

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87618; File No. SR-NYSENAT-2019-28)

November 25, 2019

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt New NYSE National Rule 11.5190

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 20, 2019, NYSE National, Inc. (“NYSE National” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III 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.

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

The Exchange proposes to adopt new NYSE National Rule 11.5190 that is substantially the same as Financial Industry Regulatory Authority (“FINRA”) Rule 5190. The proposed rule change is intended to harmonize Exchange rules with the rules of the Exchange’s affiliates and FINRA and thus promote consistency within the securities industry. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt new NYSE National Rule 11.5190 that is substantially the same as FINRA Rule 5190.³ The proposed rule change will further harmonize the Exchange’s rules with the rules of FINRA and the Exchange’s affiliates. The Exchange believes the proposed rule change will help reduce duplicative reporting requirements for ETP Holders who are also FINRA members, NYSE or NYSE American member organizations, and/or NYSE Arca ETP Holders because ETP Holders will not be required to submit an additional Regulation M notification to the Exchange if they have already provided a notification to FINRA, NYSE, or NYSE American pursuant to their respective rules.

Proposed Rule Change

The Exchange proposes to adopt Regulation M-related notification rules harmonized with the rules of FINRA, NYSE, NYSE American and NYSE Arca both to provide uniformity in the marketplace as well as to reduce duplicative reporting obligations for the same subject matter.

³ See Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR-FINRA-2008-039). The Exchange’s affiliates, New York Stock Exchange LLC (“NYSE”), NYSE American LLC (“NYSE American”), and NYSE Arca, Inc. (“NYSE Arca”), previously adopted versions of FINRA Rule 5190. See Securities Exchange Act Release No. 59965 (May 21, 2009), 74 FR 25783 (May 29, 2009) (SR-NYSE-2009-25); Securities Exchange Act Release No. 59975 (May 26, 2009), 74 FR 26449 (June 2, 2009) (SR-NYSEALTR-2009-26); and Securities Exchange Act Release No. 66311 (February 2, 2012), 77 FR 6613 (February 8, 2012) (SR-NYSEArca-2012-07).

The Exchange accordingly proposes to adopt new Rule 11.5190, which is based on FINRA Rule 5190, NYSE Rule 5190, NYSE American Rule 5190 - Equities, and NYSE Arca Rule 9.5190-E.

Proposed Rule 11.5190 would require, in part, that an ETP Holder acting as a manager (or in a similar capacity) of an offering to provide the following information:

- the ETP Holder's determination as to whether a one-day or five-day restricted period applies under Rule 101 of SEC Regulation M and the basis for such determination, including the contemplated date and time of the commencement of the restricted period, the listed security name and symbol, and identification of the distribution participants and affiliated purchasers, no later than the business day prior to the first complete trading session of the applicable restricted period, unless later notification is necessary under specific circumstances;
- the pricing of the distribution, including the listed security name and symbol, the type of security, the number of shares offered, the offering price, the last sale before the distribution, the pricing basis, the SEC effective date and time, the trade date, the restricted period, and identification of the distribution participants and affiliated purchasers, no later than the close of business the next business day following the pricing of the distribution, unless later notification is necessary under specific circumstances; and
- the cancellation or postponement of any distribution for which prior notification of commencement of the restricted period has been submitted under paragraph (c)(1)(A), immediately upon the cancellation or postponement of such distribution. If no ETP Holder is acting as a manager (or in a similar capacity) of such distribution, then each ETP Holder that is a distribution participant or

affiliated purchaser shall provide the notice required under paragraph (c)(1), unless another ETP Holder has assumed responsibility in writing for compliance therewith.

Proposed Rule 11.5190 is substantially similar to FINRA Rule 5190, except that the term “member” has been replaced with “ETP Holder” throughout to reflect the Exchange’s membership. Also, in proposed subsection (e), the Exchange proposes to replace “OTC Security” with “security” and add the phrase “stabilizing bids” to the first sentence. These changes are consistent with NYSE Rule 5190(e), NYSE American Rule 5190(e) - Equities, and NYSE Arca Rule 9.5190-E.

Consistent with current practice that notifications “to the Exchange” are submitted directly to FINRA,⁴ notification under proposed Rule 11.5190 may be satisfied by making an electronic submission through the secure FINRA website at <https://firms.finra.org>.⁵ Further, because notifications submitted pursuant to FINRA Rule 5190 or the rules of the Exchange’s affiliates will meet the requirements of proposed Rule 11.5190, such notifications will also satisfy the notification requirements of proposed Rule 11.5190. ETP Holders will therefore not need to make duplicative filings to the Exchange if notifications have been submitted to FINRA pursuant to FINRA rules or the rules of the Exchange’s affiliates.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act

⁴ Under Exchange Rule 0, ETP Holders required to submit notifications to the Exchange may submit such notifications to FINRA departments acting on the Exchange’s behalf.

⁵ The filing process is described in FINRA Regulatory Notice 12-19 (June 4, 2012), available at <https://www.finra.org/rules-guidance/notices/12-19>.

of 1934 (the “Act”),⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ 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.

The Exchange believes that the proposed rule change will harmonize its rules with the rules of FINRA and the Exchange’s affiliates. The Exchange accordingly believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange Rules and FINRA Rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for dual members of both self-regulatory organizations (“SROs”). To the extent the Exchange has proposed changes that differ from the FINRA version of the rules, such changes are technical in nature and do not change the substance of the proposed Rule.

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 proposal is intended to harmonize the Exchange’s rules with the rules of other SROs with respect to Regulation M compliance. The Exchange believes that any burden on competition would be clearly outweighed by the important regulatory goal of ensuring clear and consistent requirements applicable across SROs, avoiding duplication, and mitigating any risk of SROs

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

implementing different standards in these important areas. Further, the proposed changes would apply to all ETP Holders in the same manner and therefore would not impose any unnecessary intramarket burdens.

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

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

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 under Section 19(b)(2)(B)¹⁰ of the Act to determine whether the proposed rule change should be approved or disapproved.

⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 15 U.S.C. 78s(b)(2)(B).

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-NYSENAT-2019-28 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-NYSENAT-2019-28. 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-NYSENAT-2019-28, 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

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Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(12).