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 email to rule-comments@sec.gov. Please include File Number SR–NASDAQ–2017–063 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–NASDAQ–2017–063. This file number should be included on the subject line if email 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 Web site (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 Web site viewing and copying at 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–NASDAQ–2017–063, and should be submitted on or before August 3, 2017.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE MKT LLC; Order Granting Approval of Proposed Rule Changes, as Modified by Amendment No. 1, Amending NYSE Rule 36 and NYSE MKT Rule 36—Equities To Permit Exchange Floor Brokers To Use Non-Exchange Provided Telephones on the Floor


I. Introduction

On March 31, 2017 and March 22, 2017, New York Stock Exchange LLC ("NYSE") and NYSE MKT LLC ("NYSE MKT") (each of NYSE and NYSE MKT an "Exchange"), respectively, filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder, proposed rule changes to permit Exchange floor brokers to use telephones not provided by the Exchange while on the Floor of the Exchange, and make related changes. The proposed rule changes were published for comment in the Federal Register on April 10, 2017. On May 24, 2017, pursuant to Section 19(b)(2) of the Act, the Commission designated a longer period within which to either approve the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to disapprove the proposed rule changes. On July 6, 2017, NYSE and NYSE MKT each filed Amendment No. 1 to its respective proposed rule change. The Commission received no comments on the proposed rule changes. This order grants approval of the proposed rule changes, each as modified by the respective Amendment No. 1.

II. Description of the Proposed Rule Changes, as Modified by Amendment No. 1

NYSE and NYSE MKT propose to amend NYSE Rule 36 and NYSE MKT Rule 36—Equities, respectively, to permit Exchange floor brokers to use cellular or wireless telephones not provided by the Exchange while on the Floor of the Exchange.

Currently, with Exchange approval, a floor broker may maintain a telephone line or use an Exchange authorized and provided portable telephone, which permits a non-member off the Floor to communicate with a member or member organization on the Floor. Any floor broker receiving orders from the public over portable telephones must be properly qualified under Exchange rules to conduct such public business. Exchange rules prohibit the use of a portable telephone on the Floor other than one authorized and issued by the Exchange, with a limited exception that allows members and employees of member organizations to use personal portable telephones while outside of the Trading Floor but still on the Floor of the Exchange.

NYSE and NYSE MKT propose to allow a floor broker to use a personal cellular or wireless telephone, rather than a non-member cellular or wireless telephone, to conduct private communications with the public on the Floor. The proposed rule change eliminates or modifies several definitions, including "Trading Floor" and "Brokers To Use Non-Exchange Provided Telephones To Permit Exchange Floor Brokers To Use Non-Exchange Provided Telephones on the Floor" as modified by Amendment No. 1.
Currently, when using an Exchange authorized and Exchange provided portable telephone, a floor broker: (i) May engage in direct voice communication from the point of sale on the Floor to an off-Floor location; (ii) may provide status and oral execution reports as to orders previously received, as well as “market look” observations as historically have been routinely transmitted from a broker’s booth location; (iii) must comply with NYSE Rule 123(e) or NYSE MKT Rule 123(e)—Equities, as applicable; and (iv) must comply with all other rules, policies, and procedures of both the Exchange and the federal securities laws, including record retention requirements.\(^{13}\) NYSE and NYSE MKT also require floor brokers and their member organizations to implement procedures designed to deter anyone calling their Exchange authorized and Exchange provided portable telephones from using caller ID block or other means to conceal telephone numbers.\(^{14}\) Under the proposals, NYSE and NYSE MKT would continue to apply these requirements when a floor broker uses a personal cellular or wireless telephone on the Floor.\(^{15}\)

NYSE and NYSE MKT currently prohibit floor brokers from using call-forwarding or conference calling, and Exchange authorized and Exchange provided portable telephones do not have these capabilities.\(^{16}\) Under the proposals, NYSE and NYSE MKT would eliminate this restriction.\(^{17}\) According to NYSE and NYSE MKT, the prohibition on forwarding calls proposed to add certain requirements applicable to the NYSE Arca and NYSE MKT options trading floors that, according to the Exchanges, are not compatible with current practices on the NYSE and NYSE MKT equities trading floors that allow floor brokers to speak to individuals off the Floor and provide certain status reports and observations. See NYSE Notice, supra note 3, at 17308 n. 14; NYSE MKT Notice, supra note 3, at 17303 n. 12.

NYSE and NYSE MKT would require floor brokers to maintain records of the use of telecommunications and all other approved devices, including call logs, for at least three years.\(^{24}\) The Exchange could deny, limit, or revoke registration of any device used on the Floor upon a determination that use of such device is inconsistent with the public interest, the protection of investors, or just and equitable principles of trade, or that such device has been or is being used to facilitate any violation of the Act, as amended, or

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\(^{18}\) See proposed NYSE Rule 36, Supplementary Material .20(a); proposed NYSE MKT Rule 36—Equities, Supplementary Material .20(a).

\(^{19}\) See proposed NYSE Rule 36, Supplementary Material .21(a); proposed NYSE MKT Rule 36—Equities, Supplementary Material .21(a). NYSE and NYSE MKT submitted proposed attachments, each at Exhibit 5A. As explained in their proposals, according to NYSE and NYSE MKT, they would issue appropriate regulatory guidance regarding the use of personal cellular or wireless telephones while on the exchanges’ options trading floors.\(^{12}\)

\(^{13}\) The Exchanges’ proposed restrictions (described further below) for the use of personal cellular telephones on their equity Floors are modeled after, with some exceptions, the rules of NYSE Arca and NYSE MKT concerning cellular telephone use on their options trading floors.\(^{14}\)
rules thereunder, or Exchange Rules. Each Exchange states that it would assume no liability to floor brokers due to conflicts between telephones in use on the Floor or electronic interference problems resulting from the use of telephones on the Floor.

NYSE and NYSE MKT propose to replace references to “portable,” “personal portable,” or “Exchange authorized and provided portable” telephones with “cellular or wireless” telephones. Finally, NYSE and NYSE MKT propose to make minor technical changes to the rules.

NYSE and NYSE MKT noted that they will announce the implementation date of the proposed rule changes in a Regulatory Bulletin at least 30 days in advance of such implementation date and that the proposed rule changes will become operative within 90 days of approval. As of the implementation date, the Exchanges will no longer provide portable telephones to floor brokers.

II. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes, as modified by Amendment No. 1, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b)(5) of the Act, 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 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.

NYSE and NYSE MKT propose to allow floor brokers to use personal cellular or wireless telephones on the Floor, instead of Exchange authorized and Exchange provided telephones, subject to Exchange approval and specified registration requirements. The Commission notes that NYSE Arca and NYSE MKT currently allow floor brokers to use personal cellular or wireless telephones on their options trading floors. The Commission further notes that floor brokers’ use of personal cellular or wireless telephones will be generally subject to the existing regulatory framework pertaining to use of portable telephones on the Floor, with certain additions and one change as described further below. With respect to NYSE MKT, the Commission notes that if a floor broker conducts business on both the equities floor and the options floor, the floor broker would be required to maintain a separate personal cellular or wireless telephone for use on each floor.

When first approving NYSE floor brokers’ use of Exchange authorized and Exchange provided portable telephones on the Floor on a pilot basis, the Commission noted that the Exchange would have access to all telephone records and that proper surveillance is an essential component of any telephone access policy to an Exchange trading floor. NYSE and NYSE MKT propose that floor brokers would be required to maintain records of telephone use, including logs of calls placed, and that the Exchange would have the right to periodically inspect such records. The Commission expects that NYSE and NYSE MKT will also propose specific registration requirements for the use of personal cellular or wireless telephones on the Floor, including an attestation that floor brokers are aware of applicable rules. The Exchange would have the ability to deny, limit, or revoke such registration. The Commission believes that these registration requirements will allow the Exchanges to oversee floor brokers’ use of personal cellular or wireless telephones. Further, NYSE and NYSE MKT propose to remove restrictions on the use of call forwarding and conference calling. The Commission notes that the initial reason for the restriction on the use of call forwarding is moot now that floor brokers will not use Exchange-issued telephones and the recordkeeping requirements described

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25 See proposed NYSE Rule 36, Supplementary Material. 21(e); proposed NYSE MKT Rule 36—Equities, Supplementary Material. 21(f).
26 See proposed NYSE Rule 36, Supplementary Material. 21(f); proposed NYSE MKT Rule 36—Equities, Supplementary Material. 21(g). According to NYSE and NYSE MKT, rules of other exchanges similarly limit or cap liability for losses arising from the use of an exchange’s facilities, systems, or equipment. See NYSE Notice, supra note 3, at 17140 n. 23; NYSE MKT Notice, supra note 3, at 17305 n. 20 (citing Nasdaq Rule 4626; NYSE Arca Equities Options Rules 2.8 and 14.2; NYSE Arca Equities Rules 2.7 and 13.2).
27 See proposed NYSE Rule 36, Supplementary Material. 20...and .23; proposed NYSE MKT Rule 36—Equities, Supplementary Material. 20...and .23.
28 See proposed NYSE Rule 36, Supplementary Material. 20(a); proposed NYSE MKT Rule 36—Equities, Supplementary Material. 20(a) and .21(b)(ii).
29 See Amendment No. 1, supra note 6.
30 In approving these proposed rule changes, the Commission has considered the proposed rules’ impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).
32 See supra note 25 and accompanying text.
above should allow the Exchanges to monitor the use of conference calls.

Based on the foregoing, the Commission believes that the proposed rule changes present no novel regulatory issues and therefore finds the proposed rule changes to be consistent with the Act. The Commission believes that it is reasonable for NYSE and NYSE MKT to allow floor brokers to use personal cellular or wireless telephones on their equities Floors, subject to Exchange approval, registration requirements, and a regulatory framework similar to that which currently exists for use of Exchange-authorized and Exchange-provided portable telephones on their equities Floors, and for the use of personal cellular telephones on options floors, in compliance with Exchange Rules and federal securities laws. The Commission expects that the Exchanges will monitor compliance with Exchange rules by floor brokers using personal cellular or wireless telephones on the Floor and will inform the Commission if they encounter unanticipated difficulties in enforcing their rules, and make any subsequent changes to their rules to address these issues, or otherwise find that the use of personal telephones raises regulatory concerns.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,37 that the proposed rule changes (SR–NYSE–2017–007) be, and hereby are, each as modified by their respective proposed rule changes (SR–NYSE–2017–003, SR–NSCC–2017–004, and SR–FICC–2017–007).

Self-Regulatory Organizations: The Depository Trust Company; National Securities Clearing Corporation; Fixed Income Clearing Corporation; Order Approving Proposed Rule Changes, as Modified by Amendments No. 1, To Adopt the Clearing Agency Policy on Capital Requirements and the Clearing Agency Capital Replenishment Plan


I. Introduction


II. Description of the Proposed Rule Changes

The Proposed Rule Changes are proposals by the Clearing Agencies to adopt the Clearing Agency Policy on Capital Requirements (“Policy”) and the Clearing Agency Capital Replenishment Plan (“Plan”), as described below.

A. Overview of the Policy

The Policy is designed to provide the Clearing Agencies with a framework for holding sufficient liquid net assets (“LNA”) funded by equity to cover potential general business losses, as required under applicable regulatory standards.4 Pursuant to the Policy, the Clearing Agencies would hold LNA funded by equity in amounts designed to satisfy each Clearing Agency’s General Business Risk Capital Requirement and Credit Risk Capital Requirement, as described below. The sum of a Clearing Agency’s General Business Risk Capital Requirement and Credit Risk Capital Requirement constitutes its Total Capital Requirement. In addition to the Total Capital Requirement, the Policy would provide for the maintenance of an additional, discretionary amount of LNA funded by equity (i.e., a “Buffer”), also described below.

The Policy would describe how the Treasury group of The Depository Trust & Clearing Corporation (“Treasury”)5 would monitor and manage the LNA funded by equity to satisfy the Total Capital Requirement at all times.6 More specifically, each Clearing Agency would manage its LNA funded by equity in a number of ways, including (i) taking steps to maintain an appropriate and sustainable level of profitability; (ii) maintaining the Buffer in addition to the Total Capital Requirement; (iii) taking steps to increase the amount of LNA funded by equity when necessary; and (iv) maintaining a viable plan for the replenishment of equity through the Plan.7 The Policy would further provide that DTCC would maintain insurance policies that cover certain potential Clearing Agency losses.8

1. General Business Risk Capital Requirement

According to the Policy, each Clearing Agency would calculate the General Business Risk Capital Requirement by first calculating three separate amounts related to general business risk. Specifically, each Clearing Agency would calculate an amount based on (i) the Clearing Agency’s general business risk profile (“Risk-Based Capital Requirement”);9 (ii) the time estimated

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40 Notice, 82 FR at 19127; see also 17 CFR 240.17Ad–22(e)(15).
41 The Depository Trust & Clearing Corporation (“DTCC”) is the parent company of the Clearing Agencies. DTCC operates on a shared services model with respect to the Clearing Agencies. Most corporate functions are established and managed on an enterprise-wide basis pursuant to intercompany agreements under which it is generally DTCC that provides a relevant service to a Clearing Agency.
42 Notice, 82 FR at 19128.
43 Notice, 82 FR 19128–19129.
44 Notice, 82 FR 19129.
45 Each Clearing Agency would calculate its Risk-Based Capital Requirement by identifying the general business risk profile of that Clearing Agency through (i) analysis of business performance, key...