

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-79108; File No. SR-NYSEMKT-2016-92)

October 18, 2016

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE MKT Rule 6A – Equities and NYSE MKT Rule 6 - Equities

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on October 4, 2016, NYSE MKT LLC (“NYSE MKT” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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 MKT Rule 6A - Equities (“Trading Floor”) to exclude from the definition of Trading Floor the area within fully enclosed telephone booths located in 18 Broad Street and NYSE MKT Rule 6 – Equities (“Floor”) to provide greater specificity regarding the physical locations that constitute the Floor. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 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 purpose of the proposed rule change is to amend NYSE MKT Rule 6A - Equities (“Trading Floor”) (“Rule 6A”) to exclude from the definition of “Trading Floor” the area within fully enclosed telephone booths located in 18 Broad Street. These proposed changes are based on recent amendments to the rules of the New York Stock Exchange LLC (“NYSE”).<sup>3</sup> In addition, the Exchange proposes to amend NYSE MKT Rule 6 – Equities (“Floor”) (“Rule 6”) to provide greater specificity regarding the physical locations that constitute the Floor.

The Exchange currently defines “Trading Floor”<sup>4</sup> 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.”<sup>5</sup> The term “Trading Floor” is distinct from the term “Floor.” The term “Floor” is currently defined to have the meaning given that term in the Securities Exchange Act of 1934, as amended, and the General Rules and Regulations thereunder.<sup>6</sup> Rule 11a-1 under the Act (“Rule 11a-1”) defines the term “on the floor

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<sup>3</sup> See Securities Exchange Act Release No. 78855 (September 15, 2016) (SR-NYSE-2016-31) (“NYSE Approval Order”).

<sup>4</sup> 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.

<sup>5</sup> See Rule 6A; see also Securities Exchange Act Release No. 59480 (Mar. 2, 2009), 74 FR 10109 (Mar. 9, 2009) (SR-NYSEALTR-2009-21) (Notice of filing adopting 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).

<sup>6</sup> See Rule 6.

of the Exchange” to include “the trading floor; the rooms, lobbies, and other premises immediately adjacent thereto for use of members generally; other rooms, lobbies and premises made available primarily for use by members generally; and the telephone and other facilities in any such place.”<sup>7</sup> At the Exchange, the physical locations that meet this definition of Floor under Rule 11a-1 are 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.<sup>8</sup> The Exchange proposes to amend Rule 6 to specify these locations within the definition of Floor. This proposed rule change is based on NYSE Rule 6. NYSE and the Exchange share the same Floor.

Rule 6A also specifies that the Exchange’s Trading Floor does not include areas designated by the Exchange for the trading of its listed options securities, commonly known as the “Extended Blue Room,” which, for the purposes of the Exchange’s Equities Rules, are referred to as the “NYSE Amex Options Trading Floor.”<sup>9</sup> 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). 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

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<sup>7</sup> See 17 CFR 240.11a-1.

<sup>8</sup> The Exchange no longer has any premises for use primarily by members that would meet the Rule 11a-1 definition of Floor.

<sup>9</sup> See Rule 6A.

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.”<sup>10</sup> 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 the trading of its listed options securities takes place which, for the purposes of the Exchange's Rules, would continue to be referred to as the “NYSE Amex Options Trading Floor.”<sup>11</sup> This proposed change does not make any substantive changes and reflects only the location change 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.

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<sup>10</sup> 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.

<sup>11</sup> 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.

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.<sup>12</sup> 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. In addition, the glass on the telephone booths has been frosted to make them opaque, which would reduce any sight lines to non-public information on the Trading Floor. 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. The Exchange believes that a DMM's use of a personal cell phone while within the

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<sup>12</sup> Because the Exchange shares its equities trading market with the NYSE's physical facilities, including using the same Trading Floor, and under Rule 2.10 – Equities and NYSE Rule 2.10, all Exchange member organizations are also NYSE member organizations, the phone booths proposed for use by Exchange DMMs would be the same phone booths that have been approved for use by the NYSE DMMs. See NYSE Approval Order, supra note 3.

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 with frosted glass 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 - Equities ("Operation of a DMM Unit") ("Rule 98") 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.<sup>13</sup> 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.<sup>14</sup> 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 - Equities (“DMM Unit Post Wires”) (“Rule 36”), 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 36.30 would

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<sup>13</sup> See 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.

<sup>14</sup> The Exchange will publish an Information Memo reminding member organizations of their obligation not to misuse material non-public information, and for DMMs in particular, to update their respective written policies and procedures to reflect that any use of the telephone booths by Floor-based employees would be subject to Rule 98, and in particular, Rule 98(c)(3).

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.

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. Specifically, the Exchange monitors and surveils for the misuse of material, non-public information, including trading ahead of customer orders, and misuse of non-public Floor-based non-public order information. The Exchange believes that its existing surveillance procedures, together with the surveillance and examination program that the Financial Industry Regulatory Authority, Inc. (“FINRA”) performs on its behalf, should be effective to monitor for any misuse of material non-public information. These programs are designed to detect such misuse regardless of where communications may occur, including the use of telephone booths in close proximity to the Trading Floor within which individuals may use personal cellular phones. As part of its surveillance procedures, the Exchange or FINRA, or both, can require its member organizations to produce any additional information necessary regarding telephone booth use.

## 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 1934<sup>15</sup> (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

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<sup>15</sup> 15 U.S.C. 78f(b)(5).

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

The Exchange believes that the proposal provides a balance between the Exchange's interest to provide a convenient location for DMMs and others on the Trading Floor to place telephone calls while minimizing the risk of any potential time and place advantage that could come with using personal portable communication devices in proximity to trading activity. Moreover, the Exchange believes that given the current speed of electronic trading, any Floor-based non-public information that the DMM, or other Floor-based personnel using the telephone booths, had prior to leaving his or her trading post or booth area would likely be rendered stale

by the time he or she reached the telephone booths, thereby substantially reducing the risk of any time and place advantage.

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. If a DMM or other Floor personnel learns of information about customer orders or other material non-public information while using a personal cell phone within the telephone booths, the Exchange believes that the speed of electronic trading, together with the Exchange's ongoing surveillance of trading activity occurring at the Exchange, would reduce the risk of misuse of non-public order information.

The Exchange believes that the proposed amendment to Rule 6 will remove impediments to and perfect the mechanism of a free and open market and a national market system by providing greater specificity in Exchange rules regarding which physical locations constitute the Floor at the Exchange. The proposed rule change does not make any substantive differences to Rule 6 as these locations constitute the current definition of Floor, as defined by Rule 11a-1 under the Exchange Act.<sup>16</sup> Moreover, the proposed rule is based on the current NYSE Rule 6 definition of Floor, which has the same physical location as the Exchange.

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<sup>16</sup> See 17 CFR 240.11a-1.

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 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. Moreover, the Exchange believes that the proposed rule change would remove a significant burden on competition because it would enable DMMs that operate on both the NYSE and the Exchange to be subject to the same requirements regarding the use of the proposed telephone booths, regardless of the market on which they are trading.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>17</sup> and Rule 19b-4(f)(6) thereunder.<sup>18</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant

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<sup>17</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>18</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>19</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),<sup>20</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has stated that it is requesting this waiver because the proposed rule change is based on the approved rules of NYSE and would be applicable to member organizations that are also NYSE member organizations, trade on the same physical facilities as NYSE, and are subject to trading rules based on the rules of NYSE. The Exchange further stated that the proposed rule change would permit the Exchange to implement changes to its rules at the same time that the approved changes are implemented by NYSE.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because this waiver will enable the Exchange to maintain consistent definitions of Trading Floor and Floor between the Exchange and NYSE, which utilize the same physical location and have their member organizations in common. Waiver could thus avoid confusion that might arise from excluding the telephone booths described herein from the definition of Trading Floor for purposes of NYSE but not for the Exchange. The Commission notes that the Exchange, in adopting this proposed rule change, will

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<sup>19</sup> 17 CFR 240.19b-4(f)(6).

<sup>20</sup> 17 CFR 240.19b-4(f)(6)(iii).

be held to the same standards with respect to conducting surveillance for the misuse of material non-public information and monitoring for compliance with Exchange rules within the telephone booths and on the Trading Floor that the Commission based its findings on when approving NYSE's version of the proposed rule change. For the reasons described above, consistent with the protection of investors and the public interest, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.<sup>21</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>22</sup> of the Act to determine whether the proposed rule change should be approved or 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEMKT-2016-92 on the subject line.

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<sup>21</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>22</sup> 15 U.S.C. 78s(b)(2)(B).

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-NYSEMKT-2016-92. 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-NYSEMKT-2016-92, 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.<sup>23</sup>

Robert W. Errett  
Deputy Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).