

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78383; File No. SR-NYSEArca-2016-104)

July 21, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending NYSE Arca Equities Rules 2.16(c) and 2.21(i) to Harmonize the Requirement of When An ETP Holder Must File A Uniform Termination Notice for Securities Industry Registration with the Rules of Other Exchanges and FINRA

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 14, 2016, NYSE Arca, Inc. (the “Exchange” or “NYSE Arca”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II 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 NYSE Arca Equities Rules 2.16(c) and 2.21(i) to harmonize the requirement of when an ETP Holder must file an [sic] Uniform Termination Notice for Securities Industry Registration (“Form U-5”) with the rules of other exchanges and FINRA. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 NYSE Arca Equities Rules 2.16(c) and 2.21(i) to harmonize the requirement of when an ETP Holder must file a Form U-5 with the requirements on [sic] other exchanges and the Financial Industry Regulatory Authority ("FINRA"). This filing is not intended to address any other registration requirements in Exchange rules.

Specifically, under current Rule 2.16(c), an ETP Holder is required to electronically file a Form U-5 and any amendment thereto within 30 days of the termination when a person associated with the ETP Holder terminates their affiliation with an ETP Holder. Under current Rule 2.21(i), an ETP Holder is required to electronically file a Form U-5 and any amendment thereto within 30 business days of the termination date of an employee. While each of these rules govern the same topic, they do not use the same rule language.

The Exchange proposes to amend these two rules by replacing the current requirements of when to electronically file a Form U-5 with the same requirement in each rule that an ETP Holder promptly file a Form U-5 electronically with CRD, but not later than 30 calendar days after the date of termination of a person associated with the ETP Holder or an employee (as applicable). The proposed rule would further require that any amendment to a Form U-5 must also be promptly filed electronically with CRD, but not later than 30 calendar days after learning of the facts or circumstances giving rise to the amendment. Finally, the proposed rule would provide that all Forms U-5 must also be provided to the terminated person concurrently with

filing.⁴

The proposed rule text is based on the requirements of other exchanges and FINRA and therefore would harmonize the requirement of when an ETP Holder must file a Form U-5 with the rules of other exchanges and FINRA.⁵ The Exchange believes that the proposed rule changes will promote the protection of investors by adding that a Form U-5 be filed promptly, rather than the current requirement that a Form U-5 be filed within 30 days. The Exchange believes that this proposed requirement may lead to Form U-5s being filed sooner than the current 30 days requirement. Consistent with the rules of other exchanges and FINRA, the rule would further provide that a Form U-5 should be filed not later than 30 days after the date of termination. The Exchange believes that this timing, combined with the requirement to file promptly, may lead to firms submitting Form U-5s on a more prompt basis. In addition, the proposed rule would harmonize the standard, thus reducing the burden on competition for ETP Holders that are members of multiple exchanges and FINRA to meet similar requirements. Such conformance to

⁴ The proposed rule changes would also decrease the current time period of 30 “business” days within which an ETP Holder is required to file a Form U-5 for a terminated employee.

⁵ See New York Stock Exchange LLC (“NYSE”) Rule 345(a).17(a) and (b) (requiring that a Form U-5 shall be reported promptly, but in any event not later than 30 days following termination, that any amendment to the Form U-5 shall be filed not later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that any termination notice must be provided concurrently to the person whose association has been terminated); BATS BZX Exchange, Inc. (“BZX”) Rule 2.5 Interpretations and Policies .04(a) and (b) (requiring that a Form U-5 be reported immediately following the date of termination, but in no event later than 30 days following termination, that any amendment to the Form U-5 shall be filed no later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that any termination notice or amendment should be provided concurrently to the person whose association has been terminated); FINRA By-Laws Article 5 Sec. 3(a) and (b) (requiring that notice of termination be filed not later than 30 days after termination, that an amendment to a Form U-5 be filed not later than 30 days after learning of the facts or circumstances giving rise to the amendment, and that notice be provided concurrently to the person whose association has been terminated within the time periods prescribed).

the prevalent standard would both harmonize the time period for filing the requisite Form U-5 across multiple self-regulatory organizations and establish a known consistent standard to further ensure adherence.

2. Statutory Basis

The Exchange believes that the proposed changes are consistent with Section 6(b) of the Act,⁶ in general, and furthers [sic] the objectives of Section 6(b)(5),⁷ in particular, in that it is [sic] designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5)⁸ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that the proposed rule changes would remove impediments to and perfect the mechanisms of a free and open market by conforming the time period within which ETP Holders must file a Form U-5 to the requirement that such forms be filed promptly, but not later than 30 calendar days after the termination event. The Exchange believes that the proposed rule changes would protect investors and the public interest by adding that Form U-5s should be filed promptly, rather than requiring only that they be filed within 30 days. In addition, the Exchange believes that adding the requirement that a Form U-5 be filed

⁶ 15 U.S.C. § 78f(b).

⁷ 15 U.S.C. § 78f(b)(5).

⁸ Id.

not later than 30 calendar days after the event would eliminate the disparity among the exchanges, other SROs and the affected persons stemming from the cessation of their employment. In this regard, the proposed changes would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities as they would both harmonize the time period for filing the requisite Form U-5 across multiple self-regulatory organizations and establish a known consistent standard to further ensure adherence. Such action would not affect nor diminish the abilities of the Exchange or an ETP Holder to fulfill their [sic] regulatory responsibilities under the Act or the rules promulgated thereunder, including but not limited to the responsibilities to monitor the activities of such persons, nor would such proposed amendment affect the rights of such terminated persons.

The Exchange believes this additional transparency and clarity removes a potential impediment to, and would contribute to perfecting, the mechanism for a free and open market and a national market system, and, in general, would protect investors and the public interest by harmonizing the time period for filing the requisite Form U-5 across multiple SROs, and by imposing the requirement that such forms be filed promptly.⁹

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

The Exchange does not believe that this proposed rule changes would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes are not designed to address any competitive issue but rather to harmonize an [sic] Exchange time-filing requirements to a standard prevalent among other exchanges and FINRA, thereby reducing any potential confusion and making the Exchange's rules easier to

⁹ This filing is intended to address only the filing requirements of Forms U-5; it is not intended to address or affect any other mandatory filing requirements or procedures.

understand and navigate. The Exchange believes that the proposed rule changes would serve to promote regulatory clarity and consistency, thereby reducing burdens on the marketplace and facilitating investor protection.

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 within such longer period 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. Please include File Number SR-NYSEArca-2016-104 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-NYSEArca-2016-104. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2016-104 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.¹⁰

Robert W. Errett
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).