



**Martha Redding**  
Associate General Counsel  
Assistant Secretary

June 18, 2019

**VIA E-MAIL**

Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Re: Securities Exchange Act Rel. 34-85367 (SR-NYSE-2019-09)

Dear Secretary:

NYSE LLC, Inc. filed the attached Amendment No. 1 to the above-referenced filing on June 18, 2019.

Sincerely,

A handwritten signature in blue ink, appearing to be the initials "MR" followed by a stylized flourish.

(Encl. Amendment No. 1 to (SR-NYSE-2019-09))

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 30	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2019 - * 09 Amendment No. (req. for Amendments *) 1
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Filing by New York Stock Exchange LLC  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input type="checkbox"/>	Amendment * <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to amend Rules 104 and 36 to require and facilitate routine communications between Designated Market Makers and designated representatives of listed issuers

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* David    Last Name \* De Gregorio  
 Title \* Senior Counsel, NYSE Group Inc.  
 E-mail \* [REDACTED]  
 Telephone \* [REDACTED]    Fax [REDACTED]

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*) Associate General Counsel

Date 06/18/2019  
 By Clare Saperstein  
 (Name \*)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Clare Saperstein,

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

Add Remove View

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> New York Stock Exchange LLC (“NYSE” or the “Exchange”) proposes to amend Rules 104 and 36 to require and facilitate routine communications between Designated Market Makers (“DMMs”) and designated representatives of listed issuers. This Amendment No. 1 to SR-NYSE-2019-09 replaces SR-NYSE-2019-09 as originally filed and supersedes such filing in its entirety.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action by the Board of Directors or the membership of the Exchange is required. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

David De Gregorio  
Senior Counsel  
NYSE Group, Inc.  
[REDACTED]

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

<sup>2</sup> 17 CFR 240.19b-4.

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

(a) Purpose

The Exchange proposes to amend 104 (Dealings and Responsibilities of DMMs) and Rule 36 (Communication Between Exchange and Members' Offices) to require and facilitate routine DMM communication with designated representatives of listed issuers.

Proposed Rule Change

As described below, the Exchange proposes to amend Rule 104 to require DMM units to communicate with designated individuals at each issuer of listed securities in whose securities DMMs associated with the DMM unit are registered and would describe how the communication requirement can be met. The Exchange also proposes to amend Rule 36 to facilitate written electronic communications with issuers from the Floor of the Exchange (the "Floor")<sup>3</sup> pursuant to proposed Rule 104(l) during specified time periods and subject to certain restrictions.

Rule 104

Rule 104 sets forth the obligations of Exchange DMMs. The Exchange proposes to add a new paragraph (l) to Rule 104 titled "Communication with Issuers of Listed Securities" that would set forth the obligation of DMMs to communicate with their listed issuers.

Proposed Rule 104(1)(1) would provide that, on at least a quarterly basis, each DMM unit must communicate with one or more senior officials of each issuer of listed securities in whose securities DMMs associated with the DMM unit are registered, with the exception of American Depositary Receipts ("ADR").<sup>4</sup> The proposed rule would also provide that the senior official designated by the listed

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<sup>3</sup> Rule 6 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.

<sup>4</sup> ADRs are certificates representing a specified number of shares in non-U.S. issuers that are deposited and issued through U.S. banks. The shares underlying ADRs are primarily listed and traded on non-U.S. markets. The Exchange believes that the purpose for the proposed change is not furthered by requiring DMMs to contact foreign issuers whose ordinary listing is not on the Exchange and therefore proposes to exclude ADRs from the periodic communication requirement.

issuer for the proposed contacts must be of the rank of Corporate Secretary or higher and must not be involved in market or trading operations for or on behalf of the listed issuer or with respect to the listed security. The Exchange proposes to provide the senior officials at the issuer with the option to designate an individual to communicate with the DMMs on their behalf by including the clause “or a designee thereof” following “Corporate Secretary or above,” which the Exchange believes would enable issuers to more efficiently manage the communication process. As proposed, the designee would also have to be a person at the issuer who is not be involved in market or trading operations for or on behalf of the listed issuer or with respect to the listed security.

This proposed obligation would be on the DMM units only. DMM units would be required to communicate with the listed issuer contact, but the listed issuer contact would not be required to reciprocate. For example, a DMM unit could meet its obligation by sending an email communication to the listed issuer contact. However, the listed issuer contact would not be obligated to respond to that communication in writing or otherwise.

To address the possibility that a DMM unit may not have contact information for any individuals at a listed issuer, proposed Rule 104(1)(A) would provide that if a DMM unit does not have contact information for a listed issuer, the DMM unit can seek to communicate with the Corporate Secretary most recently named on a public filing by such issuer.

Proposed Rule 104(1)(2) would describe the ways in which the periodic communication requirement set forth in proposed subparagraph (1)(1) can be met. Specifically, proposed subparagraph (1)(2) would provide that the communication requirement may be met by either in-person meetings, telephone calls, or written communications.

The required communications would be explicitly subject to existing restrictions on DMMs. First, as set forth in proposed Rule 104(1)(2)(A), during the required communications, employees of the DMM unit would have to comply with the requirements of Rule 98<sup>5</sup> with respect to the information that may be shared with the listed issuer contact. Second, as described in proposed Rule 104(1)(2)(B), an employee of a DMM unit may not communicate with a listed issuer contact from the Floor via telephone. However, the Exchange proposes that an employee of a DMM unit would be able to communicate with a listed issuer contact from the Floor using electronic written communications, subject to the requirements and safeguards set forth in proposed Rule 36.31, described below. Finally, proposed Rule 104(1)(2)(C) would provide that DMM units must establish written policies

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<sup>5</sup> Rule 98 governs the operation of DMM units and imposes certain restrictions on DMM trading including, among other things, requiring that DMM units to protect against the misuse of Floor-based non-public order information. See, e.g., Rule 98(c)(3).

and procedures reasonably designed to ensure that DMMs are in compliance with the requirements of the proposed rule.

Proposed Rule 104(1)(3) would describe the non-regulatory penalties to be imposed if DMMs fail to initiate the required contacts with listed issuers. Specifically, if a DMM unit fails to initiate the required communication with the listed issuer for a single quarter, the Exchange would issue an initial warning letter to the DMM unit. If a DMM unit fails to initiate the required communication with the listed issuer for a two or more quarters, that DMM unit would be ineligible to participate in the allocation process for a minimum of one month following the second quarter of its failure to meet its contact requirement.

The proposed rule is substantively similar to former NYSE Rule 106(a), which provided that “[d]uring each quarter, each Exchange specialist unit shall contact one or more senior officials, of the rank of Corporate Secretary or above, of each company in whose stock specialists associated with the specialist unit are registered.” NYSE Rule 106 was deleted in 2008.<sup>6</sup> At the time, the Exchange determined that the requirement in former Rule 106 that specialist units make themselves available for contact with their listing companies periodically throughout the year was unnecessary to ensure that listed issuers were informed about trading in their listed securities given the availability of public information and the fact that specialist units had internal departments responsible for communicating with issuers during the trading day.<sup>7</sup> Following the deletion of Rule 106, the internal departments responsible for communicating with issuers were largely dismantled, and DMM communications with issuers have become less regular.

Because each listed security is assigned to a single DMM, the Exchange believes that one of the core functions of the DMM units is to maintain regular communications with listed issuers about trading activity in their securities. While DMM firms may no longer be structured as they were when former Rule 106 was in place, DMM units still regularly communicate with their listed issuers. The Exchange proposes to reinstate the mandated interaction between DMMs and listed issuers<sup>8</sup> because the Exchange believes that this would ensure that a minimum level of communication is occurring between DMM units and all listed issuers. The proposed rule would therefore establish a minimum level of required contacts. The Exchange understands that most DMM units have more frequent communications with their listed issuers.

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<sup>6</sup> See Securities Exchange Act Release No. 83540 (October 24, 2008), 73 FR 65435 (November 3, 2008) (SR-NYSE-2008-52).

<sup>7</sup> See *id.*, 73 FR at 65437.

<sup>8</sup> Former Rule 106 also required, for instance, that the specialist unit makes itself available to the Exchange’s fifteen (15) largest member organizations through required semiannual “off the Exchange Floor” contact. See *id.*

## Rule 36

Rule 36 governs the establishment of telephone or electronic communications connections between the Floor and other locations, which requires Exchange approval. Supplementary Material .31 to Rule 36 (“DMM Electronically Transmitted Written Communications”) permits DMM units to install and maintain certain written electronic communications applications. Specifically, Rule 36.31(a) permits a DMM unit, subject to Exchange approval and the conditions set forth in Rule 36.31, to install and maintain a wired or wireless device capable of sending and receiving written communications electronically through an Exchange-approved connection (a “Permitted Communications Device”).<sup>9</sup> Under Rule 36.31(b), the Permitted Communications Device shall only permit written electronic communications between Floor-based personnel and individuals with whom they are otherwise permitted to communicate pursuant to Rules 36.30 and 98, i.e., certain personnel in the off-Floor offices of the DMM unit, the DMM unit’s clearing operations, and persons who are permitted to provide non-trading related services to the DMM unit under Rule 98.

To facilitate the DMM unit’s proposed obligation to maintain regular communications with listed issuers, the Exchange proposes to amend Rule 36.31(b) to permit Floor-based DMM personnel to utilize Permitted Communications Devices for written electronic communications with the listed issuer representative designated under Rule 104(l)(1).

To effectuate this change, the Exchange would amend Rule 36.31(b) to add new subparagraphs (1) and (2), which would describe the two circumstances when using a Permitted Communications Device would be permitted.

Proposed Rule 36.31(b)(1) would reflect the current rule that Permitted Communications Devices may be used for electronic written communications between individuals located at the DMM unit’s post on the Floor and persons with whom they are otherwise permitted to communicate pursuant to Rules 36.30 and 98.

Proposed Rule 36.31(b)(2) would reflect the proposed rule that Permitted Communications Devices may be used for written electronic communications with the listed issuer representative designated under proposed Rule 104(l)(1), subject to the content restrictions set forth in that rule as described above and provided that a DMM unit may not use a Permitted Communications Device for this purpose for the periods 9:15 a.m. Eastern Time (“E.T.”) until the security is opened, and again beginning 15 minutes before the scheduled close of trading until the security is closed.

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<sup>9</sup> Examples of Permitted Communications Devices include email and instant messaging via a desktop or laptop computer.



The proposed time restrictions are designed to limit communications between the DMM and listed issuer during the period when a DMM would need to access non-public trading information to facilitate the opening or closing transactions, i.e., the fifteen minutes prior to a security being opened and closed by the DMM.<sup>10</sup> The Exchange believes that this proposed bright-line restriction on communications would eliminate any potential for non-public information to be shared by the DMM with a listed issuer in advance of the opening or closing of trading. The Exchange further believes that the Rule 98 requirements for the DMM to have policies and procedures reasonably designed to protect against the misuse of Floor-based non-public order information would restrict the DMMs from being able to share any non-public information the rest of the trading day.<sup>11</sup>

Finally, the requirements in current Rule 36.31(c) that a DMM unit must maintain records of all written communications sent from or to the DMM via the Permitted Communications Device in accordance with Rule 440 and SEC Rule 17a-4(b)(4)<sup>12</sup> and in such format as may be prescribed by the Exchange, and the requirement in current Rule 36.31(d) that a DMM's member organization must establish policies and procedures reasonably designed to ensure that use of the Permitted Communications Device is consistent with all SEC rules and Exchange rules, policies and procedures, would remain unchanged.

The Exchange believes that allowing DMM units to use a Permitted Communications Device to communicate with issuers from the Floor is appropriate because the DMM units would continue to be subject to the requirements of Rule 98 and existing restrictions on the use of Permitted Communications Devices.

The proposed rule change would in no way alter the obligations of a DMM unit to meet existing requirements under Rule 98 to, among other things, protect non-public order information and maintain appropriate information barriers in accordance with Rule 98. Because DMM units would continue to be subject to Rule 98, while on the Floor, DMM unit personnel could not use the Permitted Communications Device to communicate with issuers in violation of Rule 98. For example, DMM units would continue to be subject to the provisions of Rule

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<sup>10</sup> In connection with opening and closing a security, DMMs have access to non-public order information, specifically, the aggregate amount of specified Reserve Orders that are eligible to participate in the opening and closing transactions. See Rule 104(a)(2) and (3) (specifying that DMMs and DMM unit algorithms have access to aggregate order information in order to comply with their requirement to facilitate openings and closings).

<sup>11</sup> See Rule 98(c)(3)(A).

<sup>12</sup> See Rule 440 (Books and Records) & 17 CFR 240.17a-4(b)(4).

98 governing restrictions on communications with off-Floor individuals or systems responsible for making trading decisions in related products. The Exchange also believes that prohibiting written electronic communications from the Floor before the open and going into the close further assists DMM units in protecting non-public order information when communicating with issuers from the Floor.

DMM units would also continue to be obligated to program its communications system so that a Permitted Communications Device would not operate in a manner enabling written electronic communications to or from any location or individual other than as described in proposed amended Supplementary Material .31. Among other things, the DMM unit would be required to program its communications system to ensure that messages cannot be forwarded by DMM Floor personnel to anyone at the issuer with whom Floor personnel are not permitted to communicate.

Finally, the Exchange believes that use of auditable written electronic communications as the only permitted method for DMM units to communicate with issuers from the Floor and the related retention requirements would facilitate and enhance the Exchange's existing regulatory program. In particular, the Exchange would be able to review the email system operating the connections between the Floor and the issuer, the related written supervisory procedures, and both the content of, and participants in, any written communications.

(b) Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>13</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>14</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In particular, the Exchange believes that the proposed requirement that DMMs maintain regular contact with listed issuers would foster cooperation and coordination with persons engaged in facilitating transactions in securities, and would remove impediments to and perfect the mechanism of a free and open market and a national market system by promoting a better understanding of the needs of listed issuers and fostering communications among DMMs and listed issuers. The Exchange believes that routine and regular contacts between DMMs and listed issuers should be encouraged and will help to foster an understanding

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<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

of the DMM function, the operations of the Exchange market, and the markets that are maintained in the listed issuers' securities, as well as assisting DMMs to better perform their functions, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system. Moreover, the Exchange believes that excluding ADRs from the proposed requirement is not inconsistent with this goal because the shares underlying ADRs are not primarily listed and traded on the Exchange. The Exchange also believes that the proposed amendments to Rule 36 support the mechanism of free and open markets by facilitating DMM communications with issuers from the Floor during the trading day, subject to the safeguards described above.

Further, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and would be consistent with the public interest and the protection of investors because of the numerous safeguards surrounding the manner and form in which DMMs can communicate with listed issuers proposed for inclusion in Rules 104 and 36. The proposed safeguards would include:

- requiring communications to occur with a very senior official designated by the listed issuer;
- requiring that the official designated by the listed issuer not be involved in market or trading operations for or on behalf of the listed issuer or with respect to the listed security;
- requiring employees of the DMM unit to comply with the requirements of Rule 98 with respect to the information that may be shared with the listed issuer contact during the required communications, including written electronic communications from the Floor;
- preventing employees of the DMM unit from communicating with a listed issuer contact from the Floor via telephone;
- requiring that, while on the Floor, employees of the DMM unit only communicate with a listed issuer contact in written electronic form using a monitored Permitted Communications Device; and
- prohibiting written electronic communications from the Floor with the listed issuer contact during the busiest part of the trading day from 9:15 a.m. E.T. until the security is opened and beginning fifteen minutes before the scheduled close of trading until the security is closed.

The Exchange believes that these proposed safeguards establish an appropriate regulatory framework for supervising and monitoring mandated DMM communications with listed issuers consistent with the objectives of Section

6(b)(5) of the Act.<sup>15</sup>

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on competition because the proposed change relates to how DMMs communicate with their listed issuers and proposes no change for other market participants. In addition, the Exchange does not believe that the proposed changes will impose any competitive burden because DMMs will operate in the same manner, including from the Floor, when communicating with issuers.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2)<sup>16</sup> of the Exchange Act.

7. Basis for Accelerated Effectiveness Pursuant Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advanced Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

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

<sup>16</sup> 15 U.S.C. 78s(b)(2).

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of the Proposed Rule Change

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NYSE-2019-09, Amendment No. 1)

[Date]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change to Amend Rules 104 and 36

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on June 18, 2019, New York Stock Exchange LLC (“NYSE” or the “Exchange”) 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 Rules 104 and 36 to require and facilitate routine communications between Designated Market Makers (“DMMs”) and designated representatives of listed issuers. This Amendment No. 1 to SR-NYSE-2019-09 replaces SR-NYSE-2019-09 as originally filed and supersedes such filing in its entirety. 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.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 104 (Dealings and Responsibilities of DMMs) and Rule 36 (Communication Between Exchange and Members' Offices) to require and facilitate routine DMM communication with designated representatives of listed issuers.

Proposed Rule Change

As described below, the Exchange proposes to amend Rule 104 to require DMM units to communicate with designated individuals at each issuer of listed securities in whose securities DMMs associated with the DMM unit are registered and would describe how the communication requirement can be met. The Exchange also proposes to amend Rule 36 to facilitate written electronic communications with issuers from the Floor of the Exchange (the "Floor")<sup>4</sup> pursuant to proposed Rule 104(l) during specified time periods and subject to certain restrictions.

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<sup>4</sup> Rule 6 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.

Rule 104

Rule 104 sets forth the obligations of Exchange DMMs. The Exchange proposes to add a new paragraph (1) to Rule 104 titled “Communication with Issuers of Listed Securities” that would set forth the obligation of DMMs to communicate with their listed issuers.

Proposed Rule 104(1)(1) would provide that, on at least a quarterly basis, each DMM unit must communicate with one or more senior officials of each issuer of listed securities in whose securities DMMs associated with the DMM unit are registered, with the exception of American Depositary Receipts (“ADR”).<sup>5</sup> The proposed rule would also provide that the senior official designated by the listed issuer for the proposed contacts must be of the rank of Corporate Secretary or higher and must not be involved in market or trading operations for or on behalf of the listed issuer or with respect to the listed security. The Exchange proposes to provide the senior officials at the issuer with the option to designate an individual to communicate with the DMMs on their behalf by including the clause “or a designee thereof” following “Corporate Secretary or above,” which the Exchange believes would enable issuers to more efficiently manage the communication process. As proposed, the designee would also have to be a person at the issuer who is not be involved in market or trading operations for or on behalf of the listed issuer or with respect to the listed security.

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<sup>5</sup> ADRs are certificates representing a specified number of shares in non-U.S. issuers that are deposited and issued through U.S. banks. The shares underlying ADRs are primarily listed and traded on non-U.S. markets. The Exchange believes that the purpose for the proposed change is not furthered by requiring DMMs to contact foreign issuers whose ordinary listing is not on the Exchange and therefore proposes to exclude ADRs from the periodic communication requirement.



This proposed obligation would be on the DMM units only. DMM units would be required to communicate with the listed issuer contact, but the listed issuer contact would not be required to reciprocate. For example, a DMM unit could meet its obligation by sending an email communication to the listed issuer contact. However, the listed issuer contact would not be obligated to respond to that communication in writing or otherwise.

To address the possibility that a DMM unit may not have contact information for any individuals at a listed issuer, proposed Rule 104(1)(A) would provide that if a DMM unit does not have contact information for a listed issuer, the DMM unit can seek to communicate with the Corporate Secretary most recently named on a public filing by such issuer.

Proposed Rule 104(1)(2) would describe the ways in which the periodic communication requirement set forth in proposed subparagraph (1)(1) can be met. Specifically, proposed subparagraph (1)(2) would provide that the communication requirement may be met by either in-person meetings, telephone calls, or written communications.

The required communications would be explicitly subject to existing restrictions on DMMs. First, as set forth in proposed Rule 104(1)(2)(A), during the required communications, employees of the DMM unit would have to comply with the requirements of Rule 98<sup>6</sup> with respect to the information that may be shared with the listed issuer contact. Second, as described in proposed Rule 104(1)(2)(B), an employee of

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<sup>6</sup> Rule 98 governs the operation of DMM units and imposes certain restrictions on DMM trading including, among other things, requiring that DMM units to protect against the misuse of Floor-based non-public order information. See, e.g., Rule 98(c)(3).

a DMM unit may not communicate with a listed issuer contact from the Floor via telephone. However, the Exchange proposes that an employee of a DMM unit would be able to communicate with a listed issuer contact from the Floor using electronic written communications, subject to the requirements and safeguards set forth in proposed Rule 36.31, described below. Finally, proposed Rule 104(1)(2)(C) would provide that DMM units must establish written policies and procedures reasonably designed to ensure that DMMs are in compliance with the requirements of the proposed rule.

Proposed Rule 104(1)(3) would describe the non-regulatory penalties to be imposed if DMMs fail to initiate the required contacts with listed issuers. Specifically, if a DMM unit fails to initiate the required communication with the listed issuer for a single quarter, the Exchange would issue an initial warning letter to the DMM unit. If a DMM unit fails to initiate the required communication with the listed issuer for a two or more quarters, that DMM unit would be ineligible to participate in the allocation process for a minimum of one month following the second quarter of its failure to meet its contact requirement.

The proposed rule is substantively similar to former NYSE Rule 106(a), which provided that “[d]uring each quarter, each Exchange specialist unit shall contact one or more senior officials, of the rank of Corporate Secretary or above, of each company in whose stock specialists associated with the specialist unit are registered.” NYSE Rule 106 was deleted in 2008.<sup>7</sup> At the time, the Exchange determined that the requirement in former Rule 106 that specialist units make themselves available for contact with their listing companies periodically throughout the year was unnecessary to ensure that listed

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<sup>7</sup> See Securities Exchange Act Release No. 83540 (October 24, 2008), 73 FR 65435 (November 3, 2008) (SR-NYSE-2008-52).

issuers were informed about trading in their listed securities given the availability of public information and the fact that specialist units had internal departments responsible for communicating with issuers during the trading day.<sup>8</sup> Following the deletion of Rule 106, the internal departments responsible for communicating with issuers were largely dismantled, and DMM communications with issuers have become less regular.

Because each listed security is assigned to a single DMM, the Exchange believes that one of the core functions of the DMM units is to maintain regular communications with listed issuers about trading activity in their securities. While DMM firms may no longer be structured as they were when former Rule 106 was in place, DMM units still regularly communicate with their listed issuers. The Exchange proposes to reinstate the mandated interaction between DMMs and listed issuers<sup>9</sup> because the Exchange believes that this would ensure that a minimum level of communication is occurring between DMM units and all listed issuers. The proposed rule would therefore establish a minimum level of required contacts. The Exchange understands that most DMM units have more frequent communications with their listed issuers.

#### Rule 36

Rule 36 governs the establishment of telephone or electronic communications connections between the Floor and other locations, which requires Exchange approval. Supplementary Material .31 to Rule 36 (“DMM Electronically Transmitted Written Communications”) permits DMM units to install and maintain certain written electronic communications applications. Specifically, Rule 36.31(a) permits a DMM unit, subject

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<sup>8</sup> See id., 73 FR at 65437.

<sup>9</sup> Former Rule 106 also required, for instance, that the specialist unit makes itself available to the Exchange’s fifteen (15) largest member organizations through required semiannual “off the Exchange Floor” contact. See id.

to Exchange approval and the conditions set forth in Rule 36.31, to install and maintain a wired or wireless device capable of sending and receiving written communications electronically through an Exchange-approved connection (a “Permitted Communications Device”).<sup>10</sup> Under Rule 36.31(b), the Permitted Communications Device shall only permit written electronic communications between Floor-based personnel and individuals with whom they are otherwise permitted to communicate pursuant to Rules 36.30 and 98, i.e., certain personnel in the off-Floor offices of the DMM unit, the DMM unit’s clearing operations, and persons who are permitted to provide non-trading related services to the DMM unit under Rule 98.

To facilitate the DMM unit’s proposed obligation to maintain regular communications with listed issuers, the Exchange proposes to amend Rule 36.31(b) to permit Floor-based DMM personnel to utilize Permitted Communications Devices for written electronic communications with the listed issuer representative designated under Rule 104(l)(1).

To effectuate this change, the Exchange would amend Rule 36.31(b) to add new subparagraphs (1) and (2), which would describe the two circumstances when using a Permitted Communications Device would be permitted.

Proposed Rule 36.31(b)(1) would reflect the current rule that Permitted Communications Devices may be used for electronic written communications between individuals located at the DMM unit's post on the Floor and persons with whom they are otherwise permitted to communicate pursuant to Rules 36.30 and 98.

Proposed Rule 36.31(b)(2) would reflect the proposed rule that Permitted

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<sup>10</sup> Examples of Permitted Communications Devices include email and instant messaging via a desktop or laptop computer.

Communications Devices may be used for written electronic communications with the listed issuer representative designated under proposed Rule 104(l)(1), subject to the content restrictions set forth in that rule as described above and provided that a DMM unit may not use a Permitted Communications Device for this purpose for the periods 9:15 a.m. Eastern Time (“E.T.”) until the security is opened, and again beginning 15 minutes before the scheduled close of trading until the security is closed.

The proposed time restrictions are designed to limit communications between the DMM and listed issuer during the period when a DMM would need to access non-public trading information to facilitate the opening or closing transactions, i.e., the fifteen minutes prior to a security being opened and closed by the DMM.<sup>11</sup> The Exchange believes that this proposed bright-line restriction on communications would eliminate any potential for non-public information to be shared by the DMM with a listed issuer in advance of the opening or closing of trading. The Exchange further believes that the Rule 98 requirements for the DMM to have policies and procedures reasonably designed to protect against the misuse of Floor-based non-public order information would restrict the DMMs from being able to share any non-public information the rest of the trading day.<sup>12</sup>

Finally, the requirements in current Rule 36.31(c) that a DMM unit must maintain records of all written communications sent from or to the DMM via the Permitted

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<sup>11</sup> In connection with opening and closing a security, DMMs have access to non-public order information, specifically, the aggregate amount of specified Reserve Orders that are eligible to participate in the opening and closing transactions. See Rule 104(a)(2) and (3) (specifying that DMMs and DMM unit algorithms have access to aggregate order information in order to comply with their requirement to facilitate openings and closings).

<sup>12</sup> See Rule 98(c)(3)(A).

Communications Device in accordance with Rule 440 and SEC Rule 17a-4(b)(4)<sup>13</sup> and in such format as may be prescribed by the Exchange, and the requirement in current Rule 36.31(d) that a DMM's member organization must establish policies and procedures reasonably designed to ensure that use of the Permitted Communications Device is consistent with all SEC rules and Exchange rules, policies and procedures, would remain unchanged.

The Exchange believes that allowing DMM units to use a Permitted Communications Device to communicate with issuers from the Floor is appropriate because the DMM units would continue to be subject to the requirements of Rule 98 and existing restrictions on the use of Permitted Communications Devices.

The proposed rule change would in no way alter the obligations of a DMM unit to meet existing requirements under Rule 98 to, among other things, protect non-public order information and maintain appropriate information barriers in accordance with Rule 98. Because DMM units would continue to be subject to Rule 98, while on the Floor, DMM unit personnel could not use the Permitted Communications Device to communicate with issuers in violation of Rule 98. For example, DMM units would continue to be subject to the provisions of Rule 98 governing restrictions on communications with off-Floor individuals or systems responsible for making trading decisions in related products. The Exchange also believes that prohibiting written electronic communications from the Floor before the open and going into the close further assists DMM units in protecting non-public order information when communicating with issuers from the Floor.

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<sup>13</sup> See Rule 440 (Books and Records) & 17 CFR 240.17a-4(b)(4).

DMM units would also continue to be obligated to program its communications system so that a Permitted Communications Device would not operate in a manner enabling written electronic communications to or from any location or individual other than as described in proposed amended Supplementary Material .31. Among other things, the DMM unit would be required to program its communications system to ensure that messages cannot be forwarded by DMM Floor personnel to anyone at the issuer with whom Floor personnel are not permitted to communicate.

Finally, the Exchange believes that use of auditable written electronic communications as the only permitted method for DMM units to communicate with issuers from the Floor and the related retention requirements would facilitate and enhance the Exchange's existing regulatory program. In particular, the Exchange would be able to review the email system operating the connections between the Floor and the issuer, the related written supervisory procedures, and both the content of, and participants in, any written communications.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>15</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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<sup>14</sup> 15 U.S.C. 78f(b).

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

In particular, the Exchange believes that the proposed requirement that DMMs maintain regular contact with listed issuers would foster cooperation and coordination with persons engaged in facilitating transactions in securities, and would remove impediments to and perfect the mechanism of a free and open market and a national market system by promoting a better understanding of the needs of listed issuers and fostering communications among DMMs and listed issuers. The Exchange believes that routine and regular contacts between DMMs and listed issuers should be encouraged and will help to foster an understanding of the DMM function, the operations of the Exchange market, and the markets that are maintained in the listed issuers' securities, as well as assisting DMMs to better perform their functions, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system. Moreover, the Exchange believes that excluding ADRs from the proposed requirement is not inconsistent with this goal because the shares underlying ADRs are not primarily listed and traded on the Exchange. The Exchange also believes that the proposed amendments to Rule 36 support the mechanism of free and open markets by facilitating DMM communications with issuers from the Floor during the trading day, subject to the safeguards described above.

Further, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and would be consistent with the public interest and the protection of investors because of the numerous safeguards surrounding the manner and form in which DMMs can communicate with listed issuers proposed for inclusion in Rules 104 and 36. The proposed safeguards would include:

- requiring communications to occur with a very senior official designated



by the listed issuer;

- requiring that the official designated by the listed issuer not be involved in market or trading operations for or on behalf of the listed issuer or with respect to the listed security;
- requiring employees of the DMM unit to comply with the requirements of Rule 98 with respect to the information that may be shared with the listed issuer contact during the required communications, including written electronic communications from the Floor;
- preventing employees of the DMM unit from communicating with a listed issuer contact from the Floor via telephone;
- requiring that, while on the Floor, employees of the DMM unit only communicate with a listed issuer contact in written electronic form using a monitored Permitted Communications Device; and
- prohibiting written electronic communications from the Floor with the listed issuer contact during the busiest part of the trading day from 9:15 a.m. E.T. until the security is opened and beginning fifteen minutes before the scheduled close of trading until the security is closed.

The Exchange believes that these proposed safeguards establish an appropriate regulatory framework for supervising and monitoring mandated DMM communications with listed issuers consistent with the objectives of Section 6(b)(5) of the Act.<sup>16</sup>

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change will impose any

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<sup>16</sup> 15 U.S.C. 78f(b)(5).

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on competition because the proposed change relates to how DMMs communicate with their listed issuers and proposes no change for other market participants. In addition, the Exchange does not believe that the proposed changes will impose any competitive burden because DMMs will operate in the same manner, including from the Floor, when communicating with issuers.

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

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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-NYSE-2019-09 on the subject line.

Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2019-09. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only

information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2019-09 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>17</sup>

Eduardo A. Aleman  
Deputy Secretary

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

Additions underlined  
Deletions [bracketed]

## Rules of New York Stock Exchange LLC

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### **Rule 104. Dealings and Responsibilities of DMMs**

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(k) Temporary DMMs. In the event of an emergency, such as the absence of the DMM, or when the volume of business in the particular stock or stocks is so great that it cannot be handled by the DMMs without assistance, a Floor Governor may authorize a member of the Exchange who is not registered as a DMM in such stock or stocks, to act as temporary DMM for that day only.

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If a temporary DMM substitutes for a DMM, and if no DMM is present, the temporary DMM is expected to assume the obligations and responsibilities of DMMs for the maintenance of the market.

#### (l) Communication with Issuers of Listed Securities.

(1) On at least a quarterly basis, each DMM unit must communicate with one or more senior officials of each issuer of listed securities in whose securities DMMs associated with the DMM unit are registered, with the exception of ADRs. The senior official designated by the listed issuer for these contacts must be of the rank of Corporate Secretary or above, or a designee thereof, and must not be involved in market or trading operations for or on behalf of the listed issuer or with respect to the listed security.

(A) If a DMM unit does not have contact information for a listed issuer, the DMM unit will seek to communicate with the Corporate Secretary most recently named on a public filing by such issuer.

(2) The communication requirement may be met by in-person meetings, telephone calls, or written communications.

(A) During the required communication, employees of the DMM unit must comply with the requirements of Rule 98 with respect to the information that may be shared with the listed issuer contact.

(B) An employee of a DMM unit may not communicate with a listed issuer contact from the Trading Floor via telephone, but may, while on the Trading Floor, use written electronic communications to communicate with a listed issuer contact from the Trading Floor, subject to Rule 36.31.

(C) DMM units must establish written policies and procedures reasonably designed to ensure that DMMs are in compliance with the requirements of this Rule.

(3) If a DMM unit fails to initiate the required communication with the listed issuer for a single quarter, the Exchange will issue an initial warning letter to the DMM unit. If a DMM unit fails to initiate the required communication with the listed issuer for a two or more quarters, that DMM unit will be ineligible to participate in the allocation process for a minimum of one month following the second quarter of its failure to meet its contact requirement.

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### **Rule 36. Communications Between Exchange and Members' Offices**

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#### **.31 DMM Electronically Transmitted Written Communications**

(a) With the approval of the Exchange, and subject to the conditions set forth in this Supplementary Material .31, a DMM unit may install and maintain a wired or wireless device capable of sending and receiving written electronic communications through an Exchange-approved connection (a "Permitted Communications Device").

(b) [The] A Permitted Communications Device shall only permit written electronic communications between individuals located at the DMM unit's post on the Floor and:[]

(1) individuals with whom telephone communications are permitted under Rules 36.30 and 98 and subject to the same content restrictions set forth in those rules[.];  
or

(2) the listed issuer representative designated under Rule 104(l)(1), subject to the same content restrictions set forth in that rule and provided that a DMM unit may not use a Permitted Communications Device for this purpose for the periods 9:15 a.m. Eastern Time until the security is opened and beginning 15 minutes before the scheduled closing time for a security until the security is closed.

(c) A DMM's member organization must maintain records of all written communications sent from or to the DMM via the Permitted Communications Device in accordance with NYSE Rule 440 and SEC Rule 17a-4(b)(4) and in such format as may be prescribed by the Exchange.

(d) A DMM's member organization must establish policies and procedures reasonably designed to ensure that use of the Permitted Communications Device is consistent with all SEC rules and Exchange rules, policies and procedures.

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