



Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Shorten the Time Period Before a Letter of Acceptance, Waiver, and Consent under Rule 10.9216 and an Uncontested Offer of Settlement under Rule 10.9270(f)

December 15, 2020.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 9, 2020, NYSE Arca, Inc. (“NYSE Arca” 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 to shorten the time period before a letter of acceptance, waiver, and consent under Rule 10.9216 and an uncontested offer of settlement under Rule 10.9270(f) becomes final and the corresponding time period to request review of these settlements under Rule 10.9310 from 25 days to 10 days. The proposed rule change is available on the Exchange’s website at [www.nyse.com](https://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

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 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 shorten the time period before a letter of acceptance, waiver, and consent ("AWC") under Rule 10.9216 and an uncontested offer of settlement under Rule 10.9270(f) becomes final and the corresponding time period to request review of these settlements under Rule 10.9310 from 25 days to 10 days.

In 2019, NYSE Arca adopted disciplinary rules that are, with certain exceptions, substantially the same as the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.<sup>4</sup> In adopting disciplinary rules modeled on FINRA's rules, the Exchange established processes for settling disciplinary matters both before and after issuance of a complaint.<sup>5</sup> As adopted, Rules 10.9216, 10.9270 and 10.9310 permit a Director and any member of the Committee for Review ("CFR") to require a review by the Board of any AWC letter under Rule 10.9216 and any offer of settlement under Rule 10.9270 within 25 days after the AWC letter or offer of settlement was sent to each Director and each member of the CFR.

Proposed Rule Change

Rule 10.9216 (Acceptance, Waiver, and Consent; Procedure for Imposition of Fines for Minor Violation(s) of Rules) establishes AWC procedures by which an ETP Holder, OTP Holder, OTP Firm or covered person, prior to the issuance of a complaint, may execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such ETP Holder's, OTP Holder's, OTP Firm's or covered person's right to a hearing, appeal

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<sup>4</sup> See Securities Exchange Act Release No. 34- 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR-NYSEArca-2019-15) ("Notice").

<sup>5</sup> See Notice, 84 FR at 16366-67.

and certain other procedures. The rule also establishes procedures for executing a minor rule violation plan letter.

Under Rule 10.9216(a)(4), an AWC accepted by the Chief Regulatory Officer (“CRO”) must be sent to each Director and each member of the CFR and would be deemed final and constitute the complaint, answer, and decision in the matter 25 days after being sent to each Director and each member of the CFR, unless review by the Exchange Board of Directors is requested pursuant to Rule 10.9310(a)(1)(B).<sup>6</sup>

The Exchange proposes that an AWC accepted by the CRO would be deemed final and constitute the complaint, answer, and decision in a matter 10 days after being sent to each Director and each member of the CFR, unless review is requested pursuant to Rule 10.9310(a)(1)(B)(i). As described below, the time period to request review under Rule 10.9310(a)(1)(B)(i) would also be shortened to 10 days.

Rule 10.9270 (Settlement Procedure) provides a settlement procedure for a Respondent who has been notified of the initiation of a proceeding. Specifically, Rule 10.9270(f) provides that uncontested settlement offers accepted by the CRO, the Hearing Panel or, if applicable, Extended Hearing Panel must be issued and sent to each Director and each member of the CFR and becomes final 25 days after being sent to each Director and each member of the CFR, unless review by the Exchange Board of Directors is requested pursuant to Rule 10.9310(a)(1).

The Exchange proposes that uncontested settlement offers accepted by the CRO, the Hearing Panel or, if applicable, Extended Hearing Panel (together, a “Panel”) under Rule 10.9270(f) would become final 10 days after being sent to each Director and each member of the CFR, unless review by the Exchange Board of Directors is requested pursuant to Rule 10.9310(a)(1). As noted, the time to request review of an uncontested settlement under Rule

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<sup>6</sup> Requests for review of an AWC accepted by the CRO are governed by Rule 10.9310(a)(1)(B)(i). For the sake of clarity and transparency, the Exchange proposes the non-substantive change of including the omitted reference to subsection (B)(i) of Rule 10.9310(a)(1) in both in the current and proposed text of Rule 10.9216(a)(4).

10.9310(a)(1) would also be shortened to 10 days.

Finally, under Rule 10.9310(a)(1)(B)(i), any Director and any member of the CFR may require a review by the Board of any determination or penalty, or both, imposed in connection with an AWC letter under Rule 10.9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), except that none of those persons could request Board review of a determination or penalty concerning an affiliate of the Exchange as such term is defined in Rule 12b-2 under the Exchange Act. A request for review under this provision is made by filing with the Secretary of the Exchange a written request stating the basis and reasons for such review, within 25 days after an AWC letter or an offer of settlement has been sent to each Director and each member of the CFR pursuant to Rule 10.9216(a)(4) or Rule 10.9270(f)(3).

To permit AWC letters and uncontested settlements to become final within 10 days as proposed, the Exchange would amend Rule 10.9310(a)(1)(B)(i) to provide that a request for review of these settlements as permitted by the rule must be made by filing the requisite written request with the Secretary of the Exchange within 10 days after the AWC letter or an offer of settlement is sent to each Director and each member of the CFR pursuant to Rule 10.9216(a)(4) or Rule 10.9270(f)(3).<sup>7</sup>

The Exchange believes maintaining a 25 day waiting period for negotiated settlements under Rule 10.9216 and uncontested settlements pursuant to 10.9270(f) unnecessarily delays final resolution of matters that have been resolved by the parties and accepted by the CRO or a

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<sup>7</sup> The time period for requesting review pursuant to Rule 10.9310(a)(1)(B)(ii) of any rejection by the CRO of any AWC letter under Rule 10.9216 or of an uncontested offer of settlement under Rule 10.9270(f), would remain unchanged as would the time period to request for review of any determination or penalty, or both, imposed by a Panel under the Rule 10.9310(a)(1)(A) other than an offer of settlement determined to be uncontested after a hearing on the merits have begun under Rule 10.9270(f). For the avoidance of doubt, the Exchange would add text to Rule 10.9310(a)(1)(A) providing that any request for review of an offer of settlement determined to be uncontested after a hearing on the merits has begun under Rule 10.9270(f) that has been accepted by a Panel shall be governed by Rule 10.9310(a)(1)(B)(i).

Panel. Shortening the waiting period to 10 days, and requiring requests for Board of Directors review to be made within that same 10 day period, would significantly expedite the settlement process in situations where ETP Holders, OTP Holders, OTP Firms and covered persons and Respondents have entered into a consensual, negotiated settlement with Enforcement or made settlement offers that Enforcement does not oppose, while continuing to ensure the independence and integrity of the regulatory process by preserving the ability of Directors and CFR members to call those settlements for review.

Further, the Exchange believes that the proposed 10 day period to call a settlement for review under Rule 10.9310(a)(1)(B)(i) is reasonable and sufficient. Like the current 25 day period, the time to call a settlement for review would begin when the AWC or uncontested settlement is sent to each Director and member of the CFR. Rules 10.9216 and 10.9270 specify that an AWC or uncontested settlement accepted by the CRO or a Panel can be sent to each Director and each CFR member via courier, express delivery or electronic means. As a practical matter, AWCs and settlements are sent to the Directors and CFR members by email, which ensures prompt and instantaneous communication. As a result, the Directors and members of the CFR will have the full 10 day period to determine whether to call these settlements for review. Moreover, the requirement in Rule 10.9310(a)(1)(B)(i) that a request for review be in writing and state the basis and reasons for such review can similarly be satisfied by a Director or CFR member sending an email to the Secretary of the Exchange requesting that a specific matter be reviewed within the proposed 10 day period. The Director or CFR member would need to take no additional steps nor include any additional information in order to call a matter for review under Rule 10.9310(a)(1)(B)(i). In light of these facts, and the relative infrequency of calls for review of AWCs and uncontested settlements,<sup>8</sup> the Exchange believes that 10 days are more than sufficient for a Director or member of the CFR to determine whether to call a settlement for

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<sup>8</sup> For example, no AWC letter or uncontested settlement has been called for review in the past year.

review. Once accepted by the CRO or Panel, the proposed 10 day period for negotiated settlements to be called for review or become final would expedite disciplinary proceedings and provide finality to the disciplinary process sooner, to the benefit of the parties and the investing public.

Finally, the Exchange also believes that shortening these time periods would further promote efficiency in connection with cross-market settlements involving multiple self-regulatory organizations (“SROs”). Often such settlements are contingent upon the acceptance of a settlement by all of the SROs involved in the matter. In these situations, a settlement with the Exchange would not be final until the end of the time period specified in Rules 10.9216 and 10.9270 while a settlement with other SROs could be final once accepted.<sup>9</sup> Thus by reducing the amount of time these settlements are outstanding at the Exchange, the proposed change could speed up the settlement process for cross-market settlements involving multiple SROs, to the benefit of the parties and the investing public.

The Exchange intends to announce the operative date of the amended time periods in Rules 10.9216(a)(4), 10.9270(f)(3) and 10.9310(a)(1) at least 30 days in advance via regulatory notice to its ETP Holders, OTP Holders and OTP Firms.<sup>10</sup> To further facilitate an orderly transition from the current rules to the new rules, the Exchange proposes that matters already initiated under the current rules would be completed under such rules. Specifically, the Exchange

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<sup>9</sup> See, e.g., FINRA Rule 9216(a)(4) (“If the [AWC] letter is accepted by the National Adjudicatory Council, the Review Subcommittee, or the Office of Disciplinary Affairs, it shall be deemed final and shall constitute the complaint, answer, and decision in the matter.”); FINRA Rule 9270(e)(3) (“If the offer of settlement and order of acceptance are accepted by the National Adjudicatory Council, the Review Subcommittee, or the Office of Disciplinary Affairs, they shall become final and the Director of the Office of Disciplinary Affairs shall issue the order and notify the Office of Hearing Officers. The Department of Enforcement shall provide a copy of an issued order of acceptance to each FINRA member with which a Respondent is associated.”). See also e.g., Nasdaq Rule 9216(a)(4) & 9270(e)(3); Cboe BZX Exchange, Inc. Rule 8.8(a); Cboe EDGA Exchange, Inc. Rule 8.8(a).

<sup>10</sup> The effective date of the new time periods would be simultaneously communicated to the Directors and to the members of the CFR.

proposes to apply the current 25 day period for AWCs prepared and submitted to an ETP Holder, OTP Holder, OTP Firm or covered persons under Rule 10.9216(a)(1) prior to the operative date and to uncontested settlement offers in proceedings where a Party was served with a complaint by Enforcement pursuant to Rule 10.9131 prior to the operative date. Rules 10.9216(a)(4), 10.9270(f)(3) and 10.9310(a)(1)(B)(i) would be amended to reflect the transition process. When the transition is complete, the Exchange intends to submit a proposed rule change that would delete the unnecessary transition provisions of 10.9216(a)(4), 10.9270(f)(3) and 10.9310(a)(1)(B)(i).

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>12</sup> 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. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>13</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the Exchange believes that shortening the waiting period for negotiated settlements and uncontested offers of settlement would serve to expedite the final resolution of both Exchange and cross-market matters that have been resolved by the parties and accepted by the CRO or Panel, thereby protecting investors and the public interest by addressing rule violations and achieving finality in disciplinary matters sooner. The proposed rule change to

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<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> Id.

shorten the waiting period before an AWC letter and offer of settlement becomes final and the member of CFR or Board's time to call such settlements for review will therefore provide for a more efficient, streamlined disciplinary process.

The Exchange further believes that the proposed amendments are consistent with Section 6(b)(6) of the Act,<sup>14</sup> which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of an 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 changes will not affect the ability of Enforcement to enter into negotiated settlements or accepting uncontested settlement offers when appropriate, and will not alter the requirement that settlements be scrutinized by the CRO or Panel, who will continue to approve them, or the Directors and members of the CFR, whose right to call both types of voluntary settlements for review will not change.

For the same reasons, the Exchange believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.<sup>15</sup> Moreover, as noted, the Exchange believes that the proposed 10 day period to call a settlement for review under Rules 10.9310(a)(1)(B)(i) is reasonable and sufficient, and provides an appropriate balance between the procedural safeguards of the call for review process and the benefits of expediting the resolution of disciplinary matters and providing finality to the disciplinary process sooner. Reducing the period for review would also mean that AWCs and uncontested settlements would be published two weeks earlier, thereby allowing members and the investing public to be educated about the issues they addressed sooner. Finally, the Exchange believes that the proposed transition plan is designed to provide a fair procedure for the disciplining of members and persons associated with

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<sup>14</sup> 15 U.S.C. 78f(b)(6).

<sup>15</sup> 15 U.S.C. 78f(b)(7) and 78f(d).

members by providing for a clearly demarcated and orderly transition from the current 25 day period to the proposed 10 day period.

Finally, the Exchange believes that the non-substantive changes to clarify the cross-reference to Rule 10.9310 in Rules 10.9216 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 non-substantive 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 and ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rules.

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 is rather concerned with facilitating less burdensome regulatory compliance and processes and enhancing the quality of the regulatory process. The Exchange believes the proposed rule changes would reduce the burdens within the disciplinary process, as well as move matters through the process expeditiously by providing for more efficient finality of negotiated settlements and offers of settlement, to the benefit of all permit holders and the investing public.

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 Act<sup>16</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>17</sup>

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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2020-111 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-2020-111. 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

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<sup>16</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>17</sup> 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.

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-2020-111, 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.<sup>18</sup>

J. Matthew DeLesDernier,  
Assistant Secretary.

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<sup>18</sup> 17 CFR 200.30-3(a)(12).