

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-86423; File No. SR-NYSEARCA-2019-50)

July 22, 2019

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a New Rule 9.21-O, Delete Current Rules 9.21-O through 9.25-O, and Amend Rule 10.9551

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 9, 2019, 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, II, and III 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 (1) adopt a new Rule 9.21-O (Communications with the Public) based on NYSE American Rule 991, (2) delete current Rules 9.21-O through 9.25-O, and (3) amend Rule 10.9551 to add references to proposed Rule 9.21-O. 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 places

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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) adopt a new Rule 9.21-O (Communications with the Public) based on NYSE American Rule 991 (Options Communications), (2) delete Rules 9.21-O through 9.25-O, and (3) amend Rule 10.9551 to add references to proposed Rule 9.21-O.

Background and Proposed Rule Filing

The Exchange recently adopted a new set of rules governing investigations, discipline of ETP Holders, OTP Holders, OTP Firms, and covered persons, sanctions, cease and desist authority, and other procedural rules modeled on the rules of the Exchange’s affiliates, New York Stock Exchange LLC (“NYSE”) and NYSE American LLC (“NYSE American”), as well as those of the Financial Industry Regulatory Authority, Inc. (“FINRA”).⁴ The new disciplinary rules became effective on May 27, 2019.⁵

In that filing, the Exchange adopted Rule 10.9551 (Failure to Comply with Public Communication Standards), which permits the Exchange’s regulatory staff to issue a written notice requiring an ETP Holder, OTP Holder or OTP Firm to file communications with FINRA’s Advertising Regulation Department at least 10 days prior to use if the staff determined that the ETP Holder had departed from the standards of Rule 9.21-E (Communications with the Public)

⁴ See Securities Exchange Act Release No. 34-85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR-NYSEARCA-2019-15) (Notice) (“Disciplinary Rules Adoption”).

⁵ See NYSE Arca Options Regulatory Bulletin 19-02 (April 26, 2019), available at <https://www.nyse.com/publicdocs/nyse/markets/nyse-arca/rule-interpretations/2019/Regulatory%20Bulletin%20re%20Arca%20Disciplinary%20Rules.%20revised%2004.25.19%20V2.pdf>.

and “any applicable options rule.”⁶ As the filing noted, the Exchange did not have a rule comparable to Rule 9.21-E for the options market and undertook to submit a rule filing to adopt a new Rule 9.21-O based on NYSE American Rule 991 and to amend Rule 10.9551.⁷

The Exchange accordingly proposes to adopt a new Rule 9.21-O titled “Communications with the Public.” Except for references to OTP Firm and OTP Holder, proposed Rule 9.21-O is substantially the same as NYSE American Rule 991, which was in turn based on FINRA Rule 2220.⁸ The Exchange proposes to delete its current Rules 9.21-O through 9.25-O governing communications with the public as obsolete.

The Exchange proposes non-substantive conforming changes in Rule 10.9551(a) and (d) to replace the phrase “and any applicable options rule” following “Pursuant to Rule 9.21-E(c)(5)(B)” with “Rule 9.21-O(c)(2).”

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁰ in particular, 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, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

⁶ See Disciplinary Rules Adoption, 84 FR at 16370.

⁷ See *id.*, at n. 62.

⁸ See Securities Exchange Act Release No. 61499 (February 4, 2010), 75 FR 6738 (February 10, 2010) (SR-NYSEAmex-2010-04); Securities Exchange Act Release No. 82402 (December 26, 2017), 83 FR 179 (January 2, 2018) (SR-NYSEAmex-2017-39).

⁹ 15 U.S.C. 78f(b).

¹⁰ 15 U.S.C. 78f(b)(5).

The proposed changes will provide greater harmonization among SROs resulting in less burdensome and more efficient regulatory compliance for common members of the Exchange, the Exchange's affiliates, and FINRA. As previously noted, the proposed rule text is substantially the same as NYSE American Rule 991, which was in turn modeled on FINRA rules. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange further believes that adopting NYSE American's rule governing options communications with the public will provide its permit holders with a clearer, consistent, and more comprehensive regulatory scheme by harmonizing the Exchange's rule concerning options communications with NYSE American's rule and the FINRA rule in the same subject matter. The proposed rule change would continue to ensure a uniform regulatory approach and would reduce any potential risks or inefficiencies in rules. The Exchange further notes that the changes proposed herein are neither novel nor controversial and are modeled on existing FINRA rules.

The Exchange also believes that the proposal to use the terms "OTP Firm" and "OTP Holder" instead of "ATP Holder" would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the proposed change would reflect the Exchange's membership and terminology used in the Exchange's rulebook, thereby reducing any potential ambiguity and providing clarity to the Exchange's rules. The proposed use of the terms "OTP Firm" and "OTP Holder" would be consistent with the NYSE American term "ATP Holder."

The Exchange believes that deleting the Exchange's current options communications with the public as obsolete would remove impediments to and perfect the mechanism of a free

and open market and a national market system and, in general, protect investors and the public interest because it would eliminate rules that are now obsolete or that do not have any substantive content. Eliminating obsolete rules would reduce potential confusion and add transparency and clarity to the Exchange's rules, thereby ensuring that members, regulators, and the public can more easily navigate and understand the Exchange's rulebook.

Finally, the Exchange believes that the proposed conforming changes to Rule 10.9551(a) would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can more easily navigate, understand and comply with its rules, thereby reducing potential investor or market participant confusion.

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

The Exchange does not believe that the proposed rule change would 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 designed to address any competitive issues. Rather, the proposed change is designed to further harmonize the Exchange's rule regarding options communications with the comparable rule of the Exchange's affiliate NYSE American and to make conforming changes to the Exchange's disciplinary rules.

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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹² Because the proposed rule change does not: (i)

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 17 CFR 240.19b-4(f)(6).

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)¹³ 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEARCA-2019-50 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.

¹³ 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR-NYSEARCA-2019-50. 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-NYSEARCA-2019-50 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.¹⁴

Jill M. Peterson
Assistant Secretary

¹⁴ 17 CFR 200.30-3(a)(12).