

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-94050; File No. SR-NYSEARCA-2022-01)

January 25, 2022

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Non-Substantive Conforming Changes to Rules 10.9120 and 10.9560

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on January 10, 2022, NYSE Arca, Inc. (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 the Substance of the Proposed Rule Change

The Exchange proposes non-substantive conforming changes to Rules 10.9120 and 10.9560 of the Exchange’s disciplinary 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 Exchange 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 Exchange proposes non-substantive conforming changes to Rules 10.9120 (Definitions) and 10.9560 (Expedited Suspension Proceeding) of the Exchange’s disciplinary rules.

In 2019, the Exchange adopted rules relating to investigation, discipline, sanction, and other procedural rules based on the rules of its affiliate NYSE American LLC and the Financial Industry Regulatory Authority (“FINRA”).⁴ Rule 10.9120 defines certain terms used in the Exchange’s disciplinary rules, including “Department of Market Regulation” in paragraph (i) and “Enforcement” in paragraph (m). The definition of Enforcement in Rule 10.9120(m) includes the Department of Market Regulation of FINRA as defined in Rule 10.9120(i).

In 2018, FINRA created a unified enforcement function and eliminated the separate enforcement function in the Department of Market Regulation.⁵ In order to reflect FINRA’s revised organizational structure, the Exchange accordingly proposes to delete the definition of Department of Market Regulation in Rule 10.9120(i) and mark paragraph (i) “Reserved” in order to maintain the Rule’s sequencing. In addition, the Exchange proposes to delete Department of Market Regulation of FINRA from the definition of Enforcement in Rule 10.9120(m). As

⁴ See Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR-NYSEArca-2019-15).

⁵ See “FINRA Announces Enforcement Structure, Senior Leadership Team,” July 26, 2018, available at <https://www.finra.org/media-center/news-releases/2018/finra-announces-enforcement-structure-senior-leadership-team>.

proposed, Rule 10.9120(m) would provide that the term “Enforcement” refers to (A) any department reporting to the Chief Regulatory Officer (defined as “CRO”) of the Exchange with responsibility for investigating or, when appropriate after compliance with the Rule 10.9000 Series, imposing sanctions on an ETP Holder, OTP Holder, OTP Firm or covered person and (B) the Department of Enforcement of FINRA.

Rule 10.9560 sets forth procedures for issuing suspension orders to immediately prohibit persons from conducting, or providing access to the Exchange to conduct, disruptive quoting and trading activity. Rule 10.9560(c)(1) & (2), (d)(1) and (e) use the term “Chief Hearing Officer.” Rule 10.9120(c) defines “Chief Hearing Officer” as the Hearing Officer that manages the Office of Hearing Officers, or his or her delegatee. Rule 10.9120(r) defines “Hearing Officer,” on the other hand, as a FINRA employee who is an attorney appointed by the Chief Hearing Officer to adjudicate and fulfill various adjudicative responsibilities and duties as described in, among other rules, the Rule 10.9550 Series regarding expedited proceedings. Since Rule 10.9560(c)(1) & (2), (d)(1) and (e) govern various aspects of the adjudicative process for expedited hearings -- Rule 10.9560(c) governs hearings, Rule 10.9560(d) governs issuance of suspension orders by the hearing panel, and Rule 10.9560(e) governs hearing panel reviews -- the references to Chief Hearing Officer in each of these subsections is incorrect. The correct reference should be “Hearing Officer” consistent with the rules adopted by the Exchange’s other affiliates, which use “Hearing Officer” in their version of Rule 10.9560.⁶

2. Statutory Basis

⁶ See NYSE Rule 9560(c)(1) & (2), (d)(1) & (e); NYSE National Rule 10.9560(c)(1) & (2), (d)(1) & (e).

The proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ 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.

In particular, the Exchange believes that the proposed non-substantive conforming changes 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 because the proposed non-substantive changes would add clarity, transparency and consistency to the Exchange's rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules.

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 is rather concerned with making non-substantive conforming changes to the Exchange 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.

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

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 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 Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰

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 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

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 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.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2022-01 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-2022-01. 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, 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-2022-01 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.¹¹

J. Matthew DeLesDernier
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).