrictions are unnecessarily broad.

Accordingly, the Exchange proposes to amend Rule 98(c)(3)(B)(i) to provide that, while on the Trading Floor, employees of the DMM unit may trade DMM securities only on or through the systems and facilities of the Exchange at the DMM unit's assigned stock trading post location and as permitted by Exchange rules. Because the proposed rule would no longer specify the only securities that a DMM is permitted to trade, the Exchange proposes to delete the clause "except as provided for in Rule 36.30." The Exchange also proposes to add new Rule 98(c)(3)(B)(ii) to provide that while on the Trading Floor of the Exchange, employees of the DMM unit may not trade any security that is a related product of its DMM securities. The Exchange would renumber current Rules 98(c)(3)(B)(ii) and (iii) as new Rules 98(c)(3)(B)(iii) and (iv).

As a result of these proposed changes, DMMs would no longer be restricted from trading securities that are unrelated to DMM securities while on the Trading Floor.

However, the proposed amendments would continue to require that, while on the Trading

⁷ See, e.g., Rule 104(a) and (j).

Floor, DMMs would not be able to trade any securities that are related products to DMM securities. The proposed amendment would also add a new requirement that DMMs may only trade their DMM securities at their assigned stock trading post.

The proposed rule change would allow Exchange DMMs that are also NYSE MKT LLC (“NYSE MKT”) DMMs to continue to operate. Currently, NYSE MKT’s cash equities trading operations share a Floor with the Exchange.⁸ DMMs who are also approved as NYSE MKT DMMs currently trade in both NYSE-listed DMM securities and NYSE MKT-listed DMM securities from the same physical location on the exchanges’ respective Trading Floors.⁹ NYSE MKT has proposed to transition from a Floor-based trading model to a fully automated trading model.¹⁰ After such transition, NYSE MKT would continue to have electronic-access DMMs that would be the same member organizations that are currently operating as Floor-based NYSE MKT DMMs. The proposed amendment to Rule 98 would permit NYSE DMMs to continue to support their electronic NYSE MKT DMM functions in the same physical location where they are currently operating.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)¹¹ that an Exchange have rules that are designed to promote the just and equitable principles of trade, to remove impediments to and perfect the mechanism of a

⁸ Compare NYSE MKT Rule 6 – Equities with NYSE Rule 6.

⁹ NYSE MKT DMMs operate under the NYSE MKT Rule 98 – Equities.

¹⁰ See SR-NYSEMKT-2017-1 (“NYSE MKT Trading Rules Filing”). Subject to rule approval, NYSE MKT anticipates transitioning off of its Floor in the second quarter of 2017.

¹¹ 15 U.S.C. 78f(b)(5).

free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would remove a restriction on DMMs from trading securities while on the Trading Floor that is unrelated to their role as a DMM. The Exchange also believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would maintain restrictions on DMM trading while on the Trading Floor that are narrowly drawn to reflect the unique role of the DMM. The Exchange further believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system because it would enable NYSE DMMs that also operate NYSE MKT DMMs to continue to support their NYSE MKT DMM operations after NYSE MKT transitions to be a fully automated trading market.

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

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to be pro-competitive because it would remove a restriction unique to DMMs, as specified in Rule 98, that limits which securities a DMM may trade while on the Trading Floor. No other member that trades on the Floor is subject to similar restrictions and the restrictions that the Exchange proposes to remove are unrelated to the DMM's unique role at the Exchange vis-à-vis their DMM securities. The proposed amendment would also promote competition because it would facilitate NYSE DMMs to be able to continue supporting their NYSE MKT DMM operations once

NYSE MKT transitions to be a fully automated trading market.

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

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

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

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

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2017-03 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSE-2017-03. This file number should be included on the subject line if e-mail 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-NYSE-2017-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

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Assistant Secretary

¹² 17 CFR 200.30-3(a)(12).