

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-80334; File No. SR-NYSE-2017-03)

March 29, 2017

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Amending Rule 98

I. Introduction

On January 26, 2017, New York Stock Exchange LLC (“Exchange” or “NYSE”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Rule 98. The proposed rule change was published for comment in the Federal Register on February 16, 2017.³ The Commission received no comments on the proposed rule change. The Commission is approving the proposed rule change.

II. Description of the Proposal

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 80019 (Feb. 10, 2017), 82 FR 10942 (Feb. 16, 2017).

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

A. 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 specifically, Rule 98(c)(3)(B) provides that, while on the Trading Floor of the Exchange,⁵ 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 Rule 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.

instrument that is exercisable into or whose price is based upon or derived from a security traded at the Exchange.

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, is 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.

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.

B. Proposed Rule Change

The Exchange proposes to amend Rule 98 to remove restrictions on DMM operations on the Trading Floor that are unrelated to the 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, the Exchange states that 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).

⁷ See, e.g., Rule 104(a) and (j).

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 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. 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.⁸ NYSE MKT has proposed to transition from a Floor-based trading model to a fully automated trading model.⁹ After this 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.

⁸ NYSE MKT DMMs operate under the NYSE MKT Rule 98 – Equities.

⁹ See Securities Exchange Act Release No. 79993 (Feb. 9, 2017), 82 FR 10814 (Feb. 15, 2017) (notice of filing of 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.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ 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 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.

Under the proposal, DMMs would be permitted to trade securities that are unrelated to DMM securities while on the Trading Floor. The Exchange represents that 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 Commission notes that, while on the Trading Floor, DMMs would continue to be prohibited from trading securities that are related products to DMM securities. In addition, the Commission notes that, while on the Trading Floor, employees of the DMM unit would be permitted to 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.

¹⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

For the above reasons, the Commission finds that the proposal is consistent with the requirements of the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (NYSEMKT-2017-03) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

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Assistant Secretary

¹² Id.

¹³ 17 CFR 200.30-3(a)(12).