

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98798; File No. SR-NYSEAMER-2023-49)

October 25, 2023

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Delete Legacy Disciplinary Rules 475, 476, 476A, and 477 and Make Conforming Changes to Rule 41, Rules 8001, 8130(d), 8320(d), 9001, 9216(b)(1), 9810(a), and 781 of the Office Rules, Rules 2A, 12E, 3170(a)(3), 902NY and Adopt a New Rule 600 and Make Conforming Changes to Rules 3170(C)(3), and Adopt a New Rule 601

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 October 13, 2023, NYSE American LLC (“NYSE American” or the “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.

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

The Exchange proposes to (1) delete legacy disciplinary Rules 475, 476, 476A, and 477 of the Office Rules as obsolete and make conforming changes to Rule 41 of the General Rules, Rules 8001, 8130(d), 8320(d), 9001, 9216(b)(1), 9810(a), and 781 of the Office Rules, Rules 2A, 12E, and 3170(a)(3) of the Equities Rules, and Rule 902NY of the Options Rules; (2) adopt a new Rule 600 of the Office Rules incorporating the substantive violations currently in Rule 476(a) without change and make conforming changes to Rules 3170(C)(3) - Equities and 9217 of the Office Rules; and (3) adopt a new Rule 601 of the Office Rules similar to Cboe Exchange, Inc. Rule 13.11, Supplementary Material .01. The proposed rule change is available on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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 (1) delete legacy disciplinary Rules 475, 476, 476A, and 477 of the Office Rules as obsolete and make conforming changes to Rule 41 of the General Rules, Rules 8001, 8130(d), 8320(d), 9001, 9216(b)(1), 9810(a), and 781 of the Office Rules, Rules 2A, 12E, and 3170(a)(3) of the Equities Rules, and Rule 902NY of the Options Rules; (2) adopt a new Rule 600 of the Office Rules incorporating the substantive violations currently in Rule 476(a) without change and make conforming changes to Rules 3170(C)(3) - Equities and 9217 of the Office Rules; and (3) adopt a new Rule 601 of the Office Rules setting forth sanctions guidelines similar to Cboe Exchange, Inc. ("Cboe") Rule 13.11 (Judgment and Sanctions), Supplementary Material .01.

Background and Proposed Rule Change

In 2016, the Exchange adopted rules relating to investigation, discipline, and sanctions, and other procedural rules based on the rules of its affiliate New York Stock Exchange LLC and

the Financial Industry Regulatory Authority (“FINRA”).³ The Exchange represented in that filing that when the transition to the new disciplinary rules was complete and there were no longer any member organizations or persons subject to Rules 475, 476, 476A, and 477 of the Office Rules, the Exchange would submit a proposed rule change that would delete such rules (except for the listed offenses under Rule 476(a)).⁴ The Exchange represents that the transition to the new disciplinary rules is complete and there are no longer any member organizations or persons subject to Rules 475, 476, 476A, and 477, and that those rules can therefore be deleted as obsolete.

The Exchange proposes conforming changes to the following rules that contain references to one or more of the rules proposed to be deleted:

General Rules

- Rule 41 (Failure to Pay Exchange Fees)

Office Rules

- Rule 9216(b)(1) (Acceptance, Waiver, and Consent; Procedure for Imposition of Fines for Minor Violation(s) of Rules)
- Rule 9810(a) (Initiation of Proceeding), and
- Rule 781 (Insolvency)

Equities Rules

- Rules 2A (Jurisdiction)
- Rule 12E (Arbitration), and

³ See Securities Exchange Act Release No. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR-NYSEMKT-2016-30) (“Release No. 77241”) (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).

⁴ See *id.*, 81 FR at 11318.

- Rule 3170(a)(3) (Tape Recording of Registered Persons by Certain Firms)

Options Rules

- Rule 902NY (Admission and Conduct on the Options Trading Floor)

The following rules in the General Rules reflecting the transition from the legacy disciplinary rules to the current rule set would be deleted in their entirety:

- Rule 8130(d) (Retention of Jurisdiction);
- Rule 8320(d) (Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay); Rule 8001 (Effective Date of Rule 8000 Series); and
- Rule 9001 (Effective Date of Rule 9000 Series).

Section 9A of the Office Rules titled “Legacy Disciplinary Rules” where Rules 475, 476, 476A, and 477 are currently set forth would also be deleted.

Section 9B of the Office Rules where the Rule 8000 and Rule 9000 Series are currently set forth would become Section 10. The remaining headings -- current Sections 10 (Advertising), 11 (Wires and Other Means of Communication), 12 (Reports), 13 (Secondary Distributions), 14 (Special Offerings and Special Bids), 15 (Exchange Distributions and Exchange Acquisitions), and 16 (Proxies) -- would be renumbered.

Finally, Rule 478T, currently marked “Deleted”, would be removed as obsolete.

In connection with the deletion of Rule 476, the Exchange also proposes two new Rules that would be located in a new Section 18 titled “Offenses and Sanctions Guidelines.”

First, the Exchange would adopt new Rule 600 titled “Other Offenses” that would, consistent with its filing adopting its current disciplinary rules modeled on the NYSE and FINRA rules, retain the listed offenses in Rule 476(a)(1)-(11) without substantive change. Proposed Rule 600 would provide that a member, member organization, principal executive,

approved person, registered or non-registered employee of a member or member organization or person otherwise subject to the jurisdiction of the Exchange violates the provisions of the Rule if it commits any of the enumerated offenses, which would be transposed from Rule 476(a) in the same order and without changes except for Rule 476(a)(8), which is marked “Reserved.” The Exchange further proposes conforming changes to the following rules to replace references to Rule 476(a) with references to Rule 600: Rules 3170(C)(3) - Equities (Tape Recording of Registered Persons by Certain Firms) and Rule 9217 (Violations Appropriate for Disposition Under Rule 9216(b)).

Second, the Exchange would adopt new Rule 601 titled “Sanction Guidelines” that would incorporate sanctions guidelines similar to Cboe Rule 13.11, Supplementary Material .01, in place of the Sanction Guidelines in Rule 476, Supplementary Material .10.

The current Sanction Guidelines in Rule 476.10 were adopted pursuant to the provisions of Section IV.B.i of the Commission’s September 11, 2000 Order Instituting Administrative Proceedings Pursuant to Section 19(h)(1) of the Act (the “2000 Order”), which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules, including the duty of best execution with respect to the handling of orders after the broker-dealer routes the order to such respondent exchange, limit order display, priority, firm quote, and trade reporting rules.⁵

Unlike other exchanges subject to the 2000 Order,⁶ the Exchange incorporated specific

⁵ See Securities Exchange Act Release Nos. 45412 (February 7, 2002), 67 FR 6770 (February 13, 2002) (Notice); 45566 (March 15, 2002), 67 FR 13379 (March 22, 2002) (SR-Amex-2001-68) (Order). See generally Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282.

⁶ See, e.g., Securities Exchange Act Release Nos. 45427 (February 8, 2002), 67 FR 6958 (February 14, 2002) (Notice); 45571 (March 15, 2002), 67 FR 13382 (March 22, 2002) (SR-CBOE-2001-71) (Order

fine ranges in its sanctions guidelines for violations (other than minor rule violations) setting forth the principal considerations to be applied to the resolution of disciplinary matters. The specific fine ranges incorporated into the guidelines have remained static and, in many instances, set forth recommended fine levels for rules that have been superseded and deleted.⁷ For the remaining operative rules, such as Rule 16 (Business Conduct), 995NY (Prohibited Conduct) and 975NY (Nullification and Adjustment of Options Transactions including Obvious Errors), the fine ranges have largely been eclipsed as the disciplinary landscape evolves.⁸ In short, the Exchange believes that, more than two decades after they were adopted, the monetary sanctions ranges are no longer necessary or useful in determining appropriate sanctions in a given case.

The Exchange accordingly believes that adopting a new rule that continues to reflect a principles-based approach to sanctions guidelines applicable to all options rules that does not contain specific recommended fine ranges for a subset of rules would modernize and update the rule in important respects while continuing to provide flexible guidelines for determining appropriate remedial sanctions consistent with the intention of the original rule.⁹ The principles-

Granting Accelerated Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Incorporate Certain Principal Considerations in Determining Sanctions and To Incorporate in the Exchange's Minor Rule Violation Plan Violations of the Exchange's Order Handling Rules).

⁷ These rules include former Rules 958A, 111, 126, 155, 950, and 958. For instance, Rule 958A governing application of the firm quote rule was superseded by Rule 970NY in 2008 and deleted in 2009. Similarly, Section 900NY replaced former Rules 950 (Rules of General Applicability) and 958 (Options Transactions of Registered Traders) in 2008 and were also deleted in 2009. See generally Securities Exchange Act Release No. 59472 (February 27, 2009), 74 FR 9843 (March 6, 2009) (SR-NYSEALTR-2008-14) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Establish Rules for the Trading of Listed Options); Securities Exchange Act Release No. 59454 (February 25, 2009), 74 FR 9461 (March 9, 2009) (SR-NYSEALTR-2009-17) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Alternext U.S. LLC To Delete Certain Rules Governing the Trading of Listed Options).

⁸ For example, the guideline for Rule 16 violations is \$1,000 to \$5,000. In 2013, a respondent consented to a \$50,000 fine for a violation of Rule 16. See SG Americas Securities (NYSE American Matter No. 13-NYSEMKT-4). In 2020, the fine for a similar violation was \$95,000 -- nearly 20 times the top of the guideline range. See Citigroup Global Markets Inc. (NYSE American Matter No. 2017-11-00111).

⁹ See 67 FR at 6771.

based guidelines contained in Cboe Rule 13.11 that the Exchange proposes to adopt are similar to those set forth in the current guidelines. However, because Cboe Rule 13.11 takes a more streamlined approach, the Exchange believes the proposed rule more clearly and succinctly sets forth current relevant considerations regarding the adjudication of disciplinary actions. Further, the Exchange believes that the proposed rule would be consistent with the 2000 Order because the proposal would closely track approved Cboe Rule 13.11 that was also adopted to satisfy the Commission's order. Indeed, by modernizing and updating the Exchange's sanctions guidelines, proposed Rule 601 would further enhance its disciplinary processes consistent with the 2000 Order. Finally, the proposed rule would promote regulatory consistency across options exchanges in determining appropriate remedial sanctions for violations of options rules.

Like current Rule 476.10, proposed Rule 601 would not apply to the equities market.¹⁰ As such, Rule 601 would carry forward the current practice under Rule 476.10 whereby the various bodies with responsibility for the adjudication of disciplinary actions, including Hearing Panels, Hearing Officers, the Committee for Review ("CFR"), and the Board of Directors ("Board"), defined in the proposed Rule collectively as "Adjudicatory Bodies,"¹¹ would consider relevant Exchange precedent or such other precedent as they deem appropriate in determining sanctions imposed against ATP Holders or ATP Firms and their covered persons.

The remainder of the proposed Rule, with the following exceptions, would be substantially the same as Cboe Rule 13.11.01:

¹⁰ See note 6, *supra*.

¹¹ The Exchange proposes to add two terms to the definition of "Adjudicatory Bodies": "Extended Hearing Panels," which are provided for in the Exchange's disciplinary rules, and Chief Regulatory Officer ("CRO"), given the CRO's role in the disciplinary and settlement processes.

- First, the second paragraph in the proposed Rule would transpose the updated definition of “Adjudicatory Bodies”¹² from the second paragraph of current Rule 476.10(A) and the last two sentences of the third paragraph of current Rule 476.10(A).
- Second, references to “Cboe Options Trading Permit Holders” in Cboe Rule 13.11.01 would be replaced with “ATP Holders or ATP Firms” to reflect the Exchange’s membership.
- Third, in proposed Rule 601(d), the Exchange would omit the second sentence in Cboe Rule 13.11.01(d), which is duplicative of the first sentence that the Exchange would retain.
- Fourth, in proposed Rule 601(e), the Exchange would omit the first sentence of Cboe Rule 13.11.01(e), which provides that “Aggregation of violations may be appropriate in certain instances for purposes of determining sanctions,” as redundant of the second sentence of Cboe Rule 13.11.01(e), which the Exchange would retain.
- Fifth, in proposed Rule 601(f), the Exchange would omit the first sentence of Cboe Rule 13.11.01(f), which provides that “The Hearing Panel or the CRO, as applicable, should evaluate appropriateness of disgorgement and/or restitution,” as redundant of the sentence of Cboe Rule 13.11.01(f), which the Exchange would retain.

Finally, consistent with the Exchange’s desire to adopt streamlined, principles-based sanctions guidelines along the lines set forth in Cboe Rule 13.11.01, the Exchange would not carry forward

¹² See note 10, supra.

the specific recommended monetary and non-monetary sanctions applicable to certain specific rule violations found in current Rule 476.10.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹³ in that 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. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(7) of the Act,¹⁴ in particular, in that it provides fair procedures for the disciplining of members and persons associated with members,¹⁵ the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, 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.

Specifically, the Exchange believes that deletion of the obsolete legacy disciplinary rules now that there are no longer any member organizations or persons subject to those rules, and making conforming changes to the rules referencing those legacy disciplinary rules, would increase the clarity and transparency of the Exchange's rules and remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78f(b)(7).

¹⁵ Under the Exchange's equities rules, the equivalent to the term "member" in this context is "member organization." References to "member" and "member organization" as those terms are used in the rules of the Exchange include ATP Holders. See Rules 18, 24 & 900.2NY(5). See Release No. 77241, 81 FR 11318, notes 25-26, & 11334, n. 75.

Exchange's jurisdiction, regulators, and the investing public could more easily navigate and understand the Exchange Bylaws and rules. The Exchange further believes that the proposed amendments would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency and clarity, thereby reducing potential confusion.

The Exchange further believes that retaining the substantive offenses in Rule 476(a) without change is designed to prevent fraudulent and manipulative acts and practices by permitting the Exchange to continue to carry out its oversight and enforcement responsibilities with respect to the substantive provisions currently enumerated in Rule 476(a). For the same reasons, retention of those provisions would not be inconsistent with the public interest and the protection of investors.

Finally, the Exchange believes that adopting sanction guidelines similar to Cboe Rule 13.11.01 with only non-substantive, conforming changes that do not contain specific recommended fine ranges for a subset of rules would continue to permit the Exchange to impose sanctions consistently and fairly by reference to a streamlined rule, thereby continuing to provide fair procedures for the disciplining of members and persons associated with members, 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 pursuant to Section 6(b)(7)¹⁶ of the Act.

The proposed rule would provide flexible and appropriate principles-based guidelines applicable to all options rules for determining remedial sanctions consistent with the intention of

¹⁶ 15 U.S.C. 78f(b)(7).

the Exchange's current sanctions guidelines rule.¹⁷ However, the Exchange believes that dispensing with recommended fine ranges would modernize and update the rule in important respects. As noted, there are currently fine ranges for numerous rules that have been superseded or deleted, and the fine ranges for the remaining operative rules do not reflect more recent regulatory considerations and fine levels. Moreover, by adopting Cboe Rule 13.11's more streamlined approach to sanctions guidelines, the Exchange believes the proposed rule would more clearly and succinctly set forth the current relevant considerations regarding the adjudication of disciplinary actions. Further, the Exchange believes that the proposed rule would also be consistent with the 2000 Order because the proposal would closely track approved Cboe Rule 13.11 that was adopted to satisfy the same Commission order. Indeed, the Exchange believes that by modernizing and updating its sanctions guidelines, proposed Rule 601 would further enhance its disciplinary processes consistent with the 2000 Order and further ensure that the Exchange implements the most appropriate disciplinary mechanisms for violations and a fair process in determining same. Finally, the proposed rule would promote regulatory consistency and uniformity across options exchanges in determining appropriate remedial sanctions and the imposition of penalties.

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 Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with deleting obsolete rules and making related and conforming changes.

¹⁷ See 67 FR at 6771.

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 Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹ 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.²⁰

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)²¹ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

¹⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁹ 17 CFR 240.19b-4(f)(6).

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

²¹ 15 U.S.C. 78s(b)(2)(B).

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-2023-49 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-2023-49. 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>).

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 a.m. and 3 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-2023-49 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Sherry R. Haywood,
Assistant Secretary.

²² 17 CFR 200.30-3(a)(12).