

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81418; File No. SR-NYSEAMER-2017-06)

August 17, 2017

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Add Certain Rules Adopted in Connection with the Exchange's Transition to a Fully-Automated Cash Equities Market to the List of Minor Rule Violations in Rule 9217 of the Office Rules

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 August 9, 2017, NYSE American LLC ("NYSE American" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III 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.

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

The Exchange proposes to add certain rules adopted in connection with the Exchange's transition to a fully-automated cash equities market to the list of minor rule violations in Rule 9217 of the Office Rules. 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

On January 29, 2015, the Exchange announced the implementation of Pillar, which is 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, NYSE Arca, Inc. ("NYSE Arca") and New York Stock Exchange LLC ("NYSE").⁴ NYSE Arca Equities, Inc. ("NYSE Arca Equities"),⁵ which operates the cash equities trading platform for NYSE Arca, was the first trading system to migrate to Pillar.⁶

⁴ See Trader Update dated January 29, 2015, available here: <https://www.nyse.com/trader-update/history#13517>.

⁵ NYSE Arca Equities is a wholly-owned corporation of NYSE Arca and operates as a facility of NYSE Arca.

⁶ NYSE Arca filed four rule proposals in connection with the NYSE Arca implementation of Pillar. See Securities Exchange Act Release Nos. 74951 (May 13, 2015), 80 FR 28721 (May 19, 2015) (Notice) and 75494 (July 20, 2015), 80 FR 44170 (July 24, 2015) (SR-NYSEArca-2015-38) (Approval Order of NYSE Arca Pillar I Filing, adopting rules for Trading Sessions, Order Ranking and Display, and Order Execution); Securities Exchange Act Release Nos. 75497 (July 21, 2015), 80 FR 45022 (July 28, 2015) (Notice) and 76267 (October 26, 2015), 80 FR 66951 (October 30, 2015) (SR-NYSEArca-2015-56) (Approval Order of NYSE Arca Pillar II Filing, adopting rules for Orders and Modifiers and the Retail Liquidity Program); Securities Exchange Act Release Nos. 75467 (July 16, 2015), 80 FR 43515 (July 22, 2015) (Notice) and 76198 (October 20, 2015), 80 FR 65274 (October 26, 2015) (SR-NYSEArca-2015-58) (Approval Order of NYSE Arca Pillar III Filing, adopting rules for Trading Halts, Short Sales, Limit Up-Limit Down, and Odd Lots and Mixed Lots); and Securities Exchange Act Release Nos. 76085 (October 6, 2015), 80 FR 61513 (October 13, 2015) (Notice) and 76869 (January 11, 2016), 81 FR 2276 (January 15, 2016) (SR-NYSEArca-2015-86) (Approval Order of NYSE Arca Pillar IV Filing, adopting rules for Auctions).

To effect its transition to Pillar, the Exchange adopted the rule numbering framework of the NYSE Arca Equities, Inc. (“NYSE Arca Equities”) rules for Exchange cash equities trading on the Pillar trading platform.⁷ As described in the Framework Filing, the Exchange denoted the rules applicable to cash equities trading on Pillar with the letter “E” to distinguish such rules from the then current Exchange rules with the same numbering. The Exchange’s trading rules for cash equity trading on Pillar are also based on the trading rules of NYSE Arca Equities.⁸ The Exchange began trading on the Pillar platform on July 24, 2017.⁹

Newly Exchange adopted rules that are based on NYSE Arca Equities Rules include the following:

- Rule 2.21E (Employees of ETP Holders Registration)
- Rule 2.24E (ETP Books and Records)

⁷ See Securities Exchange Act Release No. 79242 (November 4, 2016), 81 FR 79081 (November 10, 2016) (SR-NYSEMKT-2016-97) (Notice and Filing of Immediate Effectiveness of Proposed Rule Change) (the “Framework Filing”). In addition, the Exchange filed a proposed rule change to support Exchange trading of securities listed on other national securities exchanges on an unlisted trading privileges basis, including Exchange Traded Products (“ETP”) listed on other exchanges. See Securities Exchange Act Release No. 79400 (November 25, 2016), 81 FR 86750 (December 1, 2016) (SR-NYSEMKT-2016-103) (Notice) (the “ETP Listing Rules Filing”).

⁸ See Securities Exchange Act Release Nos. 80590 (May 4, 2017), 82 FR 21843 (May 10, 2017) (Approval Order) and 79993 (February 9, 2017), 82 FR 10814 (February 15, 2017) (SR-NYSEMKT-2017-01) (Notice) (“Trading Rules Filing”). The Exchange also has established market maker obligations when trading on the Pillar trading platform. See Securities Exchange Act Release No. 80577 (May 2, 2017), 82 FR 21446 (May 8, 2017) (SR-NYSEMKT-2017-04) (Approval Order). In addition, the Exchange introduced a delay mechanism on Pillar that adds the equivalent of 350 microseconds of latency to inbound and outbound order messages, as described in greater detail in Rules 1.1E(y) and 7.29E(b). See Securities Exchange Act Release Nos. 80700 (May 16, 2017), 82 FR 23381 (May 22, 2017) (SR-NYSEMKT-2017-05) (Approval Order) and 79998 (February 9, 2017), 82 FR 10828 (February 15, 2017) (SR-NYSEMKT-2017-05) (Notice).

⁹ With Pillar, the Exchange transitioned its cash equities trading platform from a Floor-based market with a parity allocation model to a fully automated price-time priority allocation model that trades all NMS Stocks. See Trading Rules Filing, *supra* note 9, 82 FR at 21843.

- Rule 6.3E (Prevention of the Misuse of Material, Nonpublic Information) and its Commentaries
- Rule 6.15E (Prearranged Trades)
- Rule 7.16E (Short Sales)
- Rule 7.20E (Registration of Market Makers)
- Rule 7.23E (Obligations of Market Makers)
- Rule 7.30E (Authorized Traders)

NYSE Arca Equities includes its versions of the above-listed rules as eligible for disposition under its Minor Rule Plan.¹⁰ The Exchange proposes to similarly add these rules to the list of rules in Rule 9217 (Violations Appropriate for Disposition Under Rule 9216(b)) that are eligible for summary fines under Rule 9216(b). The Exchange also proposes to add accompanying fine levels based on the fine levels currently in place on NYSE Arca Equities Rule 10.12 (Minor Rule Plan) for each Rule.

Proposed Rule Change

Rule 9217, the Exchange's Minor Rule Violation Plan ("MRVP"), 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 amend Rule 9217 to add recently adopted Rules 2.21E, 2.24E, 6.3E, 6.15E, 7.16E, 7.20E, 7.23E, and 7.30E to the list of rules eligible for disposition pursuant to the Exchange's MRVP. These proposed changes are based on NYSE Arca Equities Rule 10.12(g) and (h), which specifies, in part, that NYSE Arca Equities Rules 2.21, 2.24, 6.3,

¹⁰ See NYSE Arca Equities Rule 10.12(g) & (h).

6.15(b),¹¹ 7.16, 7.20, 7.23, and 7.30 are eligible for disposition pursuant to NYSE Arca’s Minor Rule Plan.¹² The Exchange also proposes to add the accompanying fine levels for each Rule based on the fine levels in NYSE Arca Equities Rule 10.12.¹³

To effect these changes, the Exchange proposes to add a paragraph (a) titled “Trading Rule Violations” under the current heading in Rule 9217 titled “List of Equities Rule Violations and Fines Applicable Thereto,” [sic] Under proposed paragraph (a), the Exchange proposes to set forth the following text describing the eligible trading rule violations:

- Short Sale Rules (Rule 7.16E).
- Failure to maintain continuous, two-sided Q Orders in those securities in which the Market Maker is registered to trade (Rule 7.23E(a)(1)).
- Failure to comply with Authorized Trader requirements. (Rule 7.30E).

¹¹ NYSE American Rule 6.15E adopted subdivision (b) of NYSE Arca Equities Rule 6.15(b), which prohibits participation in a prearranged trade.

¹² See NYSE Arca Equities Rule 10.12(g)(1) (NYSE Arca Equities Rule 7.16); (g)(2) (NYSE Arca Equities Rule 7.23(a)(1)); (g)(4) (NYSE Arca Equities Rule 7.30); (g)(5) (NYSE Arca Equities Rule 7.20(a); and (g)(6) (NYSE Arca Equities Rule 6.15(b)). See also NYSE Arca Equities Rule 10.12(h)(7) (Rule 6.3E and its Commentaries); (h)(10) (Rule 2.24); and (h)(11) (Rule 2.21).

Failure to comply with the sponsored participant access requirements of NYSE Arca Rule 7.29 is also eligible for disposition pursuant to NYSE Arca Equities Rule 10.12(g)(3). NYSE American Rule 7.29E is based on NYSE Arca Equities Rule 7.29(a) without any substantive differences. However, the Exchange did not include rule text based on NYSE Arca Equities Rule 7.29(b) because NYSE American does not offer sponsored access in Pillar. See Trading Rules Filing, supra note 9, 82 FR at 10820. Accordingly, because NYSE Arca Equities Rule 10.12(g)(3) is limited to failure to comply with sponsored participant access requirements, the Exchange determined not to include a reference to NYSE American Rule 7.29E in the proposed amendment to Rule 9217.

¹³ The Exchange does not propose to incorporate the text of subsections (a) – (f) or footnote 1 of NYSE Arca Equities Rule 10.12 into Rule 9217. Subsections (a) – (f) of NYSE Arca Equities Rule 10.12 are duplicative of existing requirements in Rule 9217 and Rule 9216(b), which describe the procedure for imposition of minor rule violations. Similarly, footnote 1 of NYSE Arca Equities Rule 10.12 applies to certain NYSE Arca Equities rules for which there are no Exchange equivalents. See also note 17, infra.

- Acting as a Market Maker in a security without being registered as such as required by Rule 7.20E(a).
- Committing any act prohibited by Rule 6.15E.

The Exchange further proposes paragraph (b) titled “Record Keeping and Other Minor Rule Violations” to Rule 9217, which would specify the following text describing the eligible rule violations:

- Failure to comply with the requirements for preventing the misuse of material nonpublic information as set forth in Rule 6.3E and its Commentaries.
- Failure to comply with the books and records requirements of Rule 2.24E.
- Failure to comply with the employee registration or other requirements of Rule 2.21E.

The Exchange further proposes a new paragraph (c) titled “Legacy Minor Rules”¹⁴ that would appear above the current list of eligible rules in Rule 9217, above “Rule 15 – Equities (Pre-Opening Indications).”

Finally, in Rule 9217, the Exchange proposes to add proposed paragraph (d) titled “Fine Schedule” at the end of the current list of eligible rules, following “Rule 518 – Equities requirements for clearance and settlement of transactions in Nasdaq Securities.” Below proposed paragraph (d), the Exchange would include the following text drawn from NYSE Arca Equities Rule 10.12:

¹⁴ Since the transition to Pillar, specified Exchange equities trading rules are no longer applicable, and Exchange rules governing equities trading that are not identified as inapplicable continue to govern Exchange operations on its cash equities trading platform. See Trading Rules Filing, supra note 9, 82 FR at 10815-16. For purposes of Rule 9217, the Exchange proposes to refer to the non-Pillar Exchange rules regarding equities trading as “Legacy Minor Rules.” The Exchange anticipates filing separate proposed rule changes to delete the rules identified as not being applicable to trading on Pillar and to update the list of Legacy Minor Rules. See, e.g., id. at 10816.

The following fine schedule sets forth the amount of the fine(s) to be imposed. Except as noted below, the amount of the fine(s) shall be imposed at the First Level pursuant to the chart below. If another Minor Rule Plan Fine has been issued to the same member organization or covered person¹⁵ for the same or similar conduct violating the same rule (regardless of when paid) within 24 months from the date of occurrence of the violation(s) set forth in the current Notice of Minor Rule Plan Fine, then the fine(s) shall be imposed at the Second Level. If two or more separate Notices of Minor Rule Plan Fine have previously been issued to the same member organization or covered person for the same or similar conduct violating the same rule within 24 months from the date of occurrence of the violation(s) set forth in the current Notice of Minor Rule Plan Fine, then the fine(s) shall be imposed at the Third Level.

These fines are intended to apply to minor violations. For more serious violations, other disciplinary action may be sought.

Below this text, the Exchange would insert new three new subsections (1) – (3). Subsection (d)(1) would be titled “Trading Rule Violations Fine Levels” and would include a chart of first, second and third level fines based on the NYSE Arca Equities Rules for the equivalent Exchange Rules, as follows:

¹⁵ The Exchange substituted “member organization or covered person” to reflect the Exchange’s membership. The rest of the proposed text is the same as that in NYSE Arca Equities Rule 10.12.

- Violations of Rule 7.16E would be eligible for a \$500 first level fine, a \$1,000 second level fine, and a \$2,500 third level fine;
- Violations of Rule 7.23E(a)(1) would be eligible for a \$250 first level fine, a \$500 second level fine, and a \$1,000 third level fine;
- Violations of Rule 7.30E would be eligible for a \$1,000 first level fine, a \$2,500 second level fine, and a \$3,500 third level fine; and
- Violations of Rule 7.20E(a) would be eligible for a \$250 first level fine, a \$500 second level fine, and a \$1,000 third level fine.
- Violations of Rule 6.15E would be eligible for a \$1,000 first level fine, a \$2,500 second level fine, and a \$3,500 third level fine.

New subsection (d)(2) would be titled “Record Keeping and Other Minor Rule Violations Fine Levels,” and would include a chart of the first, second and third level fines that are based on the NYSE Arca Equities Rules for the equivalent Exchange Rule, as follows:

- Violations of Rule 6.3E and its Commentaries would be eligible for a \$2,000 first level fine, a \$4,000 second level fine, and a \$5,000 third level fine.
- Violations of Rule 2.24E would be eligible for a \$2,000 first level fine, a \$4,000 second level fine, and a \$5,000 third level fine.
- Violations of Rule 2.21E would be eligible for a \$1,000 first level fine, a \$2,500 second level fine, and a \$3,500 third level fine.¹⁶

¹⁶ The Exchange proposes to add a footnote 1 based on footnote 2 in NYSE Arca Equities Rule 10.12 providing that, in addition to the specified fines, the Exchange may require a violator to remit all fees that it should have paid to the Exchange pursuant to Rule 2.21E.

These fine levels are the same as those in the NYSE Arca Equities fine schedule contained in NYSE Arca Equities Rule 10.12(i) for each analogous rule.¹⁷

New subsection (e) would be titled “Legacy Minor Rules Fine Schedule”¹⁸ and would summarize fine amounts for individuals and member organizations based on first, second and subsequent offenses. These amounts would continue to govern violations of legacy minor rules following implementation [sic] of Pillar.

Lastly, the Exchange proposes to delete two erroneous references to “NYSE Arca” rules in Rule 476A (Imposition of Fines for Minor Violation(s) of Rules)¹⁹ and in the list of options rule violations and applicable fines in Rule 9217(ii)(7)(b) and replace them with “Exchange.” The Exchange also proposes to correct a typographical error in Rule 476A(ii)(7)(c) and in Rule 9217(ii)(7)(c) by replacing “procures” with “procedures.”

Summary fines provide a meaningful sanction for minor or technical violations of rules. The Exchange believes that adding recently adopted Pillar Rules modeled on the trading rules of its affiliate NYSE Arca Equities to the list of rules eligible for disposition pursuant to the Exchange’s MRVP and subject to the same fine levels as NYSE Arca Equities would harmonize requirements across exchanges for the same conduct. Accordingly, for all the foregoing reasons, the Exchange believes that inclusion of Rules 2.21E, 2.24E, 6.3E, 6.15E, 7.16E, 7.20E, 7.23E,

¹⁷ See NYSE Arca Equities Rule 10.12(i)(1) (setting forth fine levels for NYSE Arca Equities Rules 7.16, 7.23(a)(1), 7.30, 7.20(a) and 6.15(b)); NYSE Arca Equities Rule 10.12(i)(2) (setting forth fine levels for NYSE Arca Equities Rules 6.3E and its Commentaries, 2.24, and 2.21). Rule 9217 retained the Exchange’s maximum fine for minor rule violations which, under legacy Rule 476A, was \$5,000. See Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR-NYSEMKT-2016-30). See also Rule 19d-1 under the Act. 17 CFR 240.19d-1.

¹⁸ See note 15, *supra*.

¹⁹ Rule 476A is the Exchange’s legacy minor rule plan and continues to apply to matters initiated prior to April 15, 2016, the effective date of the Exchange’s new disciplinary rules, which include Rule 9217.

and 7.30E and the accompanying fine levels based on NYSE Arca Equities Rule 10.12 in Rule 9217 would be appropriate.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5),²¹ 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 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 governing cash equities trading and market maker and electronic DMM functions and obligations on the Pillar platform. In addition, adding rules based on the rules of its affiliate to the Exchange's minor rule plan and the associated fine levels would promote fairness and consistency in the marketplace by harmonizing minor rule plan fines across affiliated exchanges for the same conduct. Similarly, the proposed rule change would remove impediments to and perfect the mechanism of a free and open market by further supporting the Exchange's transition to a fully automated cash equities trading model on the Pillar trading platform and, by including rules based on the rules of its affiliated market, NYSE Arca Equities, into the Exchange's MRVP with the same fine levels, further Pillar's goal of promoting consistency among the Exchange, NYSE Arca, and the NYSE.

²⁰ 15 U.S.C. 78f(b).

²¹ 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,²² 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 of the recently adopted Pillar Rules pursuant to the Exchange's MRVP. Moreover, as noted above, the fine levels associated with the rule violations incorporated into Rule 9217 would be based on the rules of its affiliated market, NYSE Arca Equities. Moreover, the Exchange believes that delineating in Rule 9217 the rules and fine levels relating to trading on the Pillar trading platform from legacy rules relating to Floor-based trading promotes transparency following the Exchange's transition to Pillar.

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 MRVP to reflect newly adopted rules. The proposed rule change would also support the launch of the Exchange's new fully automated cash equities trading platform that trades all NMS Stocks and is based on the rules of NYSE Arca Equities.

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.

²² 15 U.S.C. 78f(b)(6).

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 Act²³ and Rule 19b-4(f)(6) thereunder.²⁴ 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)²⁵ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁶ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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)²⁷ of the Act to determine whether the proposed rule change should be approved or disapproved.

²³ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁴ 17 CFR 240.19b-4(f)(6).

²⁵ 17 CFR 240.19b-4(f)(6).

²⁶ 17 CFR 240.19b-4(f)(6)(iii).

²⁷ 15 U.S.C. 78s(b)(2)(B).

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-NYSEAMER-2017-06 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-NYSEAMER-2017-06. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such 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-NYSEAMER-2017-06, 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.²⁸

Eduardo A. Aleman
Assistant Secretary

²⁸ 17 CFR 200.30-3(a)(12).