

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-78809; File No. SR-NYSEArca-2016-104)

September 9, 2016

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Amending NYSE Arca Equities Rules 2.16(c) and 2.21(i) Regarding the Timing for Submission of a Uniform Termination Notice for Securities Industry Registration (“Form U5”) by an ETP Holder

I. Introduction

On July 14, 2016, NYSE Arca, Inc. (“Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ a proposed rule change to amend NYSE Arca Equities Rules 2.16, Amendments to ETP Documents, and 2.21, Employees of ETP Holders Registration. The proposed rule change was published for comment in the Federal Register on July 27, 2016.⁴ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange currently has two different requirements in its rules governing when a Form U5 must be filed: NYSE Arca Equities Rule 2.16(c) requires an ETP Holder to file a Form U5 and any amendment thereto within 30 days of “when a person associated with that ETP Holder terminates their [sic] affiliation with an ETP Holder”; Rule 2.21(i) requires an ETP Holder to file a Form U5 and any amendment thereto within 30 business days of the termination date, “when a person’s employment by such ETP Holder terminates.”

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 78383 (July 21, 2016), 81 FR 49309 (“Notice”).

The Exchange proposed to amend these two rules to make the time frame within which a Form U5 must be submitted the same. As revised, an ETP Holder must promptly file a Form U5 with the Central Registration Depository (“CRD”), but not later than 30 calendar days after the date of termination of a person associated with the ETP Holder or of an employee, as applicable. The proposed rule change also requires that any amendment to a Form U5 be filed promptly with CRD, but not later than 30 calendar days after learning of the facts or circumstances giving rise to the amendment. Finally, the proposed rule change requires that all Forms U5 be provided to the terminated person concurrently with filing with CRD. This last requirement is new but is consistent with the rules of other SROs.

III. Discussion and Commission Findings

After careful review, 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.⁵ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and with the objectives of Section 6(b)(5),⁷ in particular, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest.

The Commission notes that the change to Rule 2.21 shortens the time within which the Form U5 must be submitted from 30 business days to 30 calendar days. (The change to Rule

⁵ 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).

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

2.16 merely adds “calendar” to modify the number of days. The Exchange made this change so that the two rules would be consistent.) Shortening the time within which a Form U5 must be submitted is important, as the Form U5 must be filed by member firms when they terminate the association of a registered person, or employee. The Form U5 includes the reason for termination of the registered person, which is important when a firm has terminated a registered person for cause. State regulators use the information on Form U5 to determine whether to approve requests by a firm to have an associated person registered in a particular state. Broker-dealer firms review the information on Form U5 when they are deciding whether to hire a registered person. Therefore, the sooner the Form U5 is filed the sooner regulators and broker-dealers will have access to the information. Thus, shortening the time within which a Form U5 must be submitted, so that regulators and broker-dealers can have access to the information sooner, would remove impediments to, and perfect the mechanism of, a free and open market and protect investors and the public interest. For these reasons, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-NYSEArca-2016-104) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁹

Brent J. Fields
Secretary

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).