

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-84735; File No. SR-NYSEArca-2018-87)

December 6, 2018

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NYSE Arca Rule 5.1-E(a)(2)

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 November 27, 2018, NYSE Arca, Inc. (“Exchange” or “NYSE Arca”) 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 NYSE Arca Rule 5.1-E(a)(2) to remove the requirement that the Exchange file with the Securities and Exchange Commission (the “Commission”) a Form 19b-4(e) for each “new derivative securities product” that will commence trading on the Exchange pursuant to unlisted trading privileges. 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

The purpose of the proposed rule change is to amend NYSE Arca Rule 5.1-E(a)(2)(i) to remove the requirement that the Exchange file with the Commission a Form 19b-4(e) for each “new derivative securities product” that will commence trading on the Exchange pursuant to unlisted trading privileges. The Exchange also proposes to renumber the remaining subsections of NYSE Arca Rule 5.1-E(a)(2) to maintain an organized rule structure. The Exchange notes that a substantially identical proposed rule change by NYSE National, Inc. (“NYSE National”) was recently approved by the Commission.⁴

NYSE Arca Rule 5.1-E(a)(2)(i) sets forth the requirement for the Exchange to file with the Commission a Form 19b-4(e) with respect to each “new derivative securities product” that is traded pursuant to unlisted trading privileges. However, the Exchange believes that it should not be necessary to file a Form 19b-4(e) with the Commission if it begins trading a “new derivative securities product” pursuant to unlisted trading privileges, because Rule 19b-4(e)(1) under the Act refers to the “listing and trading” of a “new derivative securities product.” The Exchange believes that the requirements of that rule refer to when an exchange lists and trades a “new derivative securities product”, and not when an exchange seeks only to trade such product

⁴ See Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (Order Approving File No. SR-NYSENat-2018-02).

pursuant to unlisted trading privileges pursuant to Rule 12f-2 under the Act.⁵ Therefore, the Exchange proposes to delete the requirement in current NYSE Arca Rule 5.1-E(a)(2)(i) for the Exchange to file a Form 19b-4(e) with the Commission with respect to each “new derivative securities product” it begins trading pursuant to unlisted trading privileges. In addition, as a result of the deletion of current NYSE Arca Rule 5.1-E(a)(2)(i), the Exchange proposes to renumber current NYSE Arca Rules 5.1-E(a)(2)(ii)-(vi). Lastly, the Exchange proposes to delete a duplicative reference to subparagraph (v).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)⁶ of the Act in general, and furthers the objectives of Section 6(b)(5) of the Act⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. Specifically, eliminating the requirement to file a Form 19b-4(e) for each “new derivative securities product” the Exchange begins trading on an unlisted trading privileges basis removes an unnecessary regulatory requirement thereby providing for a more efficient process for adding a “new derivative securities product” to trading on the Exchange on an unlisted trading privileges basis.

As noted above, the Commission recently approved a substantially identical proposed

⁵ 17 CFR 240.12f-2.

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

rule change by NYSE National.⁸ In particular, the Commission noted in the approval order that it “believes that the filing of a Form 19b-4(e) is not required when an Exchange is trading a new derivative securities product on a UTP basis only”⁹ and also found that the NYSE National’s proposed rule change is “consistent with the requirements of Section 6(b)(5) of the Act.”¹⁰ The Nasdaq Stock Market LLC (“Nasdaq”), Nasdaq PHLX LLC (“PHLX”), Nasdaq BX, Inc. (“BX”) and Investors Exchange LLC (“IEX”) also recently amended their rules to remove the requirement to file with the Commission a Form 19b-4(e) for each “new derivative securities product” traded on each of those exchanges pursuant to unlisted trading privileges.¹¹

With respect to the renumbering of current NYSE Arca Rules 5.1-E(a)(2)(ii)-(vi) and the deletion of the duplicative reference to subparagraph (v), the Exchange believes that these changes are consistent with the Act because they will allow the Exchange to maintain a clear and organized rule structure, thus preventing investor confusion.

For these reasons, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, removing the requirement to file a Form 19b-4(e) will serve to enhance competition

⁸ See Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (Order Approving File No. (SR-NYSENat-2018-02)).

⁹ See supra note 10 [sic] at page 23975 at footnote 149.

¹⁰ See supra note 10 [sic] at page 23975-6.

¹¹ See Securities Exchange Act Release Nos. 84488 (October 25, 2018), 83 FR 54801 (October 31, 2018) (SR-NASDAQ-2018-082); 84542 (November 6, 2018), 83 FR 56385 (November 13, 2018) (SR-Phlx-2018-67); 84546 (November 7, 2018) 83 FR 56888 (November 14, 2018) (SR-BX-2018-051); and 83609 (July 9, 2018), 83 FR 32704 (July 13, 2018) (SR-IEX-2018-14).

by providing for the efficient addition of new derivative securities products for trading pursuant to unlisted trading privileges on the Exchange. To the extent that a competitor marketplace believes that the proposed rule change places it at a competitive disadvantage, it may file with the Commission a proposed rule change to adopt the same or similar rule.

In addition, the proposal to renumber current NYSE Arca Rules 5.1-E(a)(2)(ii)-(vi) does not impact competition in any respect since it merely maintains a clear and organized rule structure.

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 proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; or (iii) become operative prior to 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 Act¹² and Rule 19b-4(f)(6) thereunder.¹³

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the Exchange's proposal does not present any new or novel issues. Thus, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the

¹² 15 U.S.C. 78s(b)(3)(A).

¹³ 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.

public interest and hereby waives the 30-day operative delay and designates the proposed rule change to be operative upon filing.¹⁴

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.

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-NYSEArca-2018-87 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-NYSEArca-2018-87. 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

¹⁴ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2018-87 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.¹⁵

Eduardo A. Aleman
Assistant Secretary

¹⁵ 17 CFR 200.30-3(a)(12).