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For the Board.

Martha P. Rico,

Secretary to the Board.

[FR Doc. 2017–07067 Filed 4–7–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80378; File No. S7–03–14]

Order Granting a Temporary Exemption to Covered Clearing Agencies From Compliance With Rule 17Ad–22(e)(3)(ii) and Certain Requirements in Rules 17Ad–22(e)(15)(i) and (ii) Under the Securities Exchange Act of 1934

April 5, 2017.

I. Introduction

On September 28, 2016, the Securities and Exchange Commission (''Commission'') adopted amendments to Rule 17Ad–22 pursuant to Section 17A of the Securities Exchange Act of 1934 (''Exchange Act'') and Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[1] Among other things, the amendments added new Rule 17Ad–22(e), which establishes an enhanced regulatory framework for registered clearing agencies that meet the definition of a covered clearing agency.[2] The amendments to Rule 17Ad–22 became effective on December 12, 2016, and covered clearing agencies must be in compliance with the amendments by April 11, 2017.[3] For the reasons discussed below, the Commission is using its authority under Section 17A(b)(1) of the Exchange Act to grant covered clearing agencies a temporary exemption from compliance with Rule 17Ad–22(e)(3)(ii) and certain requirements in Rules 17Ad–22(e)(15)(i) and (ii) until December 31, 2017.

II. Background

Rule 17Ad–22(e) generally requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to address, among other things, its governance arrangements and risk management framework.[4] Rule 17Ad–22(e)(3) requires a covered clearing agency to establish, implement, maintain and enforce policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, and which, among other things, includes plans for recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[5] In adopting Rule 17Ad–22(e)(3)(ii), the Commission stated its belief that recovery and wind-down plans, and material changes thereto, would constitute a proposed rule change under Section 19(b) of the Exchange Act and, for designated clearing agencies, an advance notice under the Clearing Supervision Act, subjecting them to Commission review and public comment.[6]

In addition, Rule 17Ad–22(e)(15) requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the covered clearing agency's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including, among other things, by (i) determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken and (ii) holding liquid net assets funded by equity equal to the greater of either (x) six months of its current operating expenses or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the recovery and wind-down plans established under Rule 17Ad–22(e)(3)(ii).[7]

III. Discussion

A. Background and Exemptive Request

As noted in the CCA Standards Adopting Release, the Commission believes that, taken together, the policies and procedures requirements related to recovery and wind-down plans in Rules 17Ad–22(e)(3)(ii) and (15) should help ensure that a covered clearing agency is able to remain resilient in times of market stress and to sustain its operations for sufficient time to achieve orderly wind-down if such

[1] *See* Exchange Act Release No. 34–78961 (Sept. 28, 2016), 81 FR 70786 (Oct. 13, 2016) (''CCA Standards Adopting Release'').

[2] Under Rule 17Ad–22(a)(5), ''covered clearing agency'' means (i) a designated clearing agency or (ii) a clearing agency involved in activities with a more complex risk profile for which the Commodity Futures Trading Commission is not the supervisory agency as defined in Section 803(8) of the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act''). *See* 17 CFR 240.17Ad–22(a)(5).

In addition, Rule 17Ad–22(a)(6) defines ''designated clearing agency'' to mean a clearing agency registered with the Commission under Section 17A of the Exchange Act that is designated systemically important by the Financial Stability Oversight Council pursuant to the Clearing Supervision Act and for which the Commission is the supervisory agency as defined in Section 803(8) of the Clearing Supervision Act. Rule 17Ad–22(a)(4) defines ''clearing agency involved in activities with a more complex risk profile'' to mean a clearing agency registered with the Commission under Section 17A of the Exchange Act that: (i) Provides central counterparty (''CCP'') services for security-based swaps; (ii) has been determined by the Commission to be involved in activities with a more complex risk profile at the time of its initial registration; or (iii) is subsequently determined by the Commission to be involved in activities with a more complex risk profile pursuant to Rule 17Ab2–2(b) under the Exchange Act. *See* 17 CFR 240.17Ad–22(a)(4), (6).

[3] *See* CCA Standards Adopting Release at 70848.

[4] *See id.* at 70792.

[5] 17 CFR 240.17Ad–22(e)(3)(ii).

[6] *See* CCA Standards Adopting Release at 70809.

[7] 17 CFR 240.17Ad–22(e)(15)(i), (ii).

action is necessary.[8] Unlike some other aspects of Rule 17Ad–22(e), until now recovery and wind-down plans have not been part of the Commission's regulatory framework for registered clearing agencies.[9]

Since the adoption of Rule 17Ad–22(e), Commission staff has been aware of the ongoing development of recovery and wind-down plans by covered clearing agencies in anticipation of the April 11, 2017 compliance date. Nevertheless, the development of recovery and wind-down plans continues to present novel and complex questions, and one entity, on behalf of its three subsidiaries that are covered clearing agencies, has requested that the Commission provide a temporary exemption from compliance until December 31, 2017 so that the clearing agencies can finalize their recovery and wind-down plans.[10] The entity states its view that recovery and wind-down plans are an important new input into industry efforts to manage systemic risk that must be carefully designed to address concerns unique to each covered clearing agency and its members.[11] The entity asserts that the topic of recovery and wind-down remains under active discussion in the industry, that a substantial amount of work remains to be completed, and that it would be prudent to provide for a longer period of time for consultation concerning the relevant documents and filings under the Rule 19b–4 and advance notice processes related to recovery and wind-down plans.[12] The entity believes, in particular, that covered clearing agencies, their members, and other interested persons would benefit from further thought development concerning whether and how the plans should address the continued provision of critical operations and services in the event that recovery tools fail. The entity emphasizes that additional time is necessary because of the complexity of the planning process, the need for further discussion and consultation, and the advisability of conducting appropriate member outreach prior to the submission of formal filings under the Rule 19b–4 and advance notice processes.[13]

B. Exemptive Relief

Section 17A(b)(1) of the Exchange Act provides that the Commission, by order and upon its own motion, may conditionally or unconditionally exempt any clearing agency or class of clearing agencies from any provisions of Section 17A or the rules and regulations thereunder if the Commission finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.[14]

Recognizing that the reasons stated by the entity may apply to covered clearing agencies generally, the Commission believes that all covered clearing agencies would benefit from additional time to finalize the development of their recovery and wind-down plans. As noted above, unlike some other aspects of Rule 17Ad–22(e), recovery and wind-down plans continue to present novel and complex questions. The recovery and wind-down plans described in Rule 17Ad–22(e)(3)(ii) are new requirements not previously included in the Commission's regulatory framework for clearing agencies, and the topics of recovery and wind-down remain under active discussion in the industry. The Commission believes that providing additional time to develop recovery and wind-down plans will facilitate further discussion, consultation, and member outreach by the covered clearing agencies that could help resolve the novel and complex questions presented. This in turn would help promote the development of plans that comprehensively address how a covered clearing agency could continue to provide critical operations and services in the event that recovery tools fail and that are consistent with the policies and procedures requirements of Rule 17Ad–22(e)(3)(ii). Therefore, the Commission finds that a temporary exemption from compliance with Rule 17Ad–22(e)(3)(ii) until December 31, 2017 is consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act.

In addition, compliance with certain aspects of Rule 17Ad–22(e)(15) depends in part on a covered clearing agency having established recovery and wind-down plans under Rule 17Ad–22(e)(3)(ii). Specifically, these include the following: (i) The requirement in Rule 17Ad–22(e)(15)(i) for policies and procedures for determining the amount of liquid net assets funded by equity based upon the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken (''RWP clause''); and (ii) clause (y) of Rule 17Ad–22(e)(15)(ii) requiring policies and procedures for holding liquid net assets funded by equity equal to the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under Rule 17Ad–22 (e)(3)(ii). The Commission therefore finds that a temporary exemption from compliance with these subsections of Rule 17Ad–22(e)(15) until December 31, 2017 is consistent with the public interest, the protection of investors, and the purposes of Section 17A of the Exchange Act.

The Commission is not granting relief from the April 11, 2017 compliance date for any other provision of the amendments to Rule 17Ad–22. In particular, the Commission notes that the temporary exemption from compliance does not apply to either of the following: (i) The requirement in Rule 17Ad–22(e)(15)(i) for policies and procedures for determining the amount of liquid net assets funded by equity based upon its general business risk profile; or (ii) clause (x) of Rule 17Ad–22(e)(15)(ii) requiring policies and procedures for holding liquid net assets funded by equity equal to six months of the covered clearing agency's current operating expenses. Accordingly, as of the April 11, 2017 compliance date for the amendments to Rule 17Ad–22, a covered clearing agency is required to have policies and procedures for determining the amount of liquid net assets funded by equity based upon its general business risk profile pursuant to Rule 17Ad–22(e)(15)(i) and for holding liquid net assets funded by equity equal to six months of the covered clearing agency's current operating expenses pursuant to clause (x) of Rule 17Ad–22(e)(15)(ii), regardless of whether the covered clearing agency has met the condition for obtaining relief under this temporary exemption.

As a condition to obtaining relief under the temporary exemption, a

[8] *See* CCA Standards Adopting Release at 70868, 70876.

[9] As discussed in CCA Standards Adopting Release, certain requirements in Rule 17Ad–22(e) contain requirements substantially similar to those in Rule 17Ad–22(d) or reflect current practices at registered clearing agencies. Certain other requirements in Rule 17Ad–22(e) contain provisions that are similar to those in Rule 17Ad–22(d) but would also impose additional requirements not found in Rule 17Ad–22(d). A few requirements have no comparable requirement under Rule 17Ad–22(d) and therefore may require more extensive changes to policies and procedures or other additional steps to achieve compliance. *See id.* at 70891.

[10] *See* letter from Michael C. Bodson, President and Chief Executive Officer, The Depository Trust & Clearing Corporation, Feb. 15, 2017, *https://www.sec.gov/comments/s7-03-14/s70314-1594398-132354.pdf.*

[11] *See id.* at 1.

[12] *See id.* at 2.

[13] *See id.*

[14] 15 U.S.C. 78q–1(b)(1).

covered clearing agency must notify the Commission in writing of its intent to rely upon the temporary exemption no later than April 11, 2017.

IV. Conclusion

The Commission hereby grants, pursuant to Section 17A(b)(1) of the Exchange Act, covered clearing agencies a temporary exemption from compliance with Rule 17Ad–22(e)(3)(ii), the RWP clause of Rule 17Ad–22(e)(15)(i), and clause (y) of Rule 17Ad–22(e)(15)(ii) until December 31, 2017, subject to the condition contained in this order.

By the Commission.

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2017–07101 Filed 4–7–17; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–80375; File No. SR–NYSEMKT–2017–16]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending Rule 36—Equities To Permit Exchange Floor Brokers To Use Non-Exchange Provided Telephones on the Floor

April 4, 2017.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 22, 2017, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 self-regulatory organization. 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 Rule 36—Equities to permit Exchange Floor brokers to use non-Exchange provided telephones on the Floor and make related changes modeled on the rules governing telephone use on the Exchange's options trading floor and on the options trading floor of its affiliate NYSE Arca, Inc. The proposed rule change is available on the Exchange's Web site 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 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 Exchange proposes to amend Rule 36—Equities (Communication Between Exchange and Members' Offices) (''Rule 36'') to permit Exchange Floor brokers to use non-Exchange provided telephones on the Floor (the ''Floor'') [4] and make related changes modeled on the rules governing telephone use on the Exchange's options trading floor and on the options trading floor of its affiliate NYSE Arca, Inc. (''NYSE Arca'').

Background

Overview of Rule 36 Requirements

Rule 36 governs the establishment of telephone or electronic communications between the Floor and any other location, which requires Exchange approval. Supplementary Material .20, .21 and .23 to Rule 36 outline the conditions under which Floor brokers are permitted to use Exchange authorized and provided portable telephones with the approval of the Exchange. The Exchange adopted these provisions of Rule 36 in 2008 when it was acquired by NYSE Euronext.[5]

Pursuant to Rule 36.20(a), with Exchange approval, Floor brokers may maintain a telephone line or use Exchange authorized and provided portable phones, which permit a non-member off the Floor to communicate with a member or member organization on the Floor. Subject to the exception contained in Rule 36.23, discussed below, Rule 36.20(a) expressly prohibits the use of a portable telephone on the Floor other than one authorized and issued by the Exchange.[6]

The use of Exchange authorized and issued portable phones is governed by Rule 36.21, which provides that when using an Exchange authorized and provided portable phone, a Floor broker:

(i) May engage in direct voice communications 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 Exchange Rule 123(e)—Equities;

(iv) must comply with all other rules, policies, and procedures of both the Exchange and the federal securities law, including the record retention requirements, as set forth in Exchange Rule 440—Equities and SEC Rules 17a–3 and 17a–4; [7] and

(v) may not use call-forwarding or conference calling. Exchange authorized and provided portable phones used by Floor brokers shall not have these capabilities.

Rule 36.21(b) further provides that Floor brokers and their member organizations must implement procedures designed to deter anyone calling their portable phones from using caller ID block or other means to conceal the phone number from which a call is being made. Members and member organizations are required to make and retain records demonstrating compliance with such procedures.

Rule 36.21(c) provides that Floor brokers may not use an Exchange authorized and issued portable phone used to trade equities while on the NYSE Amex Options Trading Floor.

Rule 36.23 provides that, notwithstanding any other provision of Rule 36, members and employees of member organizations may use personal portable communications devices outside the Trading Floor [8] consistent

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Rule 6—Equities defines the Floor as 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.

[5] *See* Securities Exchange Act Release No. 58705 (October 1, 2008), 73 FR 58995 (October 8, 2008) (SR–Amex–2008–63). The Exchange's Rule 36 was modeled on the New York Stock Exchange LLC's (the ''NYSE'') version of Rule 36. *See id.,* 73 FR at 58996 & n.24.

[6] The last sentence of Rule 36.20(a) provides that the Exchange will approve the maintenance of telephone lines only at the booth location of a member or member organization.

[7] *See* 17 CFR 240.17a–3; 17 CFR 240.17a–4.

[8] Rule 6A—Equities defines the Trading Floor as the restricted-access physical areas designated by the Exchange for the trading of securities, commonly known as the Main Room and the Buttonwood Room but does not include the areas in the Buttonwood Room designated by the Exchange for the trading of its listed options securities, which, for the purposes of the