

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101830; File No. SR-NYSEAMER-2024-75)

December 6, 2024

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Amend Rule 342

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 December 3, 2024, 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 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 342 to add clarity to the process for a broker-dealer to become or remain a member organization notwithstanding a statutory disqualification. 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 specified in Item IV below. The Exchange has prepared summaries, set forth in sections

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend proposes to amend Rule 342 to add clarity to the process to the process for a broker-dealer to become or remain a member organization notwithstanding a statutory disqualification.

Background and Proposed Rule Filing

Section 3(a)(39) of the Act defines the term “statutory disqualification” and the circumstances that can cause a person (either a Member, or a person associated with a Member) to be subject to a statutory disqualification.⁴ Absent relief, a statutory disqualification would preclude a broker-dealer or person associated with a broker-dealer from certain activities, including membership in a self-regulatory organization (“SRO”).

There is, however, a well-established process through which a broker-dealer (or a person associated with a broker-dealer) may continue to operate in the securities industry (and either become a member of, or continue as a member of, one or more SROs) despite being subject to a statutory disqualification.⁵ In particular, SEC Rule 19h-1⁶ describes several ways an SRO may seek relief for a member (or prospective member) that is subject to a statutory disqualification, including whether an SRO must file a notice with the Commission in order to allow the disqualified firm to become or continue as a member with the SRO (a “19h-1 Notice”). A 19h-1 Notice does not, for instance, need to be filed by an SRO if the firm subject to a statutory

⁴ 15 USC 78c(a)(39).

⁵ See FINRA Regulatory Notice 09-19 (“Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications”).

⁶ 17 CFR 240.19h-1.

disqualification is a member of at least one other SRO, and that SRO intends to file a 19h-1 Notice for the firm.⁷

Rule 342 (Association of Members, Member Organizations, and Persons Associated With Member Organizations) of the Office Rules provides that, except as otherwise permitted by the Exchange, no member, member organization, approved person, employee, or any person directly or indirectly controlling, controlled by or under common control with a member or member organization shall have associated with him or it any person who is known, or in the exercise of reasonable care should be known, to be subject to any “statutory disqualification” defined in Section 3(a)(39) of the Act.

Recently, a non-member broker-dealer firm subject to a statutory disqualification that is currently under review by the Financial Industry Regulatory Authority, Inc. (“FINRA”) applied for Exchange membership.⁸

In reviewing this application, the Exchange determined that this situation is not explicitly addressed in its rules as it is in the rules of other exchanges.⁹ Specifically, BOX, Cboe BZX, Cboe BYX, Cboe EDGX, and Cboe EDGA each amended their respective rules in 2016 to provide more clarity as to the authority of each exchange to determine whether to admit a prospective member that is subject to a statutory disqualification.¹⁰ The 2016 rule change filings

⁷ Id. at (a)(3).

⁸ The processing of new membership applications at the Exchange includes statutory disqualification disclosures and background investigations. Review, assessment, and processing of these membership applications has been conducted on behalf of the Exchange by FINRA pursuant to a regulatory services agreement.

⁹ See Cboe EDGX Exchange, Inc. (“Cboe EDGX”) Rule 2.5(a) & Interpretation and Policies .04; Cboe BZX Exchange, Inc. (“Cboe BZX”) Rule 2.5(a) & Interpretation and Policies .04; Cboe BYX Exchange, Inc. (“Cboe BYX”) Rule 2.5(a) & Interpretation and Policies .04; Cboe EDGA Exchange, Inc. (“Cboe EDGA”) Rule 2.5(a) & Interpretation and Policies .04; and BOX Options Exchange LLC (“BOX”) Rule 2040(a) & IM-2040-08.

¹⁰ See Securities Exchange Act Release No. 78449 (August 1, 2016), 81 FR 51947 (August 5, 2016) (SR-

of these exchanges also amended several other aspects of their application procedures, but the Exchange only seeks to harmonize its rules insofar as they apply to member organizations and prospective member organizations (and associated persons of member organizations) that are subject to a statutory disqualification in order to address the membership application described herein.¹¹

The Exchange accordingly proposes to align its rule with these other exchanges specifically with respect to the process of assessing an applicant for membership that is subject to a statutory disqualification.¹² As discussed below, the Exchange is making the proposed rule changes and seeks waiver of the 30-day operative delay in order to address an unusual and time sensitive situation in which a firm subject to a statutory disqualification seeks to become an Exchange member organization during the pendency of the process by which the firm is seeking relief from the statutory disqualification.

To effectuate these changes, the Exchange proposes to add Supplementary Material .01 to

BOX-2016-26); Securities Exchange Act Release No. 79229 (November 3, 2016), 81 FR 78875 (November 9, 2016) (SR-BatsBZX-2016-67); Securities Exchange Act Release No. 79233 (November 3, 2016), 81 FR 78869 (November 9, 2016) (SR-BatsBYX-2016-28); Securities Exchange Act Release No. 79234 (November 3, 2016), 81 FR 78867 (November 9, 2016) (SR-BatsEDGA-2016-23); Securities Exchange Act Release No. 79236 (November 3, 2016), 81 FR 78878 (November 9, 2016) (SR-BatsEDGX2016-59).

¹¹ The 2016 rule filings also added some other conditions for eligibility for exchange membership such as adding a restriction that members must meet any condition the exchange placed on such member, which the Exchange believes are adequately addressed in other Exchange rules. See, e.g., Rule 310 (Formation of or Admission to Member Organization or Membership Owner). Moreover, the Rule 9520 Series sets forth procedures for a covered person (defined in Rule 9120(g) as a member, principal executive, approved person, registered or non-registered employee of a member organization or an ATP Holder (an options permit holder, see Rule 900.2NY (Definitions)), or other person (excluding a member organization) subject to the jurisdiction of the Exchange) to become or remain associated with a member organization or ATP Holder notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act, and for a current member organization or covered person to obtain relief from the eligibility or qualification requirements of the Exchange's Rules, referred to in the Rule as "eligibility proceedings."

¹² The proposed changes mirror the language in the following rules: BOX Rule 2040(a) and IM-2040-08; Cboe BZX Rule 2.5(a) and Interpretation and Policies .04; Cboe BYX Rule 2.5(a) and Interpretation and Policies .04; Cboe EDGA Rule 2.5(a) and Interpretation and Policies .04; and Cboe EDGX Rule 2.5(a) and Interpretation and Policies .04.

Rule 342 to provide that the Exchange could approve an applicant for membership (or association with a member organization) that is subject to a statutory disqualification when a proceeding is pending before another SRO to determine whether to permit a member, member organization, approved person, employee, or any person directly or indirectly controlling, controlled by or under common control with a member or member organization to become or continue membership or association notwithstanding a statutory disqualification. This provision, which is consistent with SEC Rule 19h-1(a)(3), would provide as follows (additions underlined):

.01 Statutory Disqualification Proceedings Pending Before

Another SRO. The Exchange may waive the provisions of this Rule when a proceeding is pending before another self-regulatory organization to determine whether to permit a member or associated person of a member to become or continue membership or association notwithstanding a statutory disqualification. In the event the Exchange determines to waive the provisions of this Rule with respect to an existing or prospective member, member organization, approved person, employee, or any person directly or indirectly controlling, controlled by or under common control with a member or member organization, the Exchange shall determine whether it will concur in any Exchange Act Rule 19h-1 filing made by another self-regulatory organization with respect to such person.

This Supplementary Material is substantively identical to IM-2040-8 to BOX Rule 2040 and Interpretation and Policies .04 to Cboe BZX, BYX, EDGX, and EDGA Rules 2.5, except for

language clarifying that the new supplementary material would apply to both prospective and existing members, member organizations, approved persons, employees, or any person directly or indirectly controlling, controlled by or under common control with a member or member organization.

The Exchange believes that the proposed rule change would appropriately align its rules with the Commission's rules regarding statutory disqualifications and harmonize the Exchange's process with several other SROs. The Exchange notes that in assessing the statutory disqualification of a member organization or a prospective member organization, it must act consistent with the protection of investors and in the public interest and cannot unfairly discriminate against existing or prospective member organizations.¹³ Moreover, as noted above, a current member organization or covered person can seek relief from the Exchange's eligibility or qualification requirements pursuant to the Rule 9520 Series.¹⁴ In addition, any prospective member organization that has been denied membership in the Exchange or barred from becoming associated with a member organization is entitled to certain due process pursuant to the Rule 308 - Equities (Acceptability Proceedings), which includes, but is not limited to, potential review by the Commission.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act¹⁵ in general, and furthers the objectives of Section 6(b)(5),¹⁶ in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade,

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See note 11, supra.

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

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 Exchange believes that the proposed rule change would better align the Exchange's rules with the Commission's rules regarding statutory disqualifications and enable a consistent process across the Exchange and several other SROs to make appropriate filings with respect to persons subject to a statutory disqualification, thereby protecting investors and the public interest by providing more clarity and consistency with respect to the process of seeking relief from a statutory disqualification and in general enabling the Exchange to more efficiently administer membership applications involving statutory disqualifications. The Exchange further believes that the proposed change would remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest, and add clarity, transparency and consistency to the Exchange's disciplinary rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion.

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 aligning the Exchange's rules with those of other exchanges and with the Commission's approach to handling firms that are subject to statutory disqualification.

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

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 Act¹⁷ and Rule 19b-4(f)(6) thereunder.¹⁸

A proposed rule change filed under Rule 19b-4(f)(6)¹⁹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²⁰ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE American has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. NYSE American states that waiving the 30-day delay in this manner would allow the Exchange to address an unusual and time sensitive situation in which a firm subject to a statutory disqualification seeks to become an Exchange member organization during the pendency of the process by which the firm is seeking relief from the statutory disqualification. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.

¹⁷ 15 U.S.C. 78s(b)(3)(A).

¹⁸ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) 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. NYSE American has satisfied this requirement.

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

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 shall institute proceedings to determine whether the proposed rule 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEAMER-2024-75 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-2024-75. 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 (<https://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-2024-75 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.²¹

Sherry R. Haywood,

Assistant Secretary.

²¹ 17 CFR 200.30-3(a)(12).