

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 97581; File No. SR-NYSEAMER-2023-29)

May 25, 2023

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Amend Rule 9232 and Rule 308-Equities

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 May 16, 2023, NYSE American LLC (“NYSE American” or “Exchange”) filed with the Securities and Exchange Commission (“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 Rule 9232 and Rule 308-Equities to reflect the consolidation of the Acceptability Board with the Hearing Board as defined in Rule 9232(b) and make conforming changes. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 9232 (Criteria for Selection of Panelists, Replacement Panelists, and Floor-Based Panelists) and Rule 308-Equities (Acceptability Proceedings) to reflect the consolidation of the Acceptability Board with the Hearing Board as defined in Rule 9232(b) and make conforming changes.

Background

Pursuant to Rule 308-Equities(c), Acceptability Committees are composed of at least three persons who are members of the Acceptability Board. Rule 308-Equities establishes procedures for Acceptability Committees to consider applications prior to disapproval by the Exchange

- (a) of prospective members or member organizations;
- (b) of any prospective member, principal executive, registered representative, or other person required by the Rules of the Exchange to be approved by the Exchange for employment or association with a member or member organization;
- (c) for any change in status of any person which change requires Exchange approval;
and
- (d) of any prospective non-member broker/dealer accessee.

Rule 308-Equities(c) provides that the Acceptability Board be appointed annually by, in part, the Chair of the Board of Directors (“Board”) subject to the approval of the Board, and that it be composed of such number of members and principal executives of the Exchange who are not members of the Board, and registered employees and non-registered employees of members and member organizations, as the Chair of the Board deems necessary.

Rule 9232 establishes procedures for the selection and appointment of panelists to a Hearing Panel as defined in Rule 9120 (Definitions) to conduct disciplinary proceedings and issue a decision. Pursuant to Rule 9232(a), each panelist, except for the Hearing Officer, shall be a member of the Exchange hearing board (“Hearing Board”) provided for in Rule 9232(b). Rule 9232(b) states that the Board shall from time to time appoint a Hearing Board to be composed of such number of members of the Exchange who are not members of the Board and registered employees and nonregistered employees of member organizations or ATP Holders.³ Pursuant to Rule 9232(b), former members or registered and non-registered employees of member organizations or ATP Holders who have retired from the securities industry may be appointed to the Hearing Board. Rule 9232(b) further provides that the members of the Hearing Board be appointed annually.

³ “ATP” refers to an American Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's options trading facilities. The term “ATP Holder” refers to a natural person, sole proprietorship, partnership, corporation, limited liability company or other organization, in good standing, that has been issued an ATP. See Rule 900.2NY (Definitions). See also Securities Exchange Act Release No. 77241 (February 26, 2016), 81 FR 11311, n. 25 (March 3, 2016) (SR-NYSEMKT-2016-30), (Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting Investigation, Disciplinary, Sanction, and Other Procedural Rules Modeled on the Rules of the New York Stock Exchange LLC and Certain Conforming and Technical Changes) (noting that equities members do not have employees, but ATP Holders may be natural persons and may have employees).

All but one of the current members of the Acceptability Board are also members of the Hearing Board. Given the overlap in the composition of the Acceptability Board and the Hearing Board, and the fact that the Acceptability Board is appointed for no other purpose than providing a ready pool for staffing Acceptability Committees, the Exchange has determined to cease appointing a separate Acceptability Board. In this filing, the Exchange accordingly proposes to amend Rule 308-Equities to reflect the consolidation but retain the current composition of Acceptability Committees.

Rule 9232(b) provides that the Hearing Board be appointed annually by the Board and serve at their pleasure. By contrast, Rule 308-Equities(c) provides that the Acceptability Board be appointed annually by the Chair, or officer, employee or committee or board to whom appropriate authority has been delegated, subject to the approval of the Board, to serve at the pleasure of the Board. Despite the apparent difference, the Exchange believes that as a practical matter the proposed change is consistent with current practice, as the board to whom authority has been delegated pursuant to Rule 308-Equities(c) is the Board itself. As a result, the Board appoints both the Hearing Board and the Acceptability Board. Moreover, the Exchange believes that having the full Board make appointments is the more conservative option for appointing Hearing Board members, who serve at the pleasure of the Board.

Proposed Rule Change

The composition of and criteria for appointment to both the Acceptability Board and the Hearing Board are substantially similar. Current Rule 308-Equities(c) provides that the Acceptability Board shall be composed of “such number of members and principal executives of the Exchange who are not members of the Board of Directors, and registered employees and non-registered employees of members and member organizations, as the Chairman of the Board

of the Exchange shall deem necessary.” Rule 9232(b) provides that the Hearing Board shall be composed “of such number of members of the Exchange who are not members of the Exchange Board of Directors and registered employees and nonregistered employees of member organizations or ATP Holders.” Rule 9232 further provides that former members or registered and non-registered employees of member organizations or ATP Holders who have retired from the securities industry may be appointed to the Hearing Board.

Amendments to Rule 308-Equities(c) and (d)

Rule 308-Equities(c) would be amended to provide that Acceptability Committees will consist of at least three persons that are members of the Hearing Board and that are also members and principal executives of the Exchange who are not Board members, or that are registered employees and non-registered employees of member organizations, as the Chair of the Board shall deem necessary. Amended Rule 308-Equities(c) would further clarify that the term Chief Hearing Officer is defined in Rule 9120(c).

As proposed, the Exchange would consolidate the Acceptability Board and the Hearing Board but would only permit members and principal executives of the Exchange who are not members of the Board, or are registered employees and non-registered employees of member organizations, to be appointed to Acceptability Committees consistent with current Rule 308-Equities(c).⁴

⁴ The references to registered or non-registered employees of a member in the second paragraph of Rule 308-Equities(d) would be deleted. As noted, equities members do not have employees. See id. The Exchange would retain the references to registered or non-registered employees of a member organization in that paragraph. Under the current rules, former members or registered and non-registered employees of member organizations or ATP Holders who have retired from the securities industry may be appointed to the Hearing Board but may not be appointed to the Acceptability Board. In turn, they may not be appointed to Acceptability Committees. The proposed changes would exclude them from Acceptability Committees as well.

With the exception of the proposed changes described above, the substantive processes set forth in Rule 308-Equities for the appointment and composition of individual Acceptability Committees, including the requirement that Acceptability Committees consist of at least three persons meeting the criteria set forth in subdivision (d) of Rule 308-Equities selected by the Chief Hearing Officer,⁵ would remain unchanged.

To effectuate these changes, the Exchange would replace “Acceptability Board” with “Hearing Board” in Rule 308-Equities(c) and (d). In addition, the Exchange would update Rule 308-Equities(c) to add (c) after Rule 9120, to more clearly refer to the definition of Chief Hearing Officer in the Rule 9000 Series, the Exchange’s current disciplinary rules. The second paragraph in current Rule 308-Equities(c), which sets forth the appointment and composition requirements for the Acceptability Board, would be deleted. Proposed Rule 308-Equities(c) would read as follows (new text underlined, deleted text bracketed):

(c) All proceedings under this rule shall be conducted in accordance with the provisions of this rule and shall be held before an Acceptability Committee consisting of at least three persons being members of the [Acceptability]Hearing Board described in Rule 9232(b) that are members and principal executives of the Exchange who are not members of the Board of Directors, or are registered employees and non-registered employees of member organizations, as the Chair of the Board of the Exchange shall deem necessary, to be selected by the Chief Hearing Officer (as

⁵ Chief Hearing Officer is defined in Rule 9120(c). The Chief Hearing Officer is currently a Financial Industry Regulatory Authority, Inc. (“FINRA”) employee appointed by the Board to serve the functions specified in the Exchange’s rules.

defined in Rule 9120(c)) in accordance with paragraph (d) of this rule.

[The Chairman of the Board of the Exchange, or officer, employee or committee or board to whom appropriate authority has been delegated, subject to the approval of the Board of Directors, shall from time to time appoint an Acceptability Board to be composed of such number of members and principal executives of the Exchange who are not members of the Board of Directors, and registered employees and non-registered employees of members and member organizations, as the Chairman of the Board of the Exchange shall deem necessary. The members of the Acceptability Board shall be appointed annually and shall serve at the pleasure of the Board of Directors.]

Finally, the references to the offices of a member and the references to employees of a member in Rule 308-Equities(d) would be deleted, as members of the Exchange's equity market do not have employees.⁶

Amendments to Rule 9232(a) and (b)

In 2016, the Exchange adopted Rule 9232 as part of its adoption of rules relating to investigation, discipline, and sanctions, and other procedural rules based on the rules of FINRA and the New York Stock Exchange LLC ("NYSE").⁷ Current Rule 9232(b) provides that the Hearing Board shall be "composed of such number of members of the Exchange who are not

⁶ See 81 FR 11311, *supra* note 3.

⁷ See *id.*, 11325-11326.

members of the Exchange Board of Directors and registered employees and nonregistered employees of member organizations or ATP Holders.” The Rule further provides that former members or registered and non-registered employees of member organizations or ATP Holders who have retired from the securities industry may be appointed to the Hearing Board.

The Exchange has determined to update the Rule to include principal executives on the Hearing Board so long as they are not members of the Board, and permit principal executives who have retired from the securities industry to be appointed to the Hearing Board. The addition would be consistent with current and proposed Rule 308-Equities(c), which allow principal executives of the Exchange to serve on an Acceptability Committee.⁸

In addition, Hearing Board is currently lower case in Rule 9232(a) and (b). The Exchange proposes to capitalize the term.

Proposed Rule 9232(a) and (b) would read as follows (new text underlined, deleted text bracketed):

(a) Each Panelist shall be a person of integrity and judgment and, other than the Hearing Officer, shall be a member of the Exchange [h]Hearing [b]Board as provided in paragraph (b). At least one Panelist shall be engaged in securities activities differing from that of the Respondent or, if retired, was so engaged in differing activities at the time of retirement.

⁸ The proposed addition of “principal executives” is consistent with NYSE Rule 9232, as recently revised. See NYSE Rule 9232(b) (Criteria for Selection of Panelists, Replacement Panelists, and Floor-Based Panelists), and Securities Exchange Act Release No. 97206 (March 27, 2023), 88 FR 19334 (March 31, 2023) (SR-NYSE-2023-19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 308 as Defined in Rule 9232(b) and Delete and Replace Certain Obsolete References).

(b) The Exchange Board of Directors shall from time to time appoint a [h]Hearing [b]Board to be composed of such number of members and principal executives of the Exchange who are not members of the Exchange Board of Directors and registered employees and nonregistered employees of member organizations or ATP Holders. Former members, principal executives, or registered and non-registered employees of member organizations or ATP Holders who have retired from the securities industry may be appointed to the [h]Hearing [b]Board. The members of the [h]Hearing [b]Board shall be appointed annually and shall serve at the pleasure of the Exchange Board of Directors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(1)¹⁰ in particular, in that it enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its exchange members and persons associated with its exchange members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(1).

¹¹ 15 U.S.C. 78f(b)(5).

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. In addition, the Exchange believes that the proposed rule change is designed to provide fair procedures for the denial of membership to any person seeking Exchange membership, the barring of any person from becoming associated with a member, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof, consistent with the objectives of Section 6(b)(7)¹² and Section 6(d)(2)¹³ of the Act.

Amending Rule 308-Equities to reflect the consolidation of the Acceptability Board with the Hearing Board would continue to contribute to the orderly operation of the Exchange. As proposed, given the overlap in the membership of the two boards, the Exchange would appoint the same individuals to a single board that would be available to serve on both Hearing Panels for disciplinary actions (the Hearing Board's current function) and Acceptability Committees for acceptability hearings (the Acceptability Board's sole current function). The proposed change would streamline the process of appointing individuals to boards charged with specific functions under the Exchange's rules and eliminate duplication in the appointment of Exchange boards, which would enable the Exchange to continue to be so organized as to have the capacity to carry out the purposes of the Act and comply with the provisions of the Act by its members and persons associated with members, thereby furthering the objectives of Section 6(b)(1)¹⁴ of the Act.

¹² 15 U.S.C. 78f(b)(7).

¹³ 15 U.S.C. 78f(d)(2).

¹⁴ 15 U.S.C. 78f(b)(1).

The Exchange further believes that the proposed change would be beneficial to both investors and the public interest, thereby promoting the maintenance of a fair and orderly market and the protection of investors and the public interest consistent with Section 6(b)(5) of the Act.¹⁵ The proposed changes would continue to permit the appointment of individuals that meet the same qualifications and requirements to consider applications prior to disapproval by the Exchange under current Rule 308-Equities.¹⁶ More specifically, the Exchange believes that there would be no material difference between the requirements for Acceptability Board composition under current Rule 308-Equities(c) and proposed Rule 9232(b) insofar as both rules require that the applicable body be composed of (1) members and principal executives of the Exchange who are not members of the Board, and (2) registered employees and non-registered employees of member organizations or, in the case of Rule 9232, ATP Holders.¹⁷ Proposed Rule 308-Equities(c) makes it clear that the proposed Acceptability Committee can only include members and principal executives of the Exchange who are members of the Board of Directors, or that are registered employees and non-registered employees of member organizations. Both rules also require that the board be appointed annually and serve at the pleasure of the Board, so there will be no change in the frequency of appointment.

Moreover, the Exchange believes that as a practical matter the proposed change is consistent with current practice, as the board to whom authority has been delegated pursuant to Rule 308-Equities(c) is the Board itself, and as a result the Board appoints both the Hearing

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ As discussed, the proposed change would not include employees of members. This is not a substantive change, because equities members do not have employees. See supra note 4.

¹⁷ Rule 308-Equities applies only to the equities market. Rule 9232 governs disciplinary proceedings for both the equities and options markets.

Board and the Acceptability Board. The Exchange believes that having the full Board make appointments is the more conservative option for appointing Hearing Board members, who serve at the pleasure of the Board. For this reason, the Exchange believes that the proposed change would be beneficial to both investors and the public interest, thereby promoting the maintenance of a fair and orderly market and the protection of investors and the public interest. In addition, because the substance and process set forth in Rule 308-Equities would remain unchanged, the Exchange believes that the proposed changes would continue to provide fair procedures for the denial of membership to any person seeking Exchange membership, the barring of any person from becoming associated with a member, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof consistent with the objectives of Section 6(b)(7)¹⁸ and Section 6(d)(2)¹⁹ of the Act.

The Exchange has also determined to update proposed Rule 9232 to include principal executives on the Hearing Board so long as they are not members of the Board, and permit principal executives who have retired from the securities industry to be appointed to the Hearing Board. The addition would be consistent with current and proposed Rule 308-Equities(c), which allow principal executives of the Exchange to serve on an Acceptability Committee.²⁰ The Exchange believes that this consistency would be beneficial to both investors and the public

¹⁸ 15 U.S.C. 78f(b)(7).

¹⁹ 15 U.S.C. 78f(d)(2).

²⁰ The proposed addition of “principal executives” is consistent with NYSE Rule 9232, as recently revised. See NYSE Rule 9232(b) (Criteria for Selection of Panelists, Replacement Panelists, and Floor-Based Panelists), and Securities Exchange Act Release No. 97206 (March 27, 2023), 88 FR 19334 (March 31, 2023) (SR-NYSE-2023-19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 308 as Defined in Rule 9232(b) and Delete and Replace Certain Obsolete References).

interest, thereby promoting the maintenance of a fair and orderly market and the protection of investors and the public interest consistent with Section 6(b)(5) of the Act.²¹

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 streamlining the process of appointing individuals to boards charged with specific functions under the Exchange's rules and eliminating duplication in the appointment of Exchange boards and with deleting and, where applicable, replacing, references to obsolete references in its rules.

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) of the Act²² and Rule 19b-4(f)(6)²³ thereunder. Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act²⁴ and Rule 19b-4(f)(6)²⁵ thereunder.

²¹ 15 U.S.C. 78f(b)(5).

²² 15 U.S.C. 78(b)(3)(A).

²³ 17 CFR 240.19b-4(f)(6).

²⁴ 15 U.S.C. 78s(b)(3)(A).

²⁵ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business

At any time within 60 days of the filing of the 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 will institute proceedings 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 email to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2023-29 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-NYSEAMER-2023-29. This file number should be included on the subject line if email 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>).

days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or

subject to copyright protection. All submissions should refer to File Number SR-NYSEAMER-2023-29 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.²⁶

Sherry R. Haywood

Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(12).