

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90776; File No. SR-NYSE-2020-105)

December 22, 2020

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Revising Rules 46 and 46A to Permit the Appointment of Trading Officials

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 December 15, 2020, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes revisions to Rules 46 and 46A to permit the appointment of Trading Officials and to make conforming changes to certain Exchange rules related to Floor Official duties and responsibilities. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 revisions to Rules 46 and 46A to permit the appointment of Trading Officials and to make conforming changes to certain Exchange rules related to Floor Official duties and responsibilities.

Background

Rule 46 (Floor Officials—Appointment) and Rule 46A (Executive Floor Governors) currently set forth the process for the Exchange to appoint active NYSE members⁴ as Floor Officials. In addition, Rule 46 permits the Exchange to appoint qualified ICE employees to act as Floor Governors, a more senior type of Floor Official.⁵

The role of the Floor Official evolved out of the self-regulatory scheme of the Securities Exchange Act of 1934, as amended (the “Act”).⁶ Floor Officials are delegated authority from the Exchange’s Board of Directors (the “Board”) to supervise and regulate active openings and

⁴ Rule 2(a) states that the term “member,” when referring to a natural person, means a natural person associated with a member organization who has been approved by the Exchange and designated by such member organization to effect transactions on the Exchange Trading Floor or any facility thereof. See also note 6, infra.

⁵ The title “Floor Official” includes a broad category of titles that include, in order of increasing seniority, Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors and Executive Floor Governors. See Rules 46 and 46A (defining Floor Official, Floor Governor, Executive Floor Official, Senior Floor Official and Executive Floor Governors).

⁶ See 15 U.S.C. 78f.

unusual situations that arise in connection with the making of bids, offers or transactions on the Trading Floor,⁷ and to review and approve certain trading actions. A number of Exchange Rules specify involvement in the marketplace by Floor Officials, senior-level Floor Officials (i.e., Floor Governors, Executive Floor Officials, Senior Floor Officials and Executive Floor Governors), or both.

Exchange members appointed as Floor Officials serve in a volunteer capacity in addition to their regular obligations as either brokers or Designated Market Makers (“DMM”). In 2008, the Exchange amended Rule 46 to permit qualified ICE employees to be appointed as Floor Governors (“Staff Governors”).⁸ At the same time, as a result of the evolution of the equities markets away from manual executions and manual enforcement of rules toward an electronic market that automates executions and in many cases hard codes the rule requirements into the execution logic, many of the trading procedures and situations originally requiring Floor Official involvement have been automated; in other cases, Floor Official approval has become pro forma rather than substantive.⁹ More recently, the Exchange introduced Regulatory Trading Officials (“RTOs”) to perform the functions performed by Floor Officials regarding whether a bid or offer is eligible for inclusion in the Closing Auction by the DMM.¹⁰ As described below, the

⁷ The term “Trading Floor” is defined in Rule 6A to mean the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the “Main Room” and the “Buttonwood Room.”

⁸ See Securities Exchange Act Release No. 57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR-NYSE-2008-19) (“Release No. 57627”).

⁹ See, e.g., Securities Exchange Act Release No. 75695 (August 13, 2015), 80 FR 50365 (August 19, 2015) (SR-NYSE-2015-33) (deletion of Rule 79A.20 requiring prior Floor Official approval for certain DMM dealer trades more than one or two dollars away from the last sale as moot).

¹⁰ See Securities Exchange Act Release No. 88765 (April 29, 2020), 85 FR 26771 (May 5, 2020) (SR-NYSE-2020-03). The Exchange has filed a separate proposed rule change to make permanent that Floor Broker Interest would not be eligible to participate in the

Exchange has now determined to delegate the remaining duties and responsibilities of Floor Officials to the proposed Trading Officials.

Proposed Rule Change

The Exchange proposes to transition the duties and responsibilities of Floor Officials to Trading Officials, who would be Exchange staff appointed by the NYSE CEO or his or her designee. As proposed, Trading Officials would be the only persons authorized to perform the delegated functions under the Exchange rules on the Floor that member Floor Officials and Staff Governors currently perform. The various seniority-based gradations of Floor Official (Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors and Executive Floor Governors) also would be eliminated. As a practical matter, the current Staff Governors would become the new Trading Officials. Active Exchange members would not be eligible for appointment as Trading Officials.

Under current Rules 46 and 46A, Floor Officials are appointed by the Board and re-appointed annually. Floor Officials must also complete a mandatory education program and pass a qualifications exam. These requirements were developed for member Floor Officials, and the Exchange does not propose to retain them for Trading Officials. Like the current Staff Governors, Exchange staff would be appointed as Trading Officials based on experience and necessary business and rule knowledge that would enable them to participate in and supervise various trading situations on the Floor. Once appointed, Trading Officials would be trained and supervised by the Exchange in the same manner as the current Staff Governors.

Closing Auction and in that filing, has also proposed to delete Rule 46B because RTOs would no longer have a role under Exchange rules. See Securities Exchange Act Release No. 90495 (November 24, 2020), 85 FR 77304 (December 1, 2020) (SR-NYSE-2020-95) (Notice) (“NYSE Close Proposal”).

In order to effectuate the proposed changes, the Exchange proposes to delete current Rules 46 and 46A in their entirety and define a Trading Official in new Rule 46 as an Exchange staff person designated by the CEO of the Exchange or his or her designee to perform those functions specified in Exchange rules.

In addition, the Exchange proposes certain technical and conforming changes to replace references to Floor Officials, Senior Floor Officials, Executive Floor Officials, Floor Governors and/or Executive Floor Governors with Trading Official in the following rules:

- Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions) sets forth the responsibility of DMMs to ensure that registered securities open as close to the beginning of Core Trading Hours as possible or reopen at the end of the halt or pause.
 - Subsection (a)(4) provides for Floor Official participation in the opening and reopening process to provide an impartial professional assessment of unusual situations, as well as to provide guidance with respect to pricing when a significant disparity in supply and demand exists. The rule also contemplates DMMs consultations with Floor Officials under certain specific circumstances. References to Floor Official in Rule 7.35A(a)(4) and (a)(5) would be replaced with Trading Official.
 - Rule 7.35A(d) governs pre-opening indications. Subsection (d)(4) describes the procedures for publishing pre-opening indications and specifies when publication of a pre-opening indication requires supervision and approval of a Floor Governor. References to Floor

Governor in Rule 7.35A(d)(4)(A) and (F)(i) would be replaced with Trading Official.

- Rule 7.35B (DMM-Facilitated Closing Auctions) describes the responsibility of each DMM to ensure that registered securities close as soon after the end of Core Trading Hours as possible.
 - Rule 7.35B(a)(1)(C) provides that electronically-entered Floor Broker Interest cannot be reduced in size or replaced except that DMMs can accept a full cancellation of electronically-entered Floor Broker Interest to correct a Legitimate Error subject to Floor Official approval. Floor Official would be replaced with Trading Official in Rule 7.35B(a)(1).¹¹
 - Rule 7.35B(d) governs closing imbalances. Subsection (d)(1)(A) describes the circumstances when a DMM may disseminate a Regulatory Closing Imbalance with prior Floor Official approval. Subsection (d)(2) provides that DMMs may disseminate a Manual Closing Imbalance only with prior Floor Official approval beginning one hour before the scheduled end of Core Trading Hours up to the Closing Auction Imbalance Freeze Time. In both subsections, references to Floor Official would be replaced with Trading Official.
 - Rule 7.35B(j) governs temporary rule suspensions. Subsection (j)(3) provides that a determination to declare a temporary suspension as well as any entry or cancellation of orders or closing of a security under subsection (j)(2) must be supervised and approved by an Executive Floor

¹¹ The Exchange has separately proposed to delete Rule 7.35B(a)(1)(C). See id.

Governor and supervised by an Exchange Officer. The Exchange proposes that supervision and approval of these determinations must be supervised and approved by a Trading Official.

- Rule 18(d) (Compensation in Relation to Exchange System Failure) sets forth the process for member organizations to seek reimbursement for losses resulting from system failures. Subsection (d) establishes a Compensation Review Panel consisting of three Floor Governors and three Exchange employees to determine the eligibility of a claim for payment. The Exchange proposes to eliminate the Compensation Review Panel and provide that the Exchange will perform will review claims submitted pursuant to the rule and determine eligibility of a claim for payment.
- Rule 37 (Visitors) provides that visitors shall not be admitted to the Floor except by permission of Exchange officer, a Senior Floor Official, Executive Floor Official, a Floor Governor, or an Executive Floor Governor. The Exchange proposes that admission of visitors to the Floor be by permission of the Exchange.
- As noted, the text of Rules 46 and 46A would be deleted. The heading of Rule 46 would be changed to “Trading Officials”.
- Under current Rule 47 (Floor Officials—Unusual Situations), Floor Officials have the power to supervise and regulate active openings and unusual situations that may arise in connection with the making of bids, offers or transactions on the Floor. References to Floor Official would be changed to Trading Officials and the heading would be changed to “Unusual Situations on the Floor.” Current Rule 47 would become new Rule 48.

- Rule 75 (Disputes as to Bids and Offers) mandates that disputes arising on bids or offers that are not settled by agreement between the interested members shall be settled by a Floor Official. The Exchange proposes that disputes be settled by a Trading Official and would amend the rule text and Supplementary Material .10 accordingly. The rule currently provides that, if both parties to a dispute involving either a monetary difference of \$10,000 or more or a questioned trade, the matter may be referred for resolution to a panel of three Floor Governors, Senior Floor Officials, or Executive Floor Officials, or any combination thereof (“3 Floor Official Panel”), whose decision shall be binding on the parties. As an alternative to the 3 Floor Official Panel, members may proceed to resolve a dispute through long-standing arbitration procedures established under the Exchange’s rules. The Exchange proposes to eliminate the 3 Floor Official Panel. Disputes involving either a monetary difference of \$10,000 or more or a questioned trade would thus be resolved exclusively through arbitration.
- Rule 91.50 (Taking or Supplying Securities Named in Order) provides that if there is a continued pattern of rejection of a DMM’s principal transactions, a Floor Official may be called upon and require the broker to review his actions. Floor Official would be changed to Trading Official in Rule 91.50.
- Rule 93(b) (Trading for Joint Account) provides that no member while on the Floor shall initiate the purchase or sale on the Exchange of a stock for any account in which the member, the member’s member organization or any other member or allied member therein is directly or indirectly interested with any person other than such member organization or any other member or allied

member therein, without the prior approval of a Floor Official. The reference to Floor Official would be changed to Trading Official.

- Rule 103.10 (Registration and Capital Requirements of DMMs and DMM Units) governs the temporary reallocation of securities and provides that the CRO or his or her designee and two non-DMM Executive Floor Governors or if only one or no non-DMM Executive Floor Governors is present on the Floor, the most senior non-DMM Floor Governor or Governors based on length of consecutive service as a Floor Governor at the time of any action covered by this rule, acting by a majority, shall have the power to reallocate temporarily any security on an emergency basis whenever such reallocation would be in the public interest. The Exchange proposes that only the CRO or his or her designee would have the power to reallocate temporarily any security on an emergency basis.
- Rule 103A (Member Education) provides for the Exchange to develop procedures and standards for qualification and performance of members active on the Floor of the Exchange. The rule currently exempts Executive Floor Governors from the requirement to complete educational modules, which the Exchange proposes to eliminate. The Exchange also proposes the non-substantive change of deleting the superfluous “(I)” at the beginning of the rule.
- Rule 103B(G) (Security Allocation and Reallocation) describes the allocation freeze policy and provides that, following allocation probation, a second six month period will begin during which a DMM unit may apply for new listings, provided that the unit demonstrates relevant efforts taken to resolve the circumstances that triggered the allocation prohibition. Currently, the

determination as to whether a unit may apply for new listings is made by Exchange regulatory staff in consultation with the Executive Floor Governors. The Exchange proposes that this determination will be made solely by regulatory staff.

- Rule 104 (Dealings and Responsibilities of DMMs) governs dealings and responsibilities of DMMs. Subsection (i) provides for temporary DMMs and permits a Floor Governor to authorize a member of the Exchange who is not registered as a DMM in such stock or stocks, to act as a temporary DMM under specific circumstances. The Exchange proposes that Trading Officials would perform this function under the rule.
- Rule 112(a)(i) (Orders initiated “Off the Floor”) provides that all orders in stocks for the account of a member organization or any member, principal executive, approved person, officer, or employee of such organization or a discretionary account serviced by the member or member organization must be sent to the Floor through a clearing firm’s order room or other facilities regularly used for transmission of public customers’ orders to the Floor, except for orders, among others, when a Floor Official expressly invites a member or members to participate in a difficult market situation. The Exchange would replace Trading Official for Floor Official in Rule 112(a)(i).
- Rule 124(e) (Midday Auction) provides that, when there is a significant imbalance in a Midday Auction Stock at the end of the Midday Auction Pause, the Midday Auction Pause may be converted to an order imbalance halt with the

approval of a Floor Governor or two Floor Officials. The Exchange proposes that the approval would be given by a Trading Official.

- Rule 128B (Publication of Changes, Corrections, Cancellations or Omissions and Verification of Transactions) governs changes and corrections to the Consolidated Tape.
 - Rule 128B.10 (Publication on the tape or in the “sales sheet”) provides that publication of a change or a correction in a transaction which previously appeared on the tape may be made on the tape on the day of the transaction provided that both buying and selling members or member organizations agree to the change in the transaction(s) and receive approval from a Floor Governor, Executive Floor Official, Senior Floor Official or Executive Floor Governor. In the event such publication is not made on the tape on the day of the transaction, it may be published on the tape at least ten minutes prior to the opening of business on the following business day or in the sales sheet within three business days of the transaction with the approval of both the buying and selling members and a Floor Official, provided the price of the transaction does not affect the high, low, opening or closing price of the security on the day of the transaction. The Exchange proposes that Trading Officials provide the approvals required under Rule 128B.10.
 - Rule 128B.13 (Other errors) provides that a correction in the amount of a transaction reported erroneously to the tape by a party to the transaction, may be published on the tape on the day of the transaction, on the tape at

least ten minutes prior to the opening on the following business day, or on the “sales sheet” within three business days of the transaction with the approval of a Floor Governor, Executive Floor Official, Senior Floor Official or Executive Floor Governor. The Exchange proposes that Trading Officials provide the approvals required under Rule 128B.13.

- Rule 308(g) (Acceptability Proceedings) provides that any person whose application has been disapproved by an Acceptability Committee, or any member of the Board, any member of the Committee for Review, any Executive Floor Governor, and the Division of the Exchange initiating the proceedings may require a review by the Board of any determination of an Acceptability Committee. The Exchange proposes to delete Executive Floor Governors from the rule.
- Rule 903(d)(ii) (Off-Hours Transactions) provides that a closing price order to buy (sell) a security for the account of the DMM registered in such security and approved by a Floor Official, coupled with a closing price order to sell (buy) to offset all or part of a market-on-close imbalance in the stock prior to the close, shall be executed upon entry. The Exchange proposes that a Trading Official would provide the required approval under the rule.
- Rule 906 (Impact of Trading Halts on Off-Hours Trading) provides that a closing price order to buy (sell) a security for the account of the DMM registered in such security and approved by a Floor Official coupled with a closing price order to sell (buy) to offset all or part of any market-on-close imbalance in the stock prior to the close, shall not be so canceled or precluded from entry as result of corporate

developments during the Off-Hours Trading Session. The Exchange proposes that a Trading Official would provide the required approval under the rule.

- Finally, NYSE Listed Company Manual Section 202.04 (Exchange Market Surveillance) provides that a listed issue may be placed under special initial margin and capital requirements, which indicates a determination by the Exchange's Floor Officials that the market in the issue has assumed a speculative tenor and has become volatile due to the influence of credit, which, if ignored, may lead to unfair and disorderly trading. The reference to Floor Officials would be updated to Trading Officials.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5),¹³ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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.

In particular, the Exchange believes that creating a new category of Trading Official to replace member Floor Officials would promote just and equitable principles of trade and remove impediments to a free and open market by streamlining and modernizing the role of a Trading Official on the Floor. The volunteer member Floor Official is a self-regulatory vestige developed for manual trading. As noted, the Exchange introduced Staff Governors several years

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

ago to address the shortfall in experienced members following the consolidation of trading space on the Exchange.¹⁴ More recently, RTOs were introduced to perform certain functions performed by Floor Officials in connection with the Closing Auction.¹⁵ The proposed rule change would complete the evolution of member Floor Officials to Trading Officials that are Exchange-trained and supervised staff, which is similar to how trading officials function on the options markets run by the Exchange's affiliates.¹⁶ By replacing the variety and hierarchy of Floor Officials based on seniority with a single Trading Official appointed by the NYSE CEO, the Exchange would significantly simplify the appointment and retention of individuals with responsibility under the Exchange's rules to supervise and review trading on the Floor. Further, the proposal would contribute to the protection of investors and the public interest by ensuring that qualified Exchange staff continue to perform the formal roles prescribed by Exchange rules and provide a level of oversight to the marketplace on a day-to-day basis, thereby contributing to the maintenance of a fair and orderly marketplace on the Exchange.

Finally, the Exchange believes that the conforming and technical changes would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed non-substantive changes would add clarity, transparency and consistency to the Exchange's rules.

The Exchange believes that market participants would benefit from the increased clarity, thereby

¹⁴ See Release No. 57627, 73 FR at 19920.

¹⁵ As noted above, the Exchange has separately proposed to delete Rule 46B because RTOs would no longer have a role under Exchange rules. See NYSE Close Proposal, supra note 10.

¹⁶ See NYSE American LLC ("NYSE American") Rule 900.2NY(82) and NYSE Arca, Inc. ("NYSE Arca") Rule 6.1-O(b)(34).

reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather concerned with transferring Floor Official duties and responsibilities under Exchange rules to staff Trading Officials. The Exchange believes the proposed rule changes would streamline and modernize the role of the trading official on the Floor, thereby contributing to the maintenance of a fair and orderly marketplace on the Exchange to the benefit of all members and member organizations and the investing public. Moreover, since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

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-2020-105 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-2020-105. 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. 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-2020-105 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.¹⁷

Eduardo A. Aleman
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).