

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-98876; File No. SR-NYSEARCA-2023-74)

November 7, 2023

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rules 10.9521 and 10.9522 to Correct Obsolete References to a FINRA Department

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”) and Rule 19b-4 thereunder,² notice is hereby given that on October 26, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) 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 Rules 10.9521 (Purposes and Definitions) and 10.9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) to correct an obsolete reference to a department of the Financial Industry Regulatory Authority, Inc. (“FINRA”). 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Exchange proposes to amend Rules 10.9521 (Purposes and Definitions) and 10.9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) to correct an obsolete reference to a FINRA department.

Background and Proposed Rule Change

In 2019, NYSE Arca adopted disciplinary rules based on the text of the Rule 8000 and Rule 9000 Series of its affiliate NYSE American LLC (“NYSE American”), with certain changes. The NYSE American disciplinary rules are, in turn, substantially the same as the Rule 8000 Series and Rule 9000 Series of FINRA and the New York Stock Exchange LLC.³ The NYSE Arca disciplinary rules were implemented on May 27, 2019.⁴

In adopting disciplinary rules modeled on FINRA’s rules, NYSE Arca adopted procedures set forth in the Rule 10.9520 Series for a covered person to become or remain associated with an ETP Holder, OTP Holder or OTP Firm notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act, and for a current ETP Holder, OTP Holder, OTP Firm or covered person to obtain relief from the eligibility or qualification requirements of the Exchange’s Rules, which the rule refers to as “eligibility proceedings.” Rule 10.9521 sets forth certain definitions relating to eligibility proceedings. Rule 10.9521(b)(1)

³ See Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR-NYSEArca-2019-15) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Investigation, Disciplinary, Sanction, and Other Procedural Rules Modeled on the Rules of the Exchange's Affiliate NYSE American LLC).

⁴ See NYSE Arca Equities RB-19-060 & NYSE Arca Options RB-19-02 (April 26, 2019).

defines the term “Application” to mean FINRA’s Form MC-400 for covered persons or Form MC-400A for ETP Holders, OTP Holders or OTP Firms filed with FINRA’s Department of Registration and Disclosure” (abbreviated as “RAD” in the Exchange’s rules). Rule 10.9522, which governs initiation of an eligibility proceeding by the Exchange, contains references to RAD in subdivisions (b)(1), (c) and (e)(3)(A).

In 2020, FINRA changed RAD’s name to “Credentialing, Registration, Education and Disclosure” (abbreviated as “CRED” in FINRA’s rules) and amended, among others, FINRA Rules 9521 and 9522 to reflect the name change.⁵ The Exchange proposes to conform the references in the Exchange’s rules. To effectuate this change, the Exchange would retain the reference to “FINRA’s Department” in Rule 10.9521(b)(1) and change the capital “D” in department to lowercase. The Exchange would replace “Registration and Disclosure (‘RAD’)” in Rule 10.9521(b)(1) with “Credentialing, Registration, Education and Disclosure (‘CRED’)”. The Exchange would also replace “RAD” with “CRED” in Rules 10.9522(b)(1) (one reference), (c) (two references) and (e)(3)(A) (one reference).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,⁶ 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

⁵ See Securities Exchange Act Release No. 90344 (November 4, 2020), 85 FR 71695 (November 10, 2020) (SR-FINRA-2020-039) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rules To Reflect Name Changes to Two FINRA Departments: The Office of Dispute Resolution and the Department of Registration and Disclosure).

⁶ 15 U.S.C. 78f(b)(5).

system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed change to Rules 10.9521 and 10.9522 to update and replace obsolete references to a FINRA department 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 Exchange's jurisdiction, regulators, and the investing public could more easily navigate and understand the Exchange rules. The Exchange further believes that the proposed change 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 clarity, thereby reducing potential confusion.

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

In accordance with Section 6(b)(8) of the Act,⁷ the Exchange believes that the proposed rule change would not 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 deleting and replacing obsolete references in its rules. Since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

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

⁷ 15 U.S.C. 78f(b)(8).

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁸ and Rule 19b-4(f)(6)⁹ thereunder. 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 Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)¹² normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ the Commission may designate a shorter time if such action is consistent with protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. The Commission believes that waving the 30-day operative delay is consistent with the protection of investors and the public interest, because it will allow the Exchange to correct obsolete references to a FINRA department in its rule text. Accordingly, the Commission designates the proposed rule change to be operative upon filing.¹⁴

⁸ 15 U.S.C. 78(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's 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.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

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

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 will 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2023-74 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-2023-74. 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-NYSEARCA-2023-74 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.¹⁵

Sherry R. Haywood,

Assistant Secretary.

¹⁵ 17 CFR 200.30-3(a)(12), (59).