

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91769; File No. SR-NYSE-2021-08)

May 4, 2021

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change of New Rules Providing for the Registration and Obligations of Non-DMM Market Makers

I. Introduction

On March 12, 2021, New York Stock Exchange, Inc. (“NYSE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² proposed new rules providing for the registration and obligations of Non-DMM Market Makers. The proposed rule change was published for comment in the Federal Register on March 25, 2021.³ The Commission has received no comments on the proposed rule change. The Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes rules governing Non-DMM Market Makers who would be electronic, off-floor market makers.⁴ Non-DMM Market Makers would comprise a new category of market participants on the Exchange and would have responsibilities different than those of Designated Market Makers (“DMMs”) and Supplemental Liquidity Providers (“SLPs”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 91377 (March 19, 2021), 86 FR 15974 (March 25, 2021) (“Notice”).

⁴ A “Non-DMM Market Maker” would be defined as a member organization that acts as a Non-DMM Market Maker pursuant to Rule 7P. See Notice, id. at 15974.

Non-DMM Market Makers are not intended to replace DMMs or SLPs on the Exchange and would not assume any of the responsibilities already assigned to DMMs or SLPs pursuant to Exchange Rules (for example, Non-DMM Market Makers would not perform any trading floor functions such as those assigned to DMMs). Instead, under the proposed rules, for all securities that trade on the Exchange, a member organization may register as a Non-DMM Market Maker and be subject to obligations similar to those of Market Makers on NYSE Arca, Inc. (“NYSE Arca”) and NYSE American LLC (“NYSE American”) to, among other things, maintain continuous, two-sided trading interest in the securities in which they are registered as a Non-DMM Market Maker (“Two-Sided Obligation”) and adhere to certain pricing obligations.

The Exchange proposes the following rules, based on NYSE Arca and NYSE American rules of the same number with non-substantive changes, to govern the registration and obligations of Non-DMM Market Makers on the NYSE:

- Proposed Rule 1.1(p) (definition of Market Maker Authorized Trader);
 - Proposed Rule 1.1(t) (definition of Non-DMM Market Maker);
 - Proposed Rule 7.20 (Registration of Non-DMM Market Makers);
 - Proposed Rule 7.21 (Obligations of Market Maker Authorized Traders);
 - Proposed Rule 7.22 (Registration of Non-DMM Market Makers in a Security);
- and
- Proposed Rule 7.23 (Obligations of Non-DMM Market Makers).

These proposed rules would be applicable only to Non-DMM Market Makers. They would not apply to DMMs or SLPs, who would continue to be governed by existing Exchange rules applicable to those market participants.⁵

⁵ See, e.g., NYSE Rules 98, 103, 103B, 104, and 107B.

Proposed Rule Changes

Rule 1.1

Rule 1.1 sets forth definitions of terms that are used throughout the Exchange rules. The Exchange proposes to add the following definitions to the rule:

- The Exchange proposes to amend current Rule 1.1(p) to set forth the definition of “Market Maker Authorized Trader” or “MMAT.” A “Market Maker Authorized Trader” or “MMAT” would be defined as an Authorized Trader (as defined in Rule 1.1(a)) who performs market making activities pursuant to Rule 7P on behalf of a Non-DMM Market Maker.
- The Exchange proposes to amend current Rule 1.1(t) to set forth the definition of “Non-DMM Market Maker.” A “Non-DMM Market Maker” would be defined as a member organization that acts as a Non-DMM Market Maker pursuant to Rule 7P. Accordingly, for purposes of Exchange rules, the term “Non-DMM Market Maker” does not include DMMs or SLPs.

Rule 7P, Section 2

The Exchange proposes to amend Section 2 under Rule 7P, which is currently designated as “Reserved,” and rename it “Non-DMM Market Makers.” The Exchange proposes that the rules set forth in this section would apply only to the proposed new group of Non-DMM Market Makers and would not be applicable to DMMs or SLPs.

Rule 7.20

The Exchange proposes to add Rule 7.20 and title it “Registration of Non-DMM Market

Makers.” Proposed Rule 7.20 would set forth the requirements for member organizations to apply for registration as Non-DMM Market Makers. The Exchange proposes that its Non-DMM Market Makers have the same registration requirements as Market Makers on NYSE Arca and NYSE American. The Exchange proposes to require member organizations interested in acting as Non-DMM Market Makers to submit an application to the Exchange. Proposed Rule 7.20 would also set forth the criteria the Exchange may consider in determining whether to approve or disapprove a prospective Non-DMM Market Maker’s application and specify how a Non-DMM Market Maker’s registration may be suspended, terminated, or withdrawn.

Rule 7.21

The Exchange proposes to add Rule 7.21 and title it “Obligations of Market Maker Authorized Traders.” Proposed Rule 7.21 would provide that Market Maker Authorized Traders (“MMATs”) are permitted to enter orders only for the account of the Non-DMM Market Maker for which they are registered. In addition, the proposed rule would specify the registration requirements for MMATs and the procedures for suspension and withdrawal of registration of MMATs. Specifically, the proposed rule would provide that a Non-DMM Market Maker must submit an application to the Exchange to register an associated person as an MMAT. An MMAT must meet certain requirements, and a Non-DMM Market Maker must ensure that its MMATs are qualified to perform market making activities. Proposed Rule 7.21 also provides that the Exchange may suspend or withdraw an MMAT’s registration.

Rule 7.22

The Exchange proposes to add Rule 7.22 and title it “Registration of Non-DMM Market Makers in a Security.” Proposed Rule 7.22 would set forth the process for Non-DMM Market Makers to become registered in a security and the factors the Exchange may consider in

approving such registration. Non-DMM Market Makers may submit a request to the Exchange to be registered in a security, and the Exchange will evaluate whether to approve such registration, taking into consideration factors including the Non-DMM Market Maker's financial resources, experience in making markets, operational capability, and the character of the market for the security. Non-DMM Market Makers will generally be permitted to register in securities in which a DMM and/or SLP is also registered, subject to the Exchange's evaluation of the character of the market for a given security.⁶ Finally, the proposed rule would also describe both termination of a Non-DMM Market Maker's registration in a security by the Exchange and voluntary termination by a Non-DMM Market Maker.

Rule 7.23

The Exchange proposes to add Rule 7.23 and title it "Obligations of Non-DMM Market Makers." Proposed Rule 7.23 would set forth the obligation of Non-DMM Market Makers to engage in a course of dealings for their own account to assist in the maintenance, insofar as reasonably practicable, of fair and orderly markets on the Exchange. The proposed rule would delineate the specific responsibilities and duties of Non-DMM Market Makers, including the Two-Sided Obligation applicable to securities in which the Non-DMM Market Maker is registered and the requirement that the interest satisfying the Two-Sided Obligation be not more than the Designated Percentage (as defined in Proposed Rule 7.23) away from the National Best Bid or Offer ("NBBO"). Proposed Rule 7.23 also provides that Non-DMM Market Makers will be subject to certain minimum capital requirements and sets forth the circumstances under which a Non-DMM Market Maker could be subject to disciplinary action or suspension or revocation

⁶ Orders entered by Non-DMM Market Makers will be allocated in accordance with Rules 7.36 and 7.37 and be treated as a Book Participant. Non-DMM Market Makers will not be eligible to participate in the allocation process as a DMM Participant.

of registration by the Exchange for failure to comply with the course of dealings obligations set forth in this proposed rule.

Specifically, with respect to the Two-Sided Obligation, proposed Rule 7.23(a)(1)(A) provides that Non-DMM Market Makers would be required to maintain displayed interest identified as interest meeting the Two-Sided Obligation on a continuous basis during Core Trading Hours for those securities in which the Non-DMM Market Maker is registered. Proposed Rule 7.23(a)(1)(B) provides that interest satisfying a Non-DMM Market Maker's Two-Sided Obligation must not be more than the Designated Percentage away from the then current NBBO, or if there is no NBBO, not more than the Designated Percentage away from the last reported sale for that security. With respect to minimum capital requirements, proposed Rule 7.23(a)(2) provides that Non-DMM Market Makers would be required to maintain adequate minimum capital in accordance with Rule 15c3-1 under the Act.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission finds that the Exchange's proposed rule change is consistent with Section 6(b)(5) of the Act,⁷ which requires that the rules of an exchange be designed, among other things, 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

⁷ 17 U.S.C. 78f(b)(5).

to remove impediments to and perfect the mechanism of a free and open market and a national market system.⁸

As described above, the Exchange proposes to adopt rules for the registration and obligations of Non-DMM Market Makers that are substantially comparable to NYSE Arca and NYSE American rules. The Exchange stated that the proposed rules are designed to enable market makers that are registered on the Exchange's affiliated markets to become registered on the Exchange as Non-DMM Market Makers by meeting the same registration requirements and by agreeing to be subject to the same obligations.⁹ The Exchange represented that the proposed Non-DMM Market Makers are not intended to supplant existing DMMs or SLPs or their roles on the Exchange and Non-DMM Market Makers would not assume any of the responsibilities already assigned to DMMs or SLPs pursuant to Exchange Rules.¹⁰ According to the Exchange, the proposed rules are intended to provide for a new category of market maker that the Exchange believes will promote competition on the Exchange by enhancing the range and diversity of market making activity on the Exchange. Further, the Exchange stated that the proposal would promote competition by encouraging additional displayed liquidity. The Exchange also stated that the proposal would facilitate price discovery and promote market quality on the Exchange.¹¹

The Commission believes that introducing a new category of market maker - Non-DMM Market Makers - could promote competition on the Exchange. Further the Commission believes

⁸ In 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 See Notice, supra note 3 at 15976.

¹⁰ While the proposed obligations for Non-DMM Market Makers are less stringent than those for DMMs and SLPs, the proposed rules would not affect the existing roles or obligations of DMMs and SLPs.

¹¹ See id.

that the introduction of Non-DMM Market Makers on the Exchange and their obligations to the market as required under NYSE Rule 7.23 could provide additional, supplemental liquidity to the market and could enhance price discovery.

Based on the foregoing, the Commission therefore finds that the proposed rule change is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NYSE-2021-08) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹³

J. Matthew DeLesDernier
Assistant Secretary

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).