



8011-01
SECURITIES AND EXCHANGE COMMISSION
[Release No. 34-88613; File No. SR-NYSE-2020-33]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change for Certain Changes and Corrections to the NYSE Rule 9000 Series

April 9, 2020.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on April 7, 2020, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (“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 certain changes and corrections to the NYSE Rule 9000 Series (Code of Procedure). 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 certain changes and corrections to the NYSE Rule 9000 Series (Code of Procedure), as follows.

Proposed Rule Change

In 2013, the Commission approved the Exchange’s adoption of the Rule 8000 (Investigations and Sanctions) and Rule 9000 Series relating to investigation, discipline, sanction, and other procedural rules modeled on the rules of the Financial Industry Regulatory Authority, Inc. (“FINRA”).⁴ The Exchange’s affiliates NYSE American LLC (“NYSE American”), NYSE National, Inc. (“NYSE National”), and NYSE Arca, Inc. (“NYSE Arca”) have since each adopted versions of the Rule 8000 and Rule 9000 Series.⁵ The Exchange proposes certain changes in order to further harmonize its disciplinary rules with the disciplinary rules of its affiliates as well as to correct inconsistencies in the Rule 9000 Series.

First, Rule 9110 (Application) sets forth the types of proceedings to which the Rule 9000

⁴ See Securities Exchange Act Release No. 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR-NYSE-2013-02).

⁵ In 2016, NYSE American adopted its Rule 8000 and Rule 9000 Series based on the NYSE and FINRA Rule 8000 and Rule 9000 Series. See Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR-NYSEMKT-2016-30). In 2018, the Commission approved NYSE National’s adoption of the NYSE National Rule 10.8000 and Rule 10.9000 Series based on the NYSE American and FINRA Rule 8000 and Rule 9000 Series. See Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR-NYSENat-2018-02). In 2019, NYSE Arca adopted the NYSE Arca Rule 10.8000 and 10.9000 Series based on the NYSE American Rule 8000 and Rule 9000 Series. See Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR-NYSEArca-2019-15) (“Release No. 85639”).

Series applies and provides that, in performing the functions under the Rule 9000 Series, the Chief Regulatory Officer (“CRO”) and Regulatory Staff shall function independently of the commercial interests of the Exchange and the commercial interests of the member organizations. In order to strengthen and further safeguard the regulatory independence of the Exchange’s CRO and Regulatory Staff, the Exchange proposes to add the following sentence to the end of the subsection:

No member of the Board of Directors or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.

The proposed sentence is based on the version of Rule 9110(a) adopted by the Exchange’s affiliates NYSE Arca and NYSE National, which contains an identical sentence.⁶

Second, Rule 9120 (Definitions) sets forth the definitions applicable to the Rule 9000 Series. Under the definition of “Interested Staff” in Rule 9120(t)(B)(iii), the Exchange would add an “s” in parentheses after “supervise” to conform to NYSE Arca Rule 10.9120(t)(B)(iii).

Third, Rule 9268 (Decision of Hearing Panel or Extended Hearing Panel) sets forth the timing and contents of a decision of a Hearing Panel or Extended Hearing Panel and the procedures for a dissenting opinion, service of the decision, and requests for review. Subsection (e)(2) provides that a majority decision with respect to an Exchange member that is an affiliate of the Exchange shall constitute final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1) and may not be reviewed pursuant to Rule 9310, which governs review by the Exchange’s Board of Directors.

In order to conform Rule 9268(e)(2) with the changes proposed to Rule 9310(a)

⁶ See NYSE Arca Rule 10.9110(a); NYSE National Rule 10.9110(a).

discussed below, and in order to further harmonize the Exchange's disciplinary rules with its affiliates, the Exchange proposes to delete the phrase "an Exchange member that is" before "an affiliate of the Exchange" and add the phrase "as such term is defined in Rule 12b-2 under the Exchange Act" after "an affiliate of the Exchange."

The proposed change would conform Rule 9268(e)(2) with NYSE Arca Rule 10.9268(e)(2), which contains the phrase "an affiliate of the Exchange as such term is defined in Rule 12b-2 under the Exchange Act." Utilizing the definition of affiliate set forth in in Rule 12b-2 under the Exchange Act would not diminish the current scope or application of the Rule since the proposed definition of affiliate would continue to encompass member and member organizations. Moreover, the proposed change would add clarity and transparency to the Exchange's rules by using a definition of affiliate in the federal securities laws that encompasses both members and member organizations, thereby avoiding potential confusion since Rule 9268(e)(2) currently uses "member."

Fourth, Rule 9310 governs review by the Exchange's board of directors. The Exchange proposes the following changes to Rule 9310.

In the first sentence of Rule 9310(a)(1)(A), the Exchange proposes to replace "neither Party" with "none of the aforementioned persons." The proposed change is based on the version of Rule 9310(a)(1)(A) adopted by the Exchange's affiliates, which prohibits the persons set forth in the rule, and not just Parties, from requesting review by the affiliate's board of directors of a decision concerning an affiliate of that exchange.⁷ The proposed change would thereby further ensure that decisions concerning an Exchange affiliate are final and cannot be appealed to the Exchange Board of Directors.

⁷ See NYSE American Rule 9310(a)(1)(A); NYSE Arca Rule 10.9310(a)(1)(A); & NYSE National Rule 10.9310(a)(1)(A).

Similar to the changes discussed above to Rule 9268(e)(2), the Exchange would delete references to an Exchange member or member organization and instead refer to an affiliate of the Exchange as that term is defined in Rule 12b-2 under the Exchange Act in Rules 9310(a)(1)(A), 9310(a)(1)(B)(i) and 9310(a)(1)(B)(ii).

The proposed changes would harmonize Rule 9310 with NYSE Arca Rule 9310, which contains the phrase “an affiliate of the Exchange as such term is defined in Rule 12b-2 under the Exchange Act,” and with the proposed changes to Rule 9268 discussed above, which would use the same terms. Further, utilizing the definition of affiliate set forth in in Rule 12b-2 under the Exchange Act would not diminish the current scope or application of the rule since the proposed definition of affiliate would continue to encompass member and member organizations. Finally, by harmonizing Rule 9310 with Rule 9268, the proposal would add clarity and transparency to the Exchange’s rules and further ensure that final determinations involving Exchange affiliates cannot be appealed to its Board of Directors.

Fifth, Rule 9560 (Expedited Client Suspension Proceeding) sets forth procedures for expedited suspension hearings. The Exchange proposes the following changes to Rule 9560.

The Exchange proposes to delete “Client” in the Rule 9560’s heading. The word does not appear in the Rule 9560 heading adopted by any of the Exchange’s affiliates.⁸ The proposed change would work no substantive change to Rule 9560, which would otherwise remain unchanged.

The Exchange proposes to add “or Panelist” after “Hearing Officer” in three places in subsection (b)(2) and in two places in subsection (c)(1) of Rule 9560. The proposed change would conform the Exchange’s rule with the analogous NYSE Arca and NYSE National

⁸ See NYSE American Rule 9560; NYSE Arca Rule 10.9560; & NYSE National Rule 10.9560.

provisions.⁹ The proposed change to provide for the potential disqualification of Panelists in addition to Hearing Officers would contribute to fairer procedures consistent with Section 6(b)(7) of the Act.¹⁰

In Rule 9560(b)(2), the Exchange proposes two changes that would conform to the rules of the Exchange's affiliate NYSE Arca. First, the Exchange would delete the "(a)" following the reference to Rule 9233. The reference to subsection (a) does not appear in NYSE Arca Rule 10.9560(b)(2). The Exchange also believes that the correct reference should be to the entire rule. Second, the Exchange proposes to add a reference to Rule 9234, which governs recusal and disqualification of Panelists, following the reference to Rule 9233. The proposed change would reflect the addition of Panelists to Rule 9560 and conform to NYSE Arca Rule 10.9560(b)(2), which also refers to NYSE Arca Rule 10.9234.

Finally, the Exchange proposes to replace "Chairman of the Hearing Panel" with "Hearing Officer" in subsections (c)(1), (c)(2), (d)(1) and (e) of Rule 9560.

Rule 9560 was adopted in 2017 based on Cboe BZX Exchange, Inc. ("Cboe BZX") Rule 8.17 and The Nasdaq Stock Market LLC ("Nasdaq") Rule 9400 in order for the Exchange to have consistent rules for issuing cease and desist orders on an expedited basis to halt certain disruptive and manipulative quoting and trading activity.¹¹ Both the Cboe BZX and Nasdaq rule use the phrase "Chairman of the Hearing Panel" in subsections (c)(1), (c)(2), (d)(1) and (e),

⁹ See NYSE Arca Rule 10.9560(b)(2) & (c)(1) & NYSE National Rule 10.9560(b)(2) & (c)(1). See Release No. 85639, 84 FR at 16372, n. 69 (noting that the NYSE would submit a rule filing to harmonize Rule 9560 with NYSE Arca Rule 10.9560 providing for the recusal of both Hearing Officers and Panelists in expedited suspension hearings).

¹⁰ 15 U.S.C. 78f(b)(7).

¹¹ See Securities Exchange Act Release Nos. 80807 (May 30, 2017), 82 FR 25856 (June 5, 2017) (SR-NYSE-2017-21); see generally Cboe BZX Rules 12.15 & 8.17 & Nasdaq Rule 2170 & 9400.

which the Exchange adopted without change. “Chairman of the Hearing Panel” is not defined in the Exchange’s rules and is only used in Rule 9560. Rule 9120(r) defines “Hearing Officer” as “an employee of FINRA who is an attorney and who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 9200 Series regarding disciplinary proceedings, the Rule 9550 Series regarding expedited proceedings, and the Rule 9800 Series regarding temporary cease and desist proceedings brought against member organizations and covered persons.” The Exchange believes that the correct reference in Rules 9560(c)(1), (c)(2), (d)(1) and (e) should be “Hearing Officer.”¹²

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹³ in general, and furthers the objectives of Section 6(b)(5),¹⁴ 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. In addition, the Exchange believes that the proposed rule changes further the objectives of Section 6(b)(7) of the Act,¹⁵ in particular, in that these changes provide for fair procedures for the disciplining of members and persons associated with members, the denial of

¹² The Exchange proposes to make similar changes to NYSE Arca Rules 10.9560(c)(1), (c)(2), (d)(1) and (e) that refer to “Chief Hearing Officer” and that should refer instead to “Hearing Officer.”

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(7).

membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

The Exchange believes that the proposed rule change 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 the proposed changes would add clarity, transparency and consistency to the Exchange's disciplinary rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion. Similarly, the Exchange believes that the proposed changes would also make the Exchange's disciplinary rules more consistent with the rules of its affiliates, thereby ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules. Further, the Exchange believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof, thereby furthering the objectives of Section 6(b)(7) of the Act.¹⁶ Specifically, the Exchange believes that adding text to Rule 9110 to strengthen and further safeguard the regulatory independence of the Exchange's CRO and Regulatory Staff and providing for the recusal of Panelists in addition to Hearing Officers in expedited proceedings under Rule 9560 would continue to provide fair procedures for the suspending and disciplining of members and associated persons consistent with and in furtherance of the objectives of the

¹⁶ Id.

objectives of Section 6(b)(7) of the Act.¹⁷

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 not intended to address competitive issues but rather is concerned solely with amending the Exchange's disciplinary rules to further harmonize those rules with the disciplinary rules of its affiliates and to correct inconsistencies.

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

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)(iii) of the Act¹⁸ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁹

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

¹⁷ Id.

¹⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file 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. The Exchange has satisfied this requirement.

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.

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-2020-33 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-2020-33. 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, D.C. 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-2020-33 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.²⁰

J. Matthew DeLesDernier,
Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(12).

[FR Doc. 2020-07903 Filed: 4/14/2020 8:45 am; Publication Date: 4/15/2020]