

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86696; File No. SR-NYSE-2019-44)

August 16, 2019

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change 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

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 August 8, 2019, New York Stock Exchange LLC (“NYSE” or the “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 (1) add certain rules to the list of minor rule violations in Rule 9217; (2) delete obsolete rules from Rule 9217; and (3) increase the maximum fine for minor rule violations to \$5,000 in order to more closely align the Exchange’s minor rule plan with that of its affiliates. 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 (1) add certain rules to the list of minor rule violations in Rule 9217; (2) delete obsolete rules from Rule 9217; and (3) increase the maximum fine for minor rule violations to \$5,000 in order to more closely align the Exchange's minor rule plan with that of its affiliates.

Rule 9217 sets forth the list of rules under which a member organization or covered person may be subject to a fine under a minor rule violation plan as described in proposed Rule 9216(b). The Exchange proposes the following amendments to Rules 9217 and 9216(b).

Proposed Rule Change

The Exchange proposes to add the following new introductory paragraph to Rule 9217:

Nothing in this Rule shall require the Exchange to impose a fine for a violation of any rule under this Minor Rule Plan. If the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed under the Rule 9000 Series rather than under this Rule.

The language is based on NYSE Arca Rule 10.9217(d).

Proposed Additions to Rule 9217

The Exchange proposes to add the following rules to the list of rules in Rule 9217 eligible for disposition pursuant to a fine under Rule 9216(b):

- Rule 7.30 (Authorized Traders)
- Rule 76 (“Crossing” Orders)
- Rule 103(a)(i) (Registration and Capital Requirements of DMM Units)
- Rule 1210 (Registration Requirements)
- Rule 3110(a) and (b)(1) (Supervision)

The Exchange also proposes that all of the registration and other requirements set forth in Rule 345 be eligible for a minor rule fine.

Rule 7.30 establishes requirements for member organizations relating to Authorized Traders. The rule is based on NYSE Arca, Inc.’s (“NYSE Arca”) Rule 7.30-E (Authorized Traders), which is eligible for NYSE Arca’s Minor Rule Plan.³

Rule 76 is substantially similar to NYSE American LLC (“NYSE American”) Rule 934NY(a)(1) (Crossing) and NYSE Arca Rule 6.47-O(a)(1) (“Crossing” Orders — OX), which govern manual crosses on those respective exchanges’ options trading Floors. NYSE American Rule 934NY(a)(1) is eligible for NYSE American’s Minor Rule Plan, and NYSE Arca Rule 6.47-O(a)(1) is eligible for NYSE Arca’s Minor Rule Plan.⁴

Rule 103(a)(1) provides that no member organization shall act as a Designated Market Maker (“DMM”) unit in any security unless such member organization is registered as a DMM unit in such security with the Exchange and unless the Exchange has approved of the member

³ See Securities Exchange Act Release No. 81225 (July 27, 2017), 82 FR 36033, 36035 (August 2, 2017) (SR-NYSE-2017-35). See also NYSE Arca Rule 10.12(i)(4) (NYSE Arca Rule 7.30-E); NYSE Arca Rule 10.9217(f)(4). NYSE Arca Rule 10.12 is NYSE Arca’s legacy minor rule plan and applies only to matters for which a written statement was served under Rule 10.12 prior to May 27, 2019; thereafter, Rules 10.9216(b) and 10.9217 apply. See generally NYSE Arca Rules 10.0 (preamble) and 10.9001.

⁴ See NYSE American Rule 9217 (Rule 934NY); NYSE Arca Rules 10.12(h)(3) and 10.9217(e)(3). See note 4, *supra*.

organization acting as a DMM unit and not withdrawn such approval. The rule is substantially similar to NYSE Arca Rule 7.20-E(a) (Registration of Market Makers) and NYSE National Rule 7.20 (Registration of Market Makers), which similarly require that market makers on those exchanges be registered in a security and that the registration has not been suspended or cancelled. Both NYSE Arca Rule 7.20-E(a) and NYSE National Rule 7.20 are eligible for minor rule fines.⁵

Similarly, Rule 1210, which was adopted in October 2018,⁶ sets forth the requirements for persons engaged in the investment banking or securities business of a member organization 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 1220. The Exchange proposes to add Rule 1210 to the list of minor rules in Rule 9217. The Exchange believes that having the ability to issue a minor rule fine for failing to comply with the registration requirements of Rule 1210 would be consistent with and complement the Exchange's current ability to issue minor rule fines for other registration violations (e.g., Rule 345).

Rule 3110 is the Exchange's supervision rule. The Exchange proposes to add subsections (a) and (b)(1) of Rule 3110, governing failure of a member organization to establish and maintain a supervisory system and failure to establish, maintain, and enforce written supervisory procedures, respectively, to Rule 9217. Failure to supervise individuals and accounts is currently eligible for minor rule fines in the rules of the Exchange's affiliate NYSE Arca.⁷

Finally, Rule 345 sets forth certain employee registration, approval and other exchange

⁵ See NYSE Arca Rules 10.12(i)(5) and 10.9217(f)(5); NYSE National Rule 10.9217(d).

⁶ See Securities Exchange Act Release No. 84336 (October 2, 2018), 83 FR 50727 (October 9, 2018) (SR-NYSE-2018-44).

⁷ See NYSE Arca Rules 11.18 (Supervision), 10.12(j)(8) and 10.9217(g)(8).

requirements, including the requirements pertaining to the registration of a securities lending representative, Securities Trader or direct supervisor thereof. Currently, the only violation of Rule 345 that is eligible for a minor rule fine is failure of a member organization to have individuals responsible and qualified for the position of Securities Lending Supervisor. The Exchange proposes that all of registration and other requirements set forth in Rule 345 be eligible for a minor rule fine. The proposed change would be consistent with the practice on the Exchange's affiliates whose comparable rule is eligible for a minor rule fine.⁸

Proposed Deletions from Rule 9217

The Exchange proposes to delete the following rules from Rule 9217 as obsolete:

- Rule 706, which was deleted in 2014.⁹
- Rule 312(h), which is marked “Reserved” in the Exchange’s rules and was deleted in 2010.¹⁰
- Rule 382(a). Rule 382 is also marked “Reserved” and was deleted in 2011.¹¹

⁸ See, e.g., NYSE Arca Rules 2.24.03 (Registration—Employees of ETP Holders), 10.12(j)(11) and 10.9217(g)(11). See also NYSE National Rules 2.2 (Obligations of ETP Holders and the Exchange) and 10.9217(e).

⁹ See Securities Exchange Act Release No. 72916 (August 26, 2014), 79 FR 52094 (September 2, 2014) (SR-NYSE-2014-44).

¹⁰ See Securities Exchange Act Release No. 61557 (February 22, 2010), 75 FR 9472 (March 2, 2010) (SR-NYSE-2010-10). NYSE Rule 4110(c)(2), based on the comparable FINRA rule, incorporates Rule 312(h) in part. The Exchange is not proposing to add Rule 4110(c)(2) to Rule 9217.

¹¹ See Securities Exchange Act Release No. 64888 (July 14, 2011), 76 FR 43368 (July 20, 2011) (SR-NYSE-2011-33). NYSE Rule 4311, based on the comparable FINRA rule, was based in part on NYSE Rule 382. The Exchange is not proposing to add Rule 4311 to Rule 9217.

- Rule 791(c), which was also deleted in 2014.¹²
- Rules 352(b) & (c). Rule 352 is marked “Reserved” and was deleted in 2009.¹³
- Rule 392, which is also marked “Reserved” and was deleted in 2009.¹⁴
- Rule 410A, which was deleted in 2013.¹⁵
- Rule 445(4), which is marked “Reserved” and was deleted in 2009.¹⁶

Eligible Fine Amounts

The maximum fine for minor rule violations under Rule 9216(b) is currently \$2,500. The maximum fine under the Exchange’s legacy minor rule plan set forth in Rule 476A previously was \$5,000. In adopting its current disciplinary rules in 2013, the Exchange believed it appropriate to lower the maximum fine amount to achieve harmony with the rules of the

¹² See Release No. 72916, 79 FR at 52094.

¹³ See Securities Exchange Act Release No. 61158 (December 11, 2009), 75 FR 67942 (December 21, 2009) (SR-NYSE-2009-123). Rule 352 was replaced by Rule 2150. Violations of Rule 2150(b) & (c) are currently eligible for a minor rule fine under Rule 9217.

¹⁴ See Securities Exchange Act Release No. 59965 (May 21, 2009), 74 FR 25783 (May 29, 2009) (SR-NYSE-2009-25).

¹⁵ See Securities Exchange Act Release No. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR-NYSE-2013-02) (Notice) (“Release No. 68678”); see also Securities Exchange Act Release No. 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR-NYSE-2013-02) (Approval Order). Rule 410A was replaced by Rule 8211. Both rules were initially retained in Rule 9217, but there is no longer any reason to retain Rule 410A in Rule 9217.

¹⁶ See Securities Exchange Act Release No. 61273 (December 31, 2009), 75 FR 1091 (January 1, 2010) (SR-NYSE-2009-134).

The Exchange proposes to correct a typographical error in Rule 9217. Rule 9217 refers to Rule 3010(a). The correct reference should be to Rule 3110(a), the Exchange’s supervision rule, which was added to Rule 9217 in 2014. See Securities Exchange Act Release No. 73554 (November 6, 2014), 79 FR 67508 (November 13, 2014) (SR-NYSE-2014-56).

Financial Industry Regulatory Authority (“FINRA”).¹⁷ The Exchange’s affiliates NYSE American, NYSE National and NYSE Arca, however, have since harmonized their disciplinary rules with the Exchange and adopted or retained a \$5,000 maximum fine for minor rule violations.¹⁸ The Exchange accordingly proposes to adopt the same maximum fine amount in order to harmonize the maximum fine level with its affiliated exchanges. The Exchange also proposes to adopt the same 24-month rolling period to calculate second and subsequent fines as that used by its affiliated exchanges.

To effectuate this change, the Exchange proposes to add the following fine chart contained in Rule 476A, the Exchange’s legacy rule governing the imposition of minor rule fines, to Rule 9217:¹⁹

<u>Fine Amount</u>	<u>Individual</u>
First Time Fined	\$1,000
Second Time Fined**	\$2,500
Subsequent Fines**	\$5,000
<u>Fine Amount</u>	<u>Member Organization</u>
First Time Fined	\$2,500
Subsequent Fines**	\$5,000

¹⁷ See Release No. 68678, 78 FR at 5226.

¹⁸ For instance, the maximum fine for minor rule violations under NYSE Arca’s legacy Minor Rule Plan set forth in Rule 10.12 is \$5,000. NYSE Arca retained the \$5,000 maximum when it adopted its new disciplinary rules. See NYSE Arca Rule 10.9217(a). See also NYSE American Rule 9217 & NYSE National Rule 10.9217.

¹⁹ When the Exchange adopted Rule 9217 as part of its adoption of FINRA’s disciplinary rules, the Exchange retained the list of rules set forth in Rule 476A. See Release No. 69045, 78 FR at 15396. The Exchange did not retain the chart in Rule 476A because, as noted above, the maximum fine under Rule 476A previously was \$5,000.

** Within a “rolling” 24-month period.

As noted, rather than the 12-month rolling period in Rule 476A, the Exchange proposes a 24-month “rolling” period from the date of the violation in order to harmonize with its affiliates.²⁰

In order to add clarity to the Exchange’s rules, the Exchange also proposes to add a paragraph immediately before the proposed chart based on NYSE Arca Rule 10.9217(h) that sets forth how the beginning and end of the 24-month rolling period is to be determined. Except for references that reflect the Exchange’s membership and use of the phrase “minor rule violation plan letter” rather than “Notice of Minor Rule Plan Fine,” the paragraph is substantially the same as NYSE Arca Rule 10.9217(h).²¹

In order to further harmonize the Exchange’s rules with those of its affiliates, and because a fine of \$5,000 would exceed the maximum amount in Securities Exchange Act Rule 19d-1(c)(2) for a minor rule plan,²² the Exchange proposes to change the titles of Rules 9216 and 9217. Specifically, the phrase “Plan Pursuant to SEA Rule 19d-1(c)(2)” would be replaced with “Procedure for Imposition of Fines for Minor Violation(s) of Rules” in the title of Rule 9216. The same phrase in Rule 9217 would be replaced with “Rule 9216(b).” The titles of both rules

²⁰ See NYSE Arca Rule 10.9217 (violations applied in a rolling 24-month period); NYSE American Rule 9217 (same).

²¹ Pursuant to the new paragraph the Exchange proposes to add to Rule 9217 based on NYSE Arca Rule 10.9217(d) discussed above, the Exchange is not required to impose a fine for a violation under its Minor Rule Plan. The Exchange may, at its discretion, bring formal disciplinary action against a member or associated person that has violated its rules.

²² 17 CFR 240.19d-1(c)(2).

would thereby be the same as the titles of NYSE Arca Rules 10.9216 and 10.9217 and NYSE National Rules 10.9216 and 10.9217, respectively. The Exchange proposes to make similar conforming changes to Rule 9216(b)(1) by removing references to SEA Rule 19d-1(c)(2) and the maximum fine level of \$2,500, and by adding language specifying that the Exchange may impose a fine in accordance with the fine amounts and fine levels set forth in Rule 9217.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Section 6(b)(5),²⁴ 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.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules. 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. Specifically, the proposed rule change is 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 its rules governing authorized traders, crossing orders, DMM registration and capital requirements, and general registration and supervision requirements in situations where a more formal disciplinary action may not be warranted or appropriate.

²³ 15 U.S.C. 78f(b).

²⁴ 15 U.S.C. 78f(b)(5).

In addition, the Exchange believes that adding rules based on the rules of its affiliate to the Exchange's minor rule plan and the associated fine levels 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 eligible for minor rule treatment on the Exchange's affiliate, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct. Deletion of obsolete rules from the minor rule plan would thus 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 can more easily navigate and understand the Exchange's rulebook.

Finally, in connection with the fine levels specified in the proposed rule change, adding clarifying language describing how the "rolling period" is determined would further the goal of transparency and add clarity to the Exchange's rules. The Exchange believes that adding such clarifying language 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 transparency, thereby reducing potential confusion.

The Exchange further believes that the proposed amendments to Rule 9217 are consistent with Section 6(b)(6) of the Act,²⁵ which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of 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 pursuant to the Exchange's rules and would increase the amounts of

²⁵ 15 U.S.C. 78f(b)(6).

finest in order for the Exchange to better deter violative activity.

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.

The Exchange also believes that the proposed change to remove obsolete rules from the list of rules eligible for minor rule fines 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 and transparency, thereby reducing potential confusion.

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

Within 45 days of the date of publication of this notice in the Federal Register or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove the proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be 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
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2019-044 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-NYSE-2019-044. 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-NYSE-2019-044, 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.²⁶

Jill M. Peterson
Assistant Secretary

²⁶ 17 CFR 200.30-3(a)(12).