

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87860; File No. SR-NYSE-2019-071)

December 26, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Add Certain Recently Adopted Trading Rules to the List of Minor Rule Violations in Rule 9217

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 16, 2019, the New York Stock Exchange LLC (“NYSE” or “Exchange”) 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add certain recently adopted trading rules to the list of minor rule violations in Rule 9217. 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 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 add certain recently adopted trading rules to the list of minor rule violations in Rule 9217. As discussed below, the rules the Exchange proposes to add to Rule 9217 are based on the rules of its affiliate NYSE Arca, Inc. (“NYSE Arca”) or on rules the Exchange adopted in connection with its transition to Pillar, which were based on legacy Exchange rules governing auctions in Exchange-listed securities. In both cases, substantively similar rules to those the Exchange proposes to add are minor fine eligible rules.

Background

On January 29, 2015, the Exchange announced the implementation of Pillar, an integrated trading technology platform designed to use a single specification for connecting to the equities and options markets operated by the Exchange and its affiliates.³ The Exchange underwent a multi-phase transition to Pillar that culminated with Exchange-listed securities transitioning to Pillar in August 2019. In order to support the transition of Exchange-listed securities to Pillar, the Exchange adopted trading and other rules including rules to conduct auctions in Pillar that were substantively based on the auction rules then in effect.⁴ As discussed below, violations of some of those legacy rules are already eligible for minor rule violations

³ See Trader Update dated January 29, 2015, available here: www.nyse.com/pillar.

⁴ See Securities Exchange Act Release No. 82945 (March 26, 2018), 83 FR 13553 (March 29, 2018) (SR-NYSE-2017-36) (“Release No. 82945”); Securities Exchange Act Release No. 85962 (May 29, 2019), 84 FR 26188 (June 5, 2019) (SR-NYSE-2019-05) (“Release No. 85962”).

under Rules 9216 and 9217.⁵

Proposed Rule Change

Rule 9217 sets forth the list of rules under which a member organization or covered person may be subject to a fine under a minor rule violation plan as described in proposed Rule 9216(b). The Exchange proposes to add the following rules to the list of rules in Rule 9217 eligible for disposition pursuant to a fine under Rule 9216(b):

- Rule 7.16 (Short Sales)
- Rule 7.35A(d) (Pre-Opening Indications)
- Rule 7.35B (Cancellation of limit-at-the-close (“LOC”) and market-at-the-close (“MOC”) orders)
- Rule 7.35A (Requirements relating to openings, re-openings, delayed openings, and trading halts)

Rule 7.16 (Short Sales) establishes requirements relating to short sales for trading on the Pillar trading platform. Rule 7.16 is based on NYSE Arca Rule 7.16-E and incorporates text from Rule 440B relating to Exchange-listed securities.⁶ NYSE Arca Rule 7.16-E is eligible for NYSE Arca’s Minor Rule Plan.⁷

⁵ Although the Exchange is adding the Pillar equivalent rules to the list of rules eligible for a minor rule fine in Rule 9217, the Exchange is not proposing to delete the legacy rules from Rule 9217 at this time.

⁶ See Release No. 82945, 83 FR at 13565; Release No. 85962, 84 FR at 26221. Rule 440B (Short Sales) is not applicable to trading on the Pillar trading platform.

⁷ See NYSE Arca Rule 10.12(i)(1) (NYSE Arca Rule 7.16-E); NYSE Arca Rule 10.9217(f)(1). NYSE Arca Rule 10.12 is NYSE Arca’s legacy minor rule plan and applies only to matters for which a written statement was served under Rule 10.12 prior to May 27, 2019; thereafter, Rules 10.9216(b) and 10.9217 apply. See generally NYSE Arca Rules 10.0 (preamble) and 10.9001.

Rules 7.35A and 7.35B, adopted in 2019, were based on legacy Rule 15 (Pre-Opening Indications and Opening Order Imbalance Information), Rule 123C (The Closing Procedures), and Rule 123D (Openings and Halts in Trading). Each of these rules are already eligible for minor fines under NYSE Rule 9217.

Specifically, Rule 7.35A (DMM-Facilitated Core Open and Trading Halt Auctions) sets forth DMM responsibilities for the opening and reopening of securities, and is based on legacy Rule 123D with minor modifications.⁸ Rule 123D is on the list of rules in Rule 9217 eligible for disposition pursuant to a fine under Rule 9216(b).

Similarly, Rule 7.35A(d) and its subparagraphs are based on Rule 15(a) - (f) relating to pre-opening indications with non-substantive differences.⁹ Rule 15 is also on the list of rules in Rule 9217 eligible for disposition pursuant to a fine under Rule 9216(b).

Rule 7.35B (DMM-facilitated Closing Auctions) sets forth DMM responsibilities for the closing of securities, and is based in part on legacy Rules 123C and 123D.¹⁰ The entry and cancellation procedures for MOC and LOC Orders set forth in Rule 7.35B are based on legacy Rule 123C,¹¹ which is also on the list of rules in Rule 9217 eligible for disposition pursuant to a fine under Rule 9216(b).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and

⁸ See Release No. 85962, 84 FR at 26202.

⁹ See id. at 26204-05.

¹⁰ See id. at 26209-17.

¹¹ See id.

¹² 15 U.S.C. 78f(b).

further the objectives of Section 6(b)(5),¹³ 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.

Summary fines provide a meaningful sanction for minor or technical violations of rules. The Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation.

Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of its rules where similar conduct is currently eligible for a minor rule fine where more formal disciplinary action may not be warranted or appropriate. In addition, the Exchange believes that adding a rule based on the rules of its affiliate to the Exchange's minor rule plan would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of a substantially similar rule that is eligible for minor rule treatment on the Exchange's affiliate, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct.

The Exchange also believes that adding rules based on legacy Exchange rules that are eligible for a minor rule fine also is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to be able to continue issuing minor rule fines for violations of rules involving the same or similar conduct.

¹³ 15 U.S.C. 78f(b)(5).

The Exchange further believes that the proposed amendments to Rule 9217 are consistent with Section 6(b)(6) of the Act,¹⁴ which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations pursuant to the Exchange's rules to deter the same or violative activity that is already eligible for a minor rule fine.

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 change is not designed to address any competitive issue but rather to update the Exchange's rules to strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

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. 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:

¹⁴ 15 U.S.C. 78f(b)(6).

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-NYSE-2019-071 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-2019-071. 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, D.C. 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-2019-071 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁶ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act¹⁷ which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,¹⁸ which governs minor rule violation plans. The Commission notes that the Exchange merely proposes to add to its minor rule violation plan Pillar rules that are identical to the provisions already included in the plan. Accordingly, the Commission believes the proposal raises no novel or significant issues..

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁹ for approving the proposed rule change prior to the thirtieth day

¹⁵ 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).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(1) and 78f(b)(6).

¹⁸ 17 CFR 240.19d-1(c)(2).

¹⁹ 15 U.S.C. 78s(b)(2).

after the date of publication of the notice of the filing thereof in the Federal Register. The proposal merely adds Pillar rules, which are substantively based on legacy rules already in the Exchange's minor rule violation plan. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act²⁰ and Rule 19d-1(c)(2) thereunder,²¹ that the proposed rule change (SR-NYSE-2019-71) be, and hereby is, approved and declared effective on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

J. Matthew DeLesDernier
Assistant Secretary

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 240.19d-1(c)(2).

²² 17 CFR 200.30-3(a)(12).