

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94217; File No. SR-NYSE-2021-73]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving a Proposed Rule Change To Amend NYSE Rule 37 To Incorporate Standards of Conduct for the Exchange's Trading Floor

February 10, 2022.

I. Introduction

On December 13, 2021, 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 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Rule 37 to incorporate standards of conduct for the Exchange's Trading Floor. The proposed rule change was published for comment in the *Federal Register* on December 29, 2021.³ The Commission has received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of Proposed Rule Change

The Exchange proposes to amend NYSE Rule 37 to incorporate standards of conduct for the Exchange's Trading Floor that are modeled on rules of the Exchange's affiliates NYSE American LLC and NYSE Arca, Inc., and to add amended NYSE Rule 37 to the list of minor rule violations in NYSE Rule 9217. Proposed NYSE Rule 37 would be administered by the Exchange's regulatory staff.

a. Proposed Amendments to NYSE Rule 37

First, NYSE Rule 37 would be renamed "Admission and Conduct on the Trading Floor" similar to the NYSE American and NYSE Arca options rules, except that it would use the term "Trading Floor."

Second, the existing text of NYSE Rule 37 governing admissions would be relocated to a new subsection (a) titled "Admission," once again similar to the NYSE American and NYSE Arca options rules.⁴ The existing text of NYSE Rule 37 would be unchanged.

Third, the Exchange would adopt a new subsection (b) titled "Conduct on the Trading Floor" that would be substantially similar to NYSE American Rule 902NY(b) and NYSE Arca Rule 6.2-O(b). The proposed rule would provide that while on the Trading Floor, all members are required to act in a manner consistent with a fair and orderly market and with the maintenance of public confidence in the Exchange.⁵ The proposed rule would further provide that upon the determination that a member's conduct on the Floor is such as to impair the maintenance of a fair and orderly market, or to impair public confidence in the operations of the Exchange, or that a member has otherwise violated the proposed rule, a member may be disciplined in accordance with the NYSE Rule 9000 Series, the Exchange's disciplinary rules. Proposed NYSE Rule 37(b) would also apply to a member's failure to adequately supervise an employee or guest of the member to ensure compliance with the proposed rule. Unlike the NYSE American and NYSE Arca rules, proposed NYSE Rule 37(b) would explicitly include as sanctionable conduct under the proposed rule the failure to adequately supervise the guest of a member. Because violations of proposed NYSE Rule 37 would be subject to discipline pursuant to the NYSE Rule 9000 Series, in paragraph (b) the Exchange proposes to include the phrase "or that a member has otherwise violated this rule." Unlike the NYSE American and NYSE Arca rules, proposed NYSE 37(b) would not include text that: (1) States that fines imposed would not preclude further disciplinary action by the Exchange; or (2) refers to Exchange Trading Officials because, unlike their options market counterparts, they are not regulatory employees.

Fourth, the Exchange proposes a new subsection (c) titled "Standards of Dress and Conduct" that is also substantially similar to NYSE American Rule 902NY(c) and NYSE Arca Rule 6.2-O(c). Proposed NYSE Rule 37(c) would provide that all persons on the Floor must comply with the standards of dress

and conduct set forth in proposed NYSE Rule 37(c)(1)(A)-(C).

Proposed NYSE Rule 37(c)(1) would be titled "Standards of Dress" and would provide that all persons on the Floor, whether members, employees of member organizations, or visitors, must at all times, whether prior to, during, or after trading sessions, be dressed in a manner appropriate for business purposes and in accordance with good taste and professional standards. Like the NYSE American and NYSE Arca rules, proposed NYSE Rule 37(c)(1) would provide that the term "good taste" will be interpreted in a conservative manner. In addition, proposed NYSE Rule 37(c)(1) would set forth the following requirements and prohibitions:

- Proposed NYSE Rule 37(c)(1)(A) would provide that personal attire must be neat, clean, and presentable.
- Proposed NYSE Rule 37(c)(1)(B) would provide that all members and employees of member organizations must wear trading jackets and/or suit or sport coats while present on the Floor.
- Proposed NYSE Rule 37(c)(1)(C) would provide that the Exchange may impose additional standards of dress or otherwise modify these standards of dress by means of a written policy that will be distributed to all members and member organizations.

Proposed NYSE Rule 37(c)(2) would be titled "Standards of Conduct." Proposed subsection (A) of NYSE Rule 37(c)(2) would provide that all persons on the Floor are required to conduct themselves in accordance with a seemly and professional standard of behavior. Specifically, the proposed Rule would specify that no person while on the Floor shall:

- Engage in any act or practice that may be detrimental to the interest or welfare of the Exchange (proposed NYSE Rule 37(c)(2)(A)(i));
 - engage in any act or practice that may serve to disrupt or hinder the ordinary and efficient conduct of business (proposed NYSE Rule 37(c)(2)(A)(ii));
 - engage in any act or practice that may serve to jeopardize the safety or welfare of any other individual (proposed NYSE Rule 37(c)(2)(A)(iii));
- or
- act in a disorderly manner, which includes, but is not limited to, use of abusive or indecorous language and the display or circulation of written material or graphic images that are harassing, inappropriate, offensive, and/or lewd (proposed NYSE Rule 37(c)(2)(A)(iv)).

Proposed subsection (B) of NYSE Rule 37(c)(2) would provide that entry and

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 93851 (Dec. 22, 2021), 86 FR 74180 (Dec. 29, 2021) ("Notice").

⁴ See, e.g., NYSE American Rule 902NY(e).

⁵ The first sentence of proposed NYSE Rule 37(b) would be based on NYSE American Rule 902NY(c) and NYSE Arca Rule 6.2-O(c).

consumption of food or drink on the Trading Floor may be permitted at the discretion of the Exchange and that food or drink should only be consumed at the booth or post. Finally, proposed NYSE Rule 37(c)(2)(B) would provide that alcoholic beverages may not be consumed on the Trading Floor during business hours as defined in NYSE Rule 7.1 (Hours of Business). The proposed Rule differs slightly from the NYSE American and NYSE Arca rules, which prohibit consumption of alcoholic beverages at any time.

Proposed subsection (C) of NYSE Rule 37(c)(2) would prohibit smoking in any form, any kind of tobacco use, or any expectorating on the Floor and clarify that this prohibition would apply at all times. The proposed Rule is identical to the NYSE American and NYSE Arca versions.

Proposed subsection (D) of NYSE Rule 37(c)(2) would prohibit running on the Trading Floor, which the proposed Rule would define as any movement at a degree of speed which may disrupt other occupants of the Floor. Once again, the proposed Rule is identical to the NYSE American and NYSE Arca versions.

Proposed subsection (E) of NYSE Rule 37(c)(2) would prohibit standing on chairs, furniture, booths, ladders, stools, and similar items. The proposed Rule is the same as NYSE American Rule 902NY(c)(2)(E) and NYSE Arca Rule 6.2–O(c)(2)(E).

Proposed subsection (F) of NYSE Rule 37(c)(2) would provide that no object of any kind may be placed in the trading post areas, including all chairs, stools, or other furniture, if it could obstruct the flow of people in or out of the Trading Floor. Unlike the NYSE American and NYSE Arca rules, NYSE Rule 37(c)(2)(F) would not include any references to the trading crowd.

Fifth and finally, the Exchange proposes a new subsection (d) to NYSE Rule 37 titled “Trading Floor Badges.” NYSE Rule 303 (Limitation on Access to Floor) currently requires members on the Floor to be provided with a badge that must be worn while on the Floor.⁶ Proposed NYSE Rule 37(d) would supplement NYSE Rule 303 by specifying, similar to NYSE American Rule 902NY(d) and NYSE Arca Rule 6.2–O(d), that admission to the Floor will be by Exchange-issued badge only and that Exchange-issued badges must be appropriately displayed, with the

⁶NYSE Rule 303(a) provides that members who execute orders on the Floor must be provided with an identification badge and must wear the same while on the Floor, and that every member’s badge must contain his or her name and a number and the name of his or her member organization.

photo visible, at all times while on the Floor. The proposed Rule would also specify that use of an Exchange-issued badge belonging to another member or Floor employee to enter or exit the Floor is prohibited. In addition, the proposed Rule would provide that authorized persons seeking admission to the Floor without a badge must show proper identification and obtain a temporary badge from the Security Office. Finally, proposed NYSE Rule 37(d) would provide that visitor’s badges are not acceptable identification cards for Floor employees.

b. Fines for Minor Rule Violations

NYSE Rule 9217 sets forth the list of rules under which a member organization or covered person may be subject to a fine under NYSE Rule 9216(b). NYSE Rule 9217 permits the Exchange to impose a fine of up to \$5,000 on any member or covered person for a minor violation of an eligible rule.

The Exchange proposes to amend NYSE Rule 9217 to add a reference to the proposed NYSE Rule 37 provisions governing floor decorum, disruptive actions involving physical contact while on the Floor, use of abusive language, rules on visitors, abuse of Exchange property, and misuse of Exchange-issued badge or identification to the list of rules in NYSE Rule 9217 eligible for disposition pursuant to a minor fine under NYSE Rule 9216(b). Violations of the similar provisions under NYSE American Rule 902NY and NYSE Arca Rule 6.2–O are eligible for minor rule fines under those markets’ respective versions of NYSE Rule 9217.⁷

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

⁷ See NYSE American Rule 9217(i)(14) (violation of rules related to floor decorum); (i)(15) (disruptive action involving physical contact while on the Trading Floor); NYSE American Rule 9217(i)(16) (ATP Holder used abusive language on the trading floor); NYSE American Rule 9217(i)(20) (violation of rules on visitors to the options floor); NYSE American Rule 9217(i)(21) (misuse of ATP Holder badge or identification); and (i)(25) (abusing exchange property). See also NYSE Arca Rule 10.9217(e)(16) (violation of rules related to floor decorum); NYSE Arca Rule 10.9217(e)(17) (disruptive action involving physical contact while on the trading floor); NYSE Arca Rule 10.9217(e)(19) (OTP Holder used abusive language on the trading floor); NYSE Arca Rule 10.9217(e)(31) (violation of rules on visitors to the options floor); NYSE Arca Rule 10.9217(e)(32) (misuse of OTP Holder badge or OTP Firm identification); and NYSE Arca Rule 10.9217 (e)(36) (abusing exchange property).

securities exchange.⁸ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,⁹ which requires that the rules of an exchange be designed 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. The Commission also finds that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,¹⁰ which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,¹¹ which governs minor rule violation plans.

As described in detail above, the Exchange proposes to amend NYSE Rule 37 to add provisions governing floor decorum, disruptive actions involving physical contact while on the Floor, use of abusive language, visitors to the Exchange, abuse of Exchange property, and misuse of Exchange-issued badge or identification, and to also add the proposed NYSE Rule 37 provisions to the list of rules in NYSE Rule 9217 that are eligible for disposition pursuant to a minor fine under NYSE Rule 9216(b). This proposed rule change is modeled on rules of the Exchange’s affiliates NYSE American and NYSE Arca.

The Commission finds that adding the NYSE Rule 37 amendments to the list of rules in NYSE Rule 9217 that are eligible for disposition pursuant to a minor fine under NYSE Rule 9216(b) is consistent with the Act. This proposed rule change will align the Exchange’s rules regarding Floor conduct and decorum with the rules of its affiliates that also have trading floors. Because this proposal is modeled on conduct that is subject to minor rule fines on NYSE American and NYSE Arca, it does not raise any novel issues for consideration. Specifically, the Commission believes that NYSE Rule 9217 provides a reasonable means of addressing rule violations that may not rise to the level of requiring formal disciplinary proceedings, while

⁸In 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).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

¹¹ 17 CFR 240.19d–1(c)(2).

providing greater flexibility to the Exchange in handling certain violations.

The Commission, however, also believes that a violation of any self-regulatory organization's rules, or of Commission rules, is a serious matter. In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with the Exchange's rules and all other rules subject to fines under NYSE Rule 9217. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under NYSE Rule 9217 or whether a violation requires formal disciplinary action.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹² and Rule 19d-1(c)(2) thereunder,¹³ that the proposed rule change (SR-NYSE-2021-73) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94218; File No. SR-NASDAQ-2022-013]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Transaction Credits at Equity 7, Section 118

February 10, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹, and Rule 19b-4 thereunder,² notice is hereby given that on February 1, 2022, The Nasdaq Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, 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 the Exchange's transaction credits at Equity 7, Section 118, as described further below.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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 Exchange 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 these 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 aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's schedule of credits, at Equity 7, Section 118(a). The Exchange proposes to amend an existing credit to its members for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity to the Exchange.

Currently, the Exchange provides a credit of \$0.0029 per share executed to a member that, through one or more of its Nasdaq Market Center MPIDs: (i) Provides shares of liquidity in all securities that represent equal to or greater than 0.65% of Consolidated Volume³ during the month; (ii)

³ Pursuant to Equity 7, Section 118(a), the term "Consolidated Volume" shall mean the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. For the purposes of calculating the extent of a member's trading activity during the month on Nasdaq and determining the

increases its average daily volume of Midpoint Extended Life Orders executed by 150% or more during the month relative to the month of January 2021; and (iii) executes an average daily volume of at least 750,000 shares in Midpoint Extended Life Orders for the month. The Exchange proposes to amend this credit by providing an additional means of attaining it. Specifically, the Exchange proposes to amend the first criterion for the credit to state that a member must provide shares of liquidity in all securities that represent equal to or greater than either 0.65% of Consolidated Volume or an average daily volume of 70 million shares during the month.

By providing an additional means by which a member can attain this credit, the Exchange intends to increase the number of members that strive to and do attain it, including by increasing their average daily volume of liquidity adding activity on the Exchange. To the extent that the proposal succeeds in this objective, then Exchange will experience an increase in liquidity, which in turn stands to improve the quality of the market, to the benefit all participants.

The Exchange notes that those participants that are dissatisfied with this new proposal are free to shift their order flow to competing venues.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,⁵ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposal is also consistent with Section 11A of the Act relating to the establishment of the national market system for securities.

The Proposal Is Reasonable

The Exchange's proposal is reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for equity securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long

charges and credits applicable to such member's activity, all M-ELO Orders that a member executes on Nasdaq during the month will count as liquidity-adding activity on Nasdaq.

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(4) and (5).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 240.19d-1(c)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.