

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Additional Item

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Thursday, September 22, 2016.

CHANGES IN THE MEETING: The following matters will also be considered during the 2:00 p.m. Closed Meeting scheduled for Thursday, September 22, 2016:

Adjudicatory matter

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: September 16, 2016.

Lynn M. Powalski,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-78855; File No. SR-NYSE-2016-31]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval 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

September 15, 2016.

I. Introduction

On May 31, 2016, New York Stock Exchange LLC (“NYSE” or the “Exchange”) 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 6A (“Trading Floor”) to exclude a physical area within fully enclosed telephone booths located in 18 Broad Street from the definition of Trading Floor. The proposed rule change was published for comment in the **Federal Register** on June 17, 2016.³ On July 29, 2016, pursuant to Section 19(b)(2) of the Act,⁴ the Commission

designated a longer period within which to either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 6A (“Trading Floor”) to exclude an area within fully enclosed telephone booths located in 18 Broad Street from the definition of “Trading Floor.” Under the proposal, as discussed in more detail below, the area within the enclosed telephone booths will remain within the Exchange’s broader definition of Floor under Rule 6.⁶ The Exchange also proposes to revise the definition of “Trading Floor” to reflect the renaming of a portion of its physical area and relocation of where NYSE Amex-listed options are traded.⁷

The Exchange currently defines “Trading Floor” 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.”⁸ Rule 6A then excludes from the definition of “Trading Floor” those 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.”⁹

The Exchange proposes to exclude an additional area from the definition of Trading Floor. Specifically, the proposal would exclude from the defined Trading Floor the physical area within fully enclosed telephone booths located in 18 Broad Street at the Southeast wall of the Trading Floor.¹⁰ These telephone booths are located in a vestibule area adjacent to the 18 Broad Street elevator banks that provide access to the Trading Floor. The vestibule area is separated from the equity trading areas of the Main Room by approximately forty (40) feet and a partial physical barrier. The Exchange

represents that, while inside the telephone booths, there is no visual or auditory access to activities conducted at the trading posts or by Floor Brokers.¹¹

Currently Exchange members and employees of member organizations are allowed to use personal portable or wireless communication devices outside the Trading Floor, provided that such use is consistent with all other Exchange Rules and federal securities laws and rules thereunder.¹² By excluding the physical area within the fully enclosed telephone booths described herein from the definition of Trading Floor, the proposal would create an exception to restrictions that would otherwise prohibit the use of personal cellular telephones while in the telephone booths. In its filing, the Exchange states that it designed the telephone booths for use by Designated Market Makers (“DMMs”) and DMMs could use this space to communicate with issuers. However, the telephone booths could be used by anyone with access to the Trading Floor, including Floor Brokers.¹³ In the Exchange’s view, a DMM’s use of a personal cellular telephone while within a telephone booth to communicate with an issuer is no different than a DMM’s use of a personal cellular telephone to communicate with an issuer from a DMM’s office off the Exchange or while outside the restricted-access areas of the Floor.¹⁴

The Exchange states in its filing that, while in a telephone booth, a DMM would not have access to any time and place information that he or she may have at a trading post. According to the Exchange, the following aspects of the telephone booths would create privacy: (1) The closest location of any Floor Broker operations, which also contains privacy barriers, is approximately forty (40) feet from the proposed location of the telephone booths; (2) there are high arching walls with limited line and sight vision separating the telephone booths from any trading posts on the Trading Floor; and (3) the telephone booths are fully enclosed so any conversation that would occur would take place behind closed doors. The Exchange states that it “believes that the combination of these visual and acoustical barriers would substantially

⁵ See Securities Exchange Act Release No. 78442 (July 29, 2016), 81 FR 51521 (August 4, 2016). The Commission designated September 15, 2016 as the date by which it shall approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change.

⁶ See, *infra*, notes 16-17 and accompanying text.

⁷ See proposed Rule 6A.

⁸ 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).

⁹ See NYSE Rule 6A.

¹⁰ See proposed Rule 6A.

¹¹ See Notice, *supra* note 3, at 39722-23.

¹² See NYSE Rule 36, Supplementary Material .23.

¹³ Currently, Floor Brokers on the Trading Floor are only allowed to use an approved telephone line or Exchange authorized and provided portable phone. See NYSE Rule, Supplementary Material .20 and .21.

¹⁴ See Notice, *supra* note 3, at 39723.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 78057 (June 13, 2016), 81 FR 39722 (“Notice”).

⁴ 15 U.S.C. 78s(b)(2).