

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-96289; File No. SR-NYSEARCA-2022-72)

November 9, 2022

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change to Add Violations of Rule 2.1210 to the Exchange's Minor Rule Violation Plan for the Equities and Options Markets

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on October 26, 2022, NYSE Arca, Inc. ("NYSE Arca" 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 and approving the proposal on an accelerated basis.

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

The Exchange proposes to (1) add Rule 2.1210 to the list of minor rule violations in Rule 10.9217 for both the equities and options markets, and (2) make certain non-substantive clarifying changes to Rule 10.9217. The proposed change is available on the Exchange's website at [www.nyse.com](http://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 III 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 to (1) add Rule 2.1210 (Registration Requirements) to the list of minor rule violations in Rule 10.9217 for both the equities and options markets, and (2) make certain non-substantive clarifying changes to Rule 10.9217.

Addition of Rule 2.1210 to the List of Rules Eligible for a Minor Fine

Rule 10.9217 sets forth the list of rules under which a ETP Holder, OTP Holder or OTP Firm or covered person may be subject to a fine under a minor rule violation plan as described in Rule 10.9216(b) for both its equities and options markets.

Rule 2.1210, which was adopted in 2018,<sup>4</sup> sets forth the requirements for persons engaged in the investment banking or securities business of an ETP Holder, OTP Holder or OTP Firm to be registered with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in Rule 2.1220.

The Exchange proposes to add Rule 2.1210 to the list of rules in Rule 10.9217 eligible for disposition pursuant to a minor fine under Rule 10.9216(b). Specifically, the Exchange proposes

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<sup>4</sup> See Securities Exchange Act Release No. 84389 (October 10, 2018), 83 FR 52272 (October 16, 2018) (SR-NYSEArca-2018-71) (Notice of Filing and Immediate Effectiveness of Amendments to Rules Regarding Qualification, Registration and Continuing Education Applicable to Equity Trading Permit Holders, Options Trading Permit Holders or OTP Firms).

to add Rule 2.1210 to Rule 10.9217(g) as new item 13 applicable to both equities and options permit holders. NYSE Arca Rule 2.1210 is substantially similar to Rule 1210 adopted by the Exchange's affiliate New York Stock Exchange LLC ("NYSE") in 2018<sup>5</sup> which is currently eligible for minor rule fines under the NYSE's version of Rule 10.9217.<sup>6</sup> The Exchange believes that having the ability to issue a minor rule fine for failing to comply with the registration requirements of Rule 2.1210 would be consistent with and complement the Exchange's current ability to issue minor rule fines for other registration violations (e.g., Rule 2.24 (Registration—Employees of ETP Holders)). The Exchange further believes that the violations of the registration requirements are particularly suited to minor rule fines because minor fines provide a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations.

The Exchange further proposes to add fine levels for violations of Rule 2.1210 to both the equities and the options fine schedules. First, the Exchange would add proposed first, second and third level fines for violations of Rule 2.1210 to the options fine schedule as proposed Rule 10.9217(h)(iii)(12) of \$1,000 for the first violation, \$2,500 for the second violation and \$3,500 for the third and subsequent violations. The proposed fine levels would be the same as those in the Exchange's current Rule 10.9217(h)(iii)(11) for violations of Rule 2.23. Second, the Exchange would add proposed first, second and third level fines for violations of Rule 2.1210 to

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<sup>5</sup> See Securities Exchange Act Release No. 84336 (October 2, 2018), 83 FR 50727 (October 9, 2018) (SR-NYSE-2018-44) (Notice of Filing and Immediate Effectiveness of Amendments To Rules Regarding Qualification, Registration and Continuing Education Applicable to Members and Member Organizations).

<sup>6</sup> See NYSE Rule 9217. See generally Securities Exchange Act Release No. 87212 (October 3, 2019), 84 FR 54193 (October 9, 2019) (SR-NYSE-2019-44) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Add Certain Rules to the List of Minor Rule Violations in Rule 9217, Delete Obsolete Rules, and Increase the Maximum Fine for Minor Rule Violations).

the equities fine schedule as proposed Rule 10.9217(i)(2)(12) of \$1,000 for the first violation, \$2,500 for the second violation and \$3,500 for the third and subsequent violations. The proposed fine levels would be the same as those in the Exchange's current Rule 10.9217(i)(2)(11) for violations of Rule 2.24.

The Exchange believes that the proposed change would strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation.

#### Non-Substantive Clarifying Changes to Rule 10.9217

The Exchange proposes the following non-substantive clarifying changes to Rule 10.9217.

First, the Exchange proposes to correct a typographical error in Rule 10.9217(h)(i)(23). Rule 10.9217(h)(i)(23) sets forth the proposed fine levels for violations of the rule governing reporting of options positions. Rule 10.9217(h)(i)(23), however, refers to Rule 6.4-O(a) (Series of Options Open for Trading) and not Rule 6.6-O(a), which governs reporting of options positions, which is correctly referred to in Rule 10.9217(e)(23). The Exchange accordingly proposes to correct the error.

Second, the Exchange proposes to add clarifying language regarding the disposition of minor rule fines for violations of the CAT Compliance Rules in the Rule 11.6800 Series based on language adopted by the Exchange's affiliates. Specifically, the Exchange would add a new footnote 4 to current Rule 10.9217(h)(iii)(13) and a new footnote 3 to current Rule 10.9217(i)(2)(14) (governing minor rule fine levels of the options and equities markets, respectively) that would provide as follows:

For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 11.6800 Series, the Exchange may impose a minor rule violation fine of up to \$2,500. For more serious violations, other disciplinary action may be sought.

The language is identical to that adopted by the Exchange's affiliates NYSE and NYSE Chicago, Inc.<sup>7</sup> In addition, "Up to \$2,500.00" would be deleted from current Rule 10.9217(i)(2)(14) and 10.9217(h)(iii)(13) as redundant of proposed footnote 3. The proposed change is not intended to make a substantive change. Violations of the CAT Compliance Rules are currently eligible for minor rule fines and \$2,500 is currently the maximum eligible fine.

Third, the Exchange would add a missing footnote number "2" to the end of Rule 10.9217(i)(2)(11), governing failure to comply with the employee registration or other requirements of Rule 2.24. The numbered footnote text appears in the rule, but the footnote number was inadvertently omitted from Rule 10.9217(i)(2)(11).

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>9</sup> 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

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<sup>7</sup> See NYSE Rule 9217(d) ("For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6800 Series, the Exchange may impose a minor rule violation fine of up to \$2,500. For more serious violations, other disciplinary action may be sought."); NYSE Chicago Rule 10.9217(f), n. \*\* (same).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

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.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in Rule 10.9217 does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through formal disciplinary action if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. The option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct. The proposed rule change is thus designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the registration requirements set forth in Rule 2.1210 where a more formal disciplinary action may not be warranted or appropriate. In addition, the Exchange believes that adding rules based on the rules of its affiliate to the Exchange's minor rule plan, and adding associated fine levels based on current treatment of violations of its registration rules, would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of substantially similar rules that are already eligible for minor rule treatment, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct.

The Exchange further believes that the proposed amendments to Rule 10.9217 are consistent with Section 6(b)(6) of the Act,<sup>10</sup> which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the Act, the rules and regulations thereunder and the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations of proposed Rule 2.1210 pursuant to the Exchange's rules. Finally, the Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.<sup>11</sup> Rule 10.9217 does not preclude an ETP Holder, OTP Holder or OTP Firm or covered person from contesting an alleged violation and receiving a hearing on the matter with procedural rights through a litigated disciplinary proceeding.

In addition, the Exchange believes that the proposed non-substantive clarifying changes described above to correct a typographical error, add clarifying language regarding the disposition of minor rule fines for violations of the CAT Compliance Rules in the Rule 11.6800 Series based on language adopted by the Exchange's affiliates, and to insert a missing footnote number would add clarity and consistency to the Exchange's rules. The Exchange believes that adding such clarity would also be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion. In addition, the Exchange believes that incorporating

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<sup>10</sup> 15 U.S.C. 78f(b)(6).

<sup>11</sup> 15 U.S.C. 78f(b)(7) and 78f(d).

language relating to violations of the CAT Compliance Rules adopted by the Exchange's affiliates would promote fairness and consistency in the marketplace by eliminating differences and harmonizing language related to minor rule treatment of similar rule violations across affiliates. The proposed change is not intended to make any substantive change to the applicability of minor rule fines to violations of the CAT Compliance Rules or the amount of those fines.

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 change is not designed to address any competitive issue but rather to update the Exchange's rules to strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2022-72 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-2022-72. 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, D.C. 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-2022-72 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>13</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to 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 Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act<sup>14</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,<sup>15</sup> which governs minor rule violation plans.

As stated above, the Exchange proposes to amend Rule 10.9217 by: (1) adding Rule 2.1210 (Registration Requirements) to the list of minor rule violations, including in the fine schedules, for both the equities and options markets; and (2) making other clarifying and non-substantive changes.

The Commission believes that Rules 10.9216(b) and 10.9217 are an effective way to discipline a member for a minor violation of a rule. More specifically, the Commission believes

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<sup>12</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).

<sup>15</sup> 17 CFR 240.19d-1(c)(2).

that the proposed addition of Rule 2.1210 (Registration Requirements) to the Exchange's list of current minor rule violations provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission also believes that amending the associated fine schedule is consistent with the Act because it may help the Exchange's ability to better carry out its oversight and enforcement responsibilities by levying appropriate fines for minor violations of the rules included in Rule 10.9217, including minor violations of Rule 2.1210. Finally, the Commission believes that the Exchange's proposal to make certain non-substantive changes to Rule 10.9217 are consistent with the Act because these changes will add clarity to the Exchange's rules.

In approving the proposed rule change, the Commission in no way minimizes the importance of compliance with the Exchange's rules and all other rules subject to fines under Rules 10.9216(b) and 10.9217. The Commission believes that a violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, Rules 10.9216(b) and 10.9217 provide a reasonable means of addressing rule violations that may not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under Rules 10.9216(b) and 10.9217 or whether a violation requires formal disciplinary action.

For the same reasons as discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the Federal Register. The proposal will assist the Exchange in preventing fraudulent and manipulative practices by allowing the Exchange to adequately enforce compliance with, and provide appropriate discipline for, violations of Exchange rules. Moreover, the proposed changes raise no new or novel issues. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>17</sup> and Rule 19d-1(c)(2) thereunder,<sup>18</sup> that the proposed rule change (SR-NYSEArca-2022-72) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

Sherry R. Haywood,  
Assistant Secretary.

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<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 240.19d-1(c)(2).

<sup>19</sup> 17 CFR 200.30-3(a)(12).