

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-96151; File No. SR-NYSEARCA-2022-69)

October 25, 2022

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Commentary .01 of NYSE Arca Rule 2.1210

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on October 11, 2022, NYSE Arca, Inc. (“NYSE Arca” 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 Commentary .01 of NYSE Arca Rule 2.1210 to add text inadvertently omitted when the rule was adopted. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Commentary .01 of NYSE Arca Rule 2.1210 (Registration Requirements) to add text inadvertently omitted when the rule was adopted.

Proposed Rule Change

In 2018, the Exchange adopted Rule 2.1210 regarding registration requirements and related Commentary.⁴ Rule 2.1210 provides that each person engaged in the investment banking or securities business of an ETP Holder, OTP Holder or OTP Firm must register with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in Rule 2.1220 (Registration Categories), unless exempt from registration pursuant to Rule 2.1230 (Associated Persons Exempt from Registration). Rule 2.1210 also provides that such person is not qualified to function in any registered capacity other than that for which the person is registered, unless otherwise stated in the rules.

Rule 2.1210, Commentary .01, provides for permissive registrations, and was adopted in order for the Exchange to harmonize its rules with the rules of the Financial Regulatory Authority, Inc. ("FINRA").⁵ The rule permits any associated person to obtain and maintain any

⁴ See Securities Exchange Act Release No. 84389 (October 10, 2018), 83 FR 52272 (October 16, 2018) (SR-NYSEArca-2018-71) (Notice of Filing and Immediate Effectiveness of Amendments to Rules Regarding Qualification, Registration and Continuing Education Applicable to Equity Trading Permit Holders, Options Trading Permit Holders or OTP Firms).

⁵ See id., 83 FR at 52275.

registration permitted by an ETP Holder, OTP Holder or OTP Firm. As adopted, the first sentence of Commentary .01 provides as follows:

An ETP Holder, OTP Holder or OTP Firm may make application for or maintain the registration as a representative or principal of any associated person of an ETP Holder, OTP Holder or OTP Firm and any individual engaged in the securities business of a foreign securities affiliate or subsidiary of the ETP Holder, OTP Holder or OTP Firm.

The Exchange inadvertently omitted the words “investment banking or” immediately before “securities business”. The omitted text mirrors the language of FINRA Rule 1210.02 and Commentary .01 of the version of Rule 2.1210 adopted by the Exchange’s affiliates New York Stock Exchange, Inc., and NYSE American LLC.⁶ As proposed, the first sentence of Commentary .01 of Rule 2.1210 would read as follows (new text italicized):

An ETP Holder, OTP Holder or OTP Firm may make application for or maintain the registration as a representative or principal of any associated person of an ETP Holder, OTP Holder or OTP Firm and any individual engaged in the investment banking or securities business of a foreign securities affiliate or subsidiary of the ETP Holder, OTP Holder or OTP Firm.

The Exchange does not propose any additional changes to the text of Rule 2.1210.

2. Statutory Basis

⁶ See FINRA Rule 1210.02; NYSE Rule 1210, Commentary .01; NYSE American Rule 1210, Commentary .01.

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, because 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, 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 Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest because the proposed conforming change would add clarity, transparency and consistency to the Exchange’s registration rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion. Similarly, the Exchange believes that the proposed changes would also make the Exchange’s registration rules more consistent with the rules of its affiliates, thereby ensuring that persons subject to the Exchange’s jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange’s rules.

B. 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 proposed rule change is not intended to address competitive issues but rather is concerned solely with amending the registration rules to make a conforming change to add text inadvertently

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

omitted when the rules were adopted.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission believes that because this rule change better harmonizes the exchange's rules with those of FINRA, waiver of the 30-day operative delay for this proposed rule change is consistent with the protection of investors and the public interest.

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹³

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)¹⁴ of the Act to determine whether the proposed rule change should be approved or 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. Please include File Number SR-NYSEARCA-2022-69 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.

¹³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSEARCA-2022-69. 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-NYSEARCA-2022-69 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.¹⁵

J. Matthew DeLesDernier,
Deputy Secretary.

¹⁵ 17 CFR 200.30-3(a)(12).