

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-90113; File No. SR-NYSEArca-2020-87)

October 7, 2020

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Temporary Commentary .10 under NYSE Arca Rule 2.1210

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 September 25, 2020, 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 a rule change to adopt temporary Commentary .10 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under NYSE Arca Rule 2.1210 (Registration Requirements) applicable to Equity Trading Permit (“ETP”) Holders, Options Trading Permit (“OTP”) Holders or OTP Firms. 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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt temporary Commentary .10 (Temporary Extension of the Limited Period for Registered Persons to Function as Principals) under NYSE Arca Rule 2.1210 (Registration Requirements) applicable to ETP Holders, OTP Holders or OTP Firms (collectively, “Members”).⁴ The proposed rule change would extend the 120-day period that certain individuals can function as a principal without having successfully passed an appropriate

⁴ The term "ETP Holder" refers to a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that has been issued an ETP. An ETP Holder must be a registered broker or dealer pursuant to Section 15 of the Act. See Rule 1.1(o). The term "ETP" refers to an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities. See Rule 1.1(n). The term "OTP Holder" refers to a natural person, in good standing, who has been issued an OTP. An OTP Holder must be a registered broker or dealer pursuant to Section 15 of the Act. Under the Exchange’s rules, an OTP Holder has the status as a “member” of the Exchange as that term is defined in Section 3 of the Act. See Rule 1.1(nn). The term "OTP" refers to an Options Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange’s Trading Facilities. See Rule 1.1(mm). The term "OTP Firm" refers to a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing who holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange’s Trading Facilities pursuant to and in compliance with Exchange rules. An OTP Firm must be a registered broker or dealer pursuant to Section 15 of the Act. See Rule 1.1(oo).

qualification examination through December 31, 2020,⁵ and would apply only to those individuals who were designated to function as a principal prior to September 3, 2020. This proposed rule change is based on a filing recently submitted by the Financial Regulatory Authority, Inc. (“FINRA”)⁶ and is intended to harmonize the Exchange’s registration rules with those of FINRA so as to promote uniform standards across the securities industry.

In response to COVID-19, earlier this year FINRA began providing temporary relief by way of frequently asked questions (“FAQs”)⁷ to address disruptions to the administration of FINRA qualification examinations caused by the pandemic that have significantly limited the ability of individuals to sit for examinations due to Prometric test center capacity issues.⁸

FINRA published the first FAQ on March 20, 2020, providing that individuals who were designated to function as principals under FINRA Rule 1210.04⁹ prior to February 2, 2020, would be given until May 31, 2020, to pass the appropriate principal qualification examination.¹⁰

⁵ If NYSE Arca seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond December 31, 2020, NYSE Arca will submit a separate rule filing to further extend the temporary extension of time.

⁶ See Securities Exchange Act Release No. 89732 (September 1, 2020), 85 FR 55535 (September 8, 2020) (SR-FINRA-2020-026) (the “FINRA Filing”). The Exchange notes that the FINRA Filing also provides temporary relief to individuals registered with FINRA as Operations Professionals under FINRA Rule 1220. The Exchange does not have a registration category for Operations Professionals and therefore, the Exchange is not proposing to adopt that aspect of the FINRA Filing.

⁷ See <https://www.finra.org/rules-guidance/key-topics/covid-19/faq#qe>.

⁸ At the outset of the COVID-19 pandemic, all FINRA qualification examinations were administered at test centers operated by Prometric. Based on the health and welfare concerns resulting from COVID-19, in March Prometric closed all of its test centers in the United States and Canada and began to slowly reopen some of them at limited capacity in May. At this time, not all of these Prometric test centers have reopened at full capacity.

⁹ NYSE Arca Rule 2.1210.03 is the corresponding rule to FINRA Rule 1210.04.

¹⁰ FINRA Rule 1210.04 (Requirements for Registered Persons Functioning as Principals for

On May 19, 2020, FINRA extended the relief to pass the appropriate examination until June 30, 2020. Most recently, on June 29, 2020, FINRA again extended the temporary relief providing that individuals who were designated to function as principals under FINRA Rule 1210.04 prior to May 4, 2020, would be given until August 31, 2020, to pass the appropriate principal qualification examination.

One of the impacts of COVID-19 continues to be serious interruptions in the administration of FINRA qualification examinations at Prometric test centers and the limited ability of individuals to sit for the examinations.¹¹ Although Prometric has begun reopening test centers, Prometric's safety practices mean that currently not all test centers are open, some of the open test centers are at limited capacity, and some open test centers are delivering only certain examinations that have been deemed essential by the local government.¹² Furthermore, Prometric has had to close some reopened test centers due to incidents of COVID-19 cases. The initial nationwide closure in March along with the inability to fully reopen all Prometric test centers due to COVID-19 have led to a significant backlog of individuals who are waiting to sit for FINRA examinations.¹³

a Limited Period) allows a member firm to designate certain individuals to function in a principal capacity for 120 calendar days before having to pass an appropriate principal qualification examination. NYSE Arca Rule 2.1210.03 provides the same allowance to Members.

¹¹ Information about the continued impact of COVID-19 on FINRA-administered examinations is available at <https://www.finra.org/rules-guidance/keytopics/covid-19/exams>.

¹² Information from Prometric about its safety practices and the impact of COVID-19 on its operations is available at <https://www.prometric.com/corona-virus-update>. See also supra note 11.

¹³ Although an online test delivery service has been launched to help address the backlog, the General Securities Principal Examination (Series 24) is not available online. See supra note 11.

In addition, firms are continuing to experience operational challenges with much of their personnel working from home due to shelter-in-place orders, restrictions on businesses and social activity imposed in various states, and adherence to other social distancing guidelines consistent with the recommendations of public health officials.¹⁴ As a result, firms continue to face potentially significant disruptions to their normal business operations that may include a limitation of in-person activities and staff absenteeism as a result of the health and welfare concerns stemming from COVID-19. Such potential disruptions may be further exacerbated and may even affect client services if firms cannot continue to keep principal positions filled as they may have difficulty finding other qualified individuals to transition into these roles or may need to reallocate employee time and resources away from other critical responsibilities at the firm.

These ongoing, extenuating circumstances make it impracticable for Members to ensure that the individuals whom they have designated to function in a principal capacity, as set forth in NYSE Arca Rule 2.1210.03, are able to successfully sit for and pass an appropriate qualification examination within the 120-calendar day period required under the rule, or to find other qualified staff to fill this position. The ongoing circumstances also require individuals to be exposed to the health risks associated with taking an in-person examination, because the General Securities Principal examination is not available online. Therefore, NYSE Arca is proposing to continue the temporary relief provided through the FINRA FAQs by adopting Rule 2.1210.10 to extend the 120-day period during which an individual can function as a principal before having to pass an applicable qualification examination until December 31, 2020.¹⁵ The proposed rule change

¹⁴ See, e.g., Centers for Disease Control and Prevention, How to Protect Yourself & Others, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-gettingsick/prevention.html>.

¹⁵ See supra note 5.

would apply only to those individuals who were designated to function as a principal prior to September 3, 2020. Any individuals designated to function as a principal on or after September 3, 2020, would need to successfully pass an appropriate qualification examination within 120 days.

NYSE Arca believes that this proposed continued extension of time is tailored to address the needs and constraints on a Member's operations during the COVID-19 pandemic, without significantly compromising critical investor protection. The proposed extension of time will help to minimize the impact of COVID-19 on Members by providing continued flexibility so that Members can ensure that principal positions remain filled. The potential risks from the proposed extension of the 120-day period are mitigated by the Member's continued requirement to supervise the activities of these designated individuals and ensure compliance with federal securities laws and regulations, as well as NYSE Arca rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Section 6(b)(5),¹⁷ 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 proposed rule change is intended to minimize the impact of COVID-19 on Member operations by extending the 120-day period certain individuals may function as a principal

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

without having successfully passed an appropriate qualification examination under NYSE Arca Rule 2.1210.03 until December 31, 2020. The proposed rule change does not relieve Members from maintaining, under the circumstances, a reasonably designed system to supervise the activities of their associated persons to achieve compliance with applicable securities laws and regulations, and with applicable NYSE Arca rules that directly serve investor protection. In a time when faced with unique challenges resulting from the COVID-19 pandemic, NYSE Arca believes that the proposed rule change is a sensible accommodation that will continue to afford Members the ability to ensure that critical positions are filled and client services maintained, while continuing to serve and promote the protection of investors and the public interest in this unique environment.

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 rule change is intended to provide temporary relief given the impacts of the COVID-19 pandemic crisis and to also maintain consistency with the rules of other self-regulatory organizations (“SROs”) with respect to the registration requirements applicable to Members and their registered personnel. In that regard, the Exchange believes that any burden on competition would be clearly outweighed by providing Members with temporary relief in this unique environment while also ensuring clear and consistent requirements applicable across SROs and mitigating any risk of SROs implementing different standards in these important areas. In its filing, FINRA provides an abbreviated economic impact assessment maintaining that the changes are necessary to temporarily rebalance the attendant benefits and costs of the obligations under FINRA Rule 1210 in response to the impacts of the COVID-19 pandemic that is equally

applicable to the changes the Exchange proposes.¹⁸ The Exchange accordingly incorporates FINRA's abbreviated economic impact assessment by reference.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

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 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)²⁰ thereunder.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Arca has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately upon filing. As noted above, NYSE Arca stated that the temporary proposed rule change is based on a recent rule change by FINRA and is intended to harmonize NYSE Arca's registration rules with those of FINRA to

¹⁸ FINRA Filing, 85 FR at 55537.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) 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. NYSE Arca has satisfied this requirement.

promote uniform standards across the securities industry.²¹ NYSE Arca states that it will also help minimize the impact of the COVID-19 outbreak on NYSE Arca Members' operations by allowing them to keep principal positions filled and minimizing disruptions to client services and other critical responsibilities. The ongoing extenuating circumstances of the COVID-19 pandemic make it impractical to ensure that individuals designated to act in principal capacities are able to take and pass the appropriate qualification examination during the 120-calendar day period required under the rules. Shelter-in-place orders, quarantining, restrictions on business and social activity and adherence to other social distancing guidelines consistent with the recommendation of public officials remain in place in various states.²² Further, NYSE Arca states that Prometric test centers have experienced serious interruptions in the administration of FINRA qualification examinations, resulting in a backlog of individuals waiting to take these examinations. Following a nationwide closure of all test centers earlier in the year, some test centers have re-opened, but are operating at limited capacity or are only delivering certain examinations that have been deemed essential by the local government.²³ FINRA has launched an online test delivery service to help address this backlog. However, the General Securities Principal (Series 24) Examination is not available online. NYSE Arca states that the temporary proposed rule change will provide needed flexibility to ensure that these positions remain filled and is tailored to address the constraints on Members' operations during the COVID-19 pandemic without significantly compromising critical investor protection.²⁴

²¹ See supra note 6.

²² See supra note 14.

²³ See supra notes 11 and 12. NYSE Arca states that Prometric has also had to close some reopened test centers due to incidents of COVID-19 cases.

²⁴ NYSE Arca states that Members remain subject to the continued requirement to supervise

The Commission also notes that the proposal provides only temporary relief from the requirement to pass certain qualification examinations within the 120-day period in the rules. As proposed, this relief would extend the 120-day period that certain individuals can function as principals through December 31, 2020. NYSE Arca has also stated that if it requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2020, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.²⁵ For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.²⁶ Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²⁷

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 to determine whether the proposed rule should be approved or disapproved.

the activities of these designated individuals and ensure compliance with federal securities laws and regulations, as well as NYSE Arca rules.

²⁵ See supra note 5.

²⁶ As noted above by the Exchange, this proposed temporary change is based on a recent filing by FINRA that the Commission approved with a waiver of the 30-day operative delay. See supra note 6, 85 FR at 55538.

²⁷ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-2020-87 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-2020-87. 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, on business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NYSE Arca. 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-2020-87 and should be submitted on or before [date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁸

J. Matthew DeLesDernier
Assistant Secretary

²⁸ 17 CFR 200.30-3(a)(12).