

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78057; File No. SR-NYSE-2016-31)

June 13, 2016

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending NYSE Rule 6A to Exclude the Physical Area Within Fully Enclosed Telephone Booths Located in 18 Broad Street From the Definition of Trading Floor

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 31, 2016, 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to amend NYSE Rule 6A (“Trading Floor”) to exclude an area in 18 Broad Street that has fully enclosed telephone booths from the definition of Trading Floor. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 purpose of the proposed rule change is to amend NYSE Rule 6A (“Trading Floor”) to exclude from the definition of “Trading Floor” the area within fully enclosed telephone booths located in 18 Broad Street.

The Exchange currently defines “Trading Floor”³ 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,” the “Blue Room” and the “Garage.”⁴ Rule 6A also specifies that the Exchange’s Trading Floor does not include areas designated by the Exchange where NYSE Amex-listed options are traded, commonly known as the “Extended Blue Room,” which, for the purposes of the Exchange’s Rules, are referred to as the “NYSE Amex Options Trading Floor.”⁵ The Exchange proposes to add sub-paragraph numbering to Rule 6A, so that the first paragraph of the rule would be sub-paragraph (a) and the second paragraph would be sub-paragraph (b).

³ Access to the Trading Floor is restricted at each entrance by turnstiles and only authorized visitors, members or member firm employees are permitted to enter.

⁴ See NYSE Rule 6A; see also Securities Exchange Act Release No. 59479 (Mar. 2, 2009), 74 FR 10325 (Mar. 10, 2009) (SR-NYSE-2009-23) (Notice of filing adopting NYSE Rule 6A and explaining that the proposed definition of “Trading Floor” will provide a more accurate description of the physical areas of the Floor where trading is actually conducted).

⁵ Id. The term “Trading Floor” is distinct from the term “Floor.” The term “Floor” means the trading Floor of the Exchange and the premises immediately adjacent thereto, such as the various entrances and lobbies of the 11 Wall Street, 18 New Street, 8 Broad Street, 12 Broad Street and 18 Broad Street Buildings, and also means the telephone facilities available in these locations. See NYSE Rule 6.

As proposed, Rule 6A(a) would define the term “Trading Floor,” and proposed Rule 6A(b) would define which physical areas are excluded from the definition of “Trading Floor.”

The Exchange first proposes to amend Rule 6A to reflect the renaming of the physical area formerly known as the “Garage.” That area has been renamed the “Buttonwood Room” and the Exchange proposes to reflect this change in Rule 6A. Rule 6A also currently defines Trading Floor to include areas commonly known as the “Blue Room” and also refers to an area commonly referred to as the “Extended Blue Room.”⁶ The Exchange recently closed those areas and moved all member organizations, member organization employees and NYSE Amex Options trading activities that were previously housed in these areas to the Buttonwood Room. To reflect this change, the Exchange proposes to delete references to the Blue Room and Extended Blue Room from Rule 6A and replace them with a reference to the Buttonwood Room.

With respect to proposed Rule 6A(b), the current rule already excludes the NYSE Amex Options Trading Floor from the definition of “Trading Floor.” To reflect the change to the names of the trading rooms and the relocation of the NYSE Amex Options Trading Floor to the Buttonwood Room, the Exchange proposes to amend Rule 6A(b) to refer to the Buttonwood Room when referring to the NYSE Amex Options Trading Floor. Accordingly, the proposed rule would exclude from the definition of Trading Floor the designated areas in the Buttonwood Room where NYSE Amex-listed options are traded which, for the purposes of the Exchange's Rules, would continue to be referred to as the “NYSE Amex Options Trading Floor.”⁷ This proposed change does not make any substantive changes and reflects only the location change

⁶ The Blue Room and Extended Blue Room are references to trading spaces previously utilized by member firm employees and NYSE Amex Options at 20 Broad Street.

⁷ As when the NYSE Amex Options Trading Floor was located in the Extended Blue Room, in the Buttonwood Room, the Exchange has erected physical barriers between the NYSE Amex Options Trading Floor and any Exchange member organizations or Exchange personnel that are also located in the Buttonwood Room.

for NYSE Amex Options. This proposal would have no impact on the physical location of NYSE Amex Options personnel as they would remain in their current location in the Buttonwood Room.

The Exchange next proposes to amend Rule 6A(b) to exclude an additional area from the definition of Trading Floor. As proposed, the Exchange proposes to exclude from the definition of Trading Floor the area within fully enclosed telephone booths located in 18 Broad Street at the Southeast wall of the Trading Floor. The telephone booths would be located in a vestibule area adjacent to 18 Broad Street elevator banks that provide access to the Trading Floor and that are separated from the equity trading areas of the Main Room by approximately forty (40) feet and a partial physical barrier. As such, while inside the telephone booths, there is not any visual or auditory access to activities conducted at the trading posts or by Floor Brokers.

These telephone booths would be designed for use by DMMs, but could be used by anyone on the Trading Floor. Because the telephone booths would be excluded from the definition of Trading Floor, there would not be any restrictions on the use of personal cell phones by DMMs while in these telephone booths, nor would there be restrictions on which cellular phone a Floor broker may use while in the telephone booth. For example, currently, a DMM who is not on the Trading Floor, i.e., is located outside the restricted-access areas of the Floor, may use a personal cell phone to communicate with an issuer. As proposed, because the area within the telephone booth would similarly be excluded from the definition of Trading Floor, a DMM could use a personal cell phone while inside the telephone booth to communicate with an issuer. A DMM's use of a personal cell phone while within the telephone booth would be no different than if the DMM used his or her personal cell phone to communicate with an issuer

from the DMM's office off the Exchange or while outside the restricted-access areas of the Floor, i.e., outside the Trading Floor.

While in the telephone booth, the DMM would not have access to any time and place information that he or she may have at the trading post. The proposed location of these telephone booths would ensure the privacy of any conversations, for a number of reasons: the closest location of any Floor Broker operations, which also contain privacy barriers, is approximately forty (40) feet from the proposed location of the telephone booths; there are high arching walls with limited line and sight vision separating the telephone booths from any trading posts on the Trading Floor; and lastly, the telephone booths are fully enclosed so any conversation that would occur would take place behind closed doors. The Exchange believes that the combination of these visual and acoustical barriers would substantially eliminate the risk that any conversations occurring inside the telephone booth could be overheard. In addition, it substantially eliminates the risk that an individual having a telephone conversation while inside the telephone booth would be able to hear or see anything at a trading post where securities trade.

To the extent that a DMM would use the telephone booths to communicate off the Trading Floor, current Exchange restrictions governing the protection of material non-public information would continue to apply. Rule 98 ("Operation of a DMM Unit") currently provides that that when a Floor-based employee of a DMM unit moves to a location off of the Trading Floor of the Exchange or if any person that provides risk management oversight or supervision of the Floor-based operations of the DMM unit is aware of Floor-based non-public order information, he or she shall not (1) make such information available to customers, (2) make such information available to individuals or systems responsible for making trading decisions in DMM securities in away markets or related products, or (3) use any such information in

connection with making trading decisions in DMM securities in away markets or related products.⁸ The proposed rule change is not intended to circumvent the restrictions prescribed in Rule 98 applicable to DMMs. Accordingly, DMMs would continue to be subject to the restrictions against the misuse of material non-public information prescribed in Rule 98. To that end, any communication between a DMM and an issuer would be limited to information that is in the public domain and not deemed material, non-public information. Except for the requirement to protect against the misuse of material non-public information set forth in Rule 98, Exchange rules do not have any restrictions on DMMs communicating with issuers from locations off of the Trading Floor. To the contrary, an important element of the DMM role is its relationship with issuers.

Moreover, DMMs would continue to be subject to supplementary material .30 to Rule 36 (“DMM Unit Post Wires”) (“Rule 36.30”), which permits a DMM to maintain at their posts telephone lines and wired or wireless devices that are registered with the Exchange to communicate with personnel at the off-Floor offices of the DMM, the DMM’s clearing firm, or with persons providing non-trading related services to the DMM. The Exchange is not proposing any changes to Rule 36 and, therefore, the current restrictions in Rule 36 would remain applicable and would not be affected by the proposed amendment to the definition of Trading Floor in Rule 6A. The proposed amendment to Rule 6A would allow the Exchange to delineate an area inside the telephone booth as being off the Trading Floor where a DMM may use a personal cell phone, which would not be subject to Rule 36.30.

⁸ See NYSE Rule 98(c)(3)(C). Rule 98, however, permits a DMM that needs to take on a larger risk profile in a security because of a proposed floor broker transaction to discuss the proposed transaction, which would be deemed material non-public information, with the DMM’s risk manager located off of the Trading Floor without violating Exchange rules or federal securities laws.

Because the proposed telephone booths would still fall within the broader definition of Floor under Exchange rules, the Exchange will retain jurisdiction in this area to regulate conduct that is inconsistent with Exchange Rules and the federal securities laws and rules thereunder.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with, and further the objectives of, Section 6(b)(5) of the Securities Exchange Act of 1934⁹ (the “Act”), in that they are 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. The proposed rule change would exclude from the definition of Trading Floor fully-enclosed telephone booths that are located on the perimeter of the Trading Floor, approximately 40 feet away from any trading operations. The Exchange believes that excluding these telephone booths from the definition of Trading Floor is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade because the visual and acoustic lines while within the fully-enclosed telephone booths to any trading activities are extremely limited. The Exchange believes that the combination of these visual and acoustical barriers would substantially eliminate the risk that any conversations occurring inside the telephone booth could be overheard. In addition, it substantially eliminates the risk that an individual having a telephone conversation while inside the telephone booth would be able to hear or see anything at a trading post where securities trade. Accordingly, because being inside the telephone booths would be akin to being off of the Trading Floor, the Exchange believes that it would remove impediments to and perfect the mechanism of a free and open market and a

⁹ 15 U.S.C. 78f(b)(5).

national market system to treat the areas within the telephone booths similarly to areas located outside of the Trading Floor.

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 will reduce the burdens on the ability of a DMM to communicate with an issuer. Currently, a DMM may use a personal cell phone to communicate with an issuer outside of the Trading Floor, but short of going to an office at a separate physical location, there are limited areas where a DMM may have a private conversation. The telephone booths would provide a physical space in which a DMM could have a private conversation with an issuer while at the same time remaining subject to existing Rule 98 requirements to protect against the misuse of material, non-public information. The Exchange further believes that updating the references in the Exchange rules to reflect the correct use of the Exchange Trading Floor would eliminate any potential confusion among investors and other market participants on the Exchange as to areas of the Trading Floor where certain conduct is, or is not, permitted.

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

The Exchange does not believe that the proposed rule changes 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 designed to address any issues relating to competition. Rather, the proposed rule change would ease burdens on the ability of a DMM to have a private conversation with an issuer by providing a physical location that would be excluded from the definition of Trading Floor that is private.

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-2016-31 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-2016-31. 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 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; 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-2016-31, 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.¹⁰

Robert W. Errett
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).