

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100377; File No. SR-NYSEARCA-2024-52)

June 18, 2024

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Commentary .07 under NYSE Arca Rule 2.23 and Commentary .07 under NYSE Arca Rule 2.24

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 June 7, 2024, 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 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 Commentary .07 under NYSE Arca Rule 2.23 and Commentary .07 under NYSE Arca Rule 2.24 to harmonize with recent changes to Financial Industry Regulatory Authority, Inc. (“FINRA”) Rule 1240.01 reopening the period by which certain participants in the Maintaining Qualifications Program can complete their 2022 and 2023 continuing education content. 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

II. Self-Regulatory Organization’s Statement of the Purpose of, and the 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 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 Commentary .07 under NYSE Arca Rule 2.23 (Registration—OTPS) and Commentary .07 under NYSE Arca Rule 2.24 (Registration—Employees of ETP Holders) to harmonize with recent changes to FINRA Rule 1240.01 (Eligibility of Other Persons to Participate in the Continuing Education Program Specified in Paragraph (c) of this Rule) reopening the period by which certain participants in the Maintaining Qualifications Program (“MQP”) can complete their 2022 and 2023 continuing education (“CE”) content. This proposed rule change would harmonize the Exchange’s CE rules with those of FINRA and thus promote uniform CE standards across the securities industry.⁴

⁴ See Securities Exchange Act Release No. 100067 (May 6, 2024), 89 FR 40520 (May 10, 2024) (SR-FINRA-2024-006) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 1240.01 To Reopen the Period by Which Certain Participants in the Maintaining Qualifications Program May Complete Their Prescribed Continuing Education Content) (“Release No. 100067”).

Background

The continuing education program for registered persons of broker-dealers (“CE Program”) set forth in Rules 2.23 and 2.24⁵ requires registered persons to complete CE consisting of a Regulatory Element and a Firm Element. The Regulatory Element, administered by FINRA on behalf of the Exchange, focuses on regulatory requirements and industry standards, while the Firm Element is provided by each firm and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

In 2022, the Exchange amended NYSE Arca Rules 2.1210 (Registration Requirements), 2.23 (Registration—OTPs), and 2.24 (Registration—Employees of ETP Holders) to, among other things, provide eligible individuals terminating any of their representative or principal registration categories the option of maintaining their qualification for any terminated registration categories by completing annual CE through a new program known as the MQP.⁶ The MQP under NYSE Arca Rules 2.23, Commentary .07, and 2.24, Commentary .07, contains a look-back provision that, subject to specified conditions, extends the option to participate in the MQP to individuals who: (1) were registered as a representative or principal within two years immediately prior to May 25, 2022 (i.e., the MQP implementation date); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program (“FSAWP”) under NYSE Arca Rule 2.1210, Commentary .08 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of an ETP Holder, OTP Holder or OTP Firm) immediately prior to May 25, 2022 (collectively, the “Look-Back Individuals”).⁷

⁵ See also Commentary .06 to Rule 2.1210 (All Registered Representatives and Principals Must Satisfy the Regulatory Element of Continuing Education).

⁶ See Securities Exchange Act Release No. 95065 (June 7, 2022), 87 FR 35820 (June 13, 2022) (SR-NYSEARCA-2022-32) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Amendments to the Exchange’s Rules Regarding Continuing Education Requirements).

Given that many eligible individuals were unable to participate in the MQP because they failed, for various reasons, to make an election before March 15, 2022, the Exchange provided Look-Back Individuals a second opportunity to elect to participate in the MQP to maintain their qualification in 2023.⁸ Specifically, NYSE Arca Rules 2.23, Commentary .07, and 2.24, Commentary .07, were amended to provide eligible persons who elected to participate in the CE Program between June 5, 2023, and December 31, 2023 until March 31, 2024 to complete any prescribed 2022 and 2023 CE. The Exchange's filing was based on FINRA's earlier amendment to Rule 1240.01.⁹

Recently, FINRA again amended its Rule 1240.01 to provide eligible individuals enrolled in the MQP in both 2022 and 2023 who did not complete their prescribed 2022 and 2023 CE content as of March 31, 2024, the opportunity to complete such content between May 22, 2024, and July 1, 2024, to be eligible to continue their participation in the MQP.¹⁰ FINRA also amended its rule to provide that any such individuals who will have completed their prescribed 2022 and 2023 CE content between March 31, 2024, and May 22, 2024 will be deemed to have

⁷ The FSAWP is a waiver program for eligible individuals who have left an ETP Holder, OTP Holder or OTP Firm to work for a foreign or domestic financial services affiliate of a member firm. The Exchange stopped accepting new participants for the FSAWP beginning on May 25, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

⁸ See Securities Exchange Act Release No. 97743 (June 16, 2023), 88 FR 41176 (June 23, 2023) (SR-NYSEARCA-2023-43) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Amendments to the Exchange's Rules Regarding Continuing Education Requirements).

⁹ See id. See also Securities Exchange Act Release No. 97184 (March 22, 2023), 88 FR 18359 (March 28, 2023) (SR-FINRA-2023-005) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 1240.01 To Provide Eligible Individuals Another Opportunity To Elect To Participate in the Maintaining Qualifications Program). Like FINRA, the Exchange determined to treat the individuals who enrolled during the first period (between January 31, 2022, and March 15, 2022) the same as those who enrolled during the second period (between March 15, 2023, and December 31, 2023) for purposes of the March 31, 2024, deadline for completion of prescribed 2022 and 2023 CE content because those who had enrolled in the MQP during the first period satisfied all of the eligibility criteria for enrollment during the second period and would have been able to complete their prescribed CE content by March 31, 2024, had they chosen to enroll during the second period instead of enrolling during the first period.

¹⁰ See Release No. 100067, 89 FR at 40520.

completed such content by July 1, 2024, for purposes of the rule.¹¹

In its filing, FINRA represented that during the process of reaching out to Look-Back Individuals who had enrolled in the MQP but not completed their prescribed CE to remind them of the March 31, 2024 deadline, it noticed that several thousand of those individuals were renewing their participation in the MQP for 2024 instead of completing their prescribed CE.¹² FINRA believes that some of those individuals may have been confused by the layout of the FINRA Financial Professional Gateway accounts and may have inadvertently assumed that completion of the renewal process alone would have satisfied all of the necessary requirements to continue their participation in the MQP.¹³

Proposed Rule Change

NYSE Arca Rules 2.23, Commentary .07 and 2.24, Commentary .07 provide that eligible persons who elect to participate in the CE Program between June 5, 2023 and December 31, 2023 must complete any prescribed 2022 and 2023 CE content by March 31, 2024. The Exchange proposes to delete this language in both rules as obsolete.

In addition, in order to harmonize with FINRA and avoid any potential regulatory gaps, the Exchange proposes to add the following text (italicized) to Rule 2.23, Commentary .07:

Individuals enrolled in the continuing education program under this Commentary .07 in both 2022 and 2023 who did not complete their prescribed 2022 and 2023 continuing education content as of March 31, 2024, shall be able to complete such content between [the effective date of filing], and July 1, 2024, to be eligible to

¹¹ See id.

¹² See id. at 40521.

¹³ See id.

continue their participation in the continuing education program. In addition, any such individuals who will have completed their prescribed 2022 and 2023 continuing education content between March 31, 2024, and [the effective date of filing], shall be deemed to have completed such content by July 1, 2024, for purposes of this Commentary .07.

Similarly, the Exchange proposes to add the following text (italicized) to Rule 2.24, Commentary .07:

Individuals enrolled in the continuing education program under this Commentary .07 in both 2022 and 2023 who did not complete their prescribed 2022 and 2023 continuing education content as of March 31, 2024, shall be able to complete such content between [the effective date of filing], and July 1, 2024, to be eligible to continue their participation in the continuing education program. In addition, any such individuals who will have completed their prescribed 2022 and 2023 continuing education content between March 31, 2024, and [the effective date of filing], shall be deemed to have completed such content by July 1, 2024, for purposes of this Commentary .07.

The proposed text in both rules is substantially similar to the language adopted by FINRA in its Rule 1240.01.¹⁴

As discussed below, the Exchange believes that the proposed rule change is eligible for

¹⁴ See Release No. 100067, 89 FR at 40520.

immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁵ 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, 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. Additionally, the Exchange believes the proposed rule change is 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.¹⁷

The Exchange believes that the proposed rule changes support the objectives of the Act by harmonizing Exchange rules modeled on FINRA's rules, resulting in less burdensome and more efficient regulatory compliance. The proposed rule change would provide Look-Back Individuals another opportunity to complete their prescribed 2022 and 2023 CE content in order to remain eligible to continue their participation in the MQP, thereby promoting efficiency because participation in the MQP would reduce unnecessary impediments to requalification for these individuals without diminishing investor protection. In addition, the Exchange agrees with FINRA that the proposed rule change is consistent with other goals, such as the promotion of diversity and inclusion in the securities industry, by attracting and retaining a broader and

¹⁵ 15 U.S.C. 78f(b).

¹⁶ 15 U.S.C. 78f(b)(5).

¹⁷ 15 U.S.C. 78f(b)(7) & 78f(d).

diverse group of professionals.¹⁸ The MQP also allows the industry to retain expertise from skilled individuals, providing investors with the advantage of greater experience among the individuals working in the industry. The Exchange believes that reopening the CE completion period, as proposed, and providing Look-Back Individuals another opportunity to elect to participate in the MQP will further these goals and objectives.

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 Exchange believes that the proposed rule change, which harmonizes its rules with the recent rule change adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

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

¹⁸ See Release No. 100067, 89 FR at 40521.

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²² the Commission may designate a shorter time if such action is consistent with the 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 upon filing. NYSE Arca, like FINRA, requests that the proposed rule change become operative as quickly as possible so NYSE Arca can communicate the rule change to impacted individuals in a timely manner. Waiver of the operative delay would allow the Exchange to implement the proposed changes to its CE rules without delay, thereby eliminating the possibility of a significant regulatory gap between the FINRA and the Exchange rules, providing more uniform standards across the securities industry, and helping to avoid confusion for Exchange members that are also FINRA members. For these reasons, 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.²³

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 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. The Exchange has satisfied this requirement.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

²³ For purposes only of waiving the 30-day operative delay, the Commission 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 shall institute proceedings under Section 19(b)(2)(B)²⁴ of the Act 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-2024-52 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-2024-52. 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

²⁴ 15 U.S.C. 78s(b)(2)(B).

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. 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-2024-52 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.²⁵

Sherry R. Haywood,

Assistant Secretary.

²⁵ 17 CFR 200.30-3(a)(12).