



SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98620; File No. SR-NYSEARCA-2023-66]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 0

September 28, 2023.

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 September 27, 2023, 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 to amend Rule 0 (Regulation of the Exchange, OTP Holders, OTP Firms and ETP Holders) to adopt new rule text based on based on [sic] Rule 0 (Regulation of the Exchange and its Member Organizations) of its affiliate New York Stock Exchange LLC. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 0 (Rule 0 [sic] (Regulation of the Exchange, OTP Holders, OTP Firms and ETP Holders) to adopt new rule text based on Rule 0 (Regulation of the Exchange and its Member Organizations) of its affiliate New York Stock Exchange LLC (“NYSE”). Specifically, the Exchange proposes a new subsection (b) in conformity with NYSE Rule 0(b). NYSE Rule 0(b) is in turn based on FINRA Rule 0140(a) (Applicability), Nasdaq Stock Market LLC (“Nasdaq”) General 2 (Organization and Administration), Section 6(a), and Nasdaq BX, Inc. (“Nasdaq BX”) General 2 (Organization and Administration), Section 6(a).⁴

NYSE Rule 0(b) provides that the NYSE’s rules apply to all member organizations and persons associated with a member organization and that persons associated with a member organization shall have the same duties and obligations as a member organization under the NYSE’s rules. NYSE Rule 0(b) mirrors FINRA Rule 0140(a) and the versions of FINRA Rule 0140(a) adopted by the Nasdaq Exchanges, which similarly provide that the rules of those self-regulatory organizations, as applicable, apply to all members and persons associated with a member and that persons associated with a member shall have the same duties and obligations as a member under such rules.⁵ Proposed Rule 0(d) [sic] is substantively identical to NYSE Rule 0(b).

⁴ For purposes of this filing, Nasdaq and Nasdaq BX are referred to collectively as the “Nasdaq Exchanges.” Nasdaq General 2, Section 6(a) and Nasdaq BX General 2, Section 6(a) are referred to collectively as the “Nasdaq Exchanges’ Rules.”

⁵ An “ETP Holder” means a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that is a registered broker-dealer and has been issued an Equity Trading Permit (“ETP”) by the Exchange. See Rules 1.1(n) and (o). “OTP” means an Options Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange’s Trading Facilities. An OTP may be issued to a sole proprietor, partnership, corporation, limited liability company or other organization that is a registered broker-dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. See Rule 1.1(mm). “OTP Holder” means a natural person, in good standing, who has been issued an OTP, or has been named as a Nominee. An OTP Holder must be a registered

The Exchange believes that the proposed rule change would improve the clarity of the Exchange's rules by reflecting that the Exchange's rules apply to persons associated with an ETP Holder, OTP Holder or OTP Firm and that such persons have the same duties and obligations as their Exchange ETP Holder, OTP Holder or OTP Firm employer. An ETP Holder's, OTP Holder's or OTP Firm's compliance with Exchange rules may depend on the actions of persons associated with the ETP Holder, OTP Holder or OTP Firm. Accordingly, the Exchange believes that the proposed rule, which mirrors the rules of its affiliate NYSE, FINRA and the Nasdaq Exchanges, would promote consistency in the Exchange's rules by expressly providing that the Exchange may enforce its rules with respect to persons associated with an ETP Holder, OTP Holder or OTP Firm, including by taking appropriate disciplinary action against such persons for their ETP Holder's, OTP Holder's or OTP Firm's violation of NYSE Arca rules. The Exchange notes that the proposed rule does not contemplate disciplinary action against individuals not involved in violations of Exchange rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁶ in general, and furthers the objectives of Section 6(b)(5),⁷ 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

broker or dealer pursuant to Section 15 of the Act, or a nominee or an associated person of a registered broker or dealer that has been approved by the Exchange to conduct business on the Exchange's Trading Facilities. An OTP Holder has status as a "member" of the NYSE Arca, Inc. as that term is defined in Section 3 of the Act. See Rule 1.1(nn). "OTP Firm" means a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange's Trading Facilities. An OTP Firm must be a registered broker-dealer pursuant to Section 15 of the Act. An OTP Firm also has status as a "member" of the Exchange, as that term is defined in Section 3 of the Act. See Rule 1.1(oo). By way of comparison, FINRA uses the term "member" in its rules and NYSE uses the term "member organization."

⁶ 15 U.S.C. 78f(b).

⁷ 15 U.S.C. 78f(b)(5).

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 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 to the Exchange's rules. As previously noted, the proposed rule text conforms to current NYSE Rule 0(b) without change. The Exchange believes that adopting separate rule text expressly providing that all Exchange rules apply to persons associated with an ETP Holder, OTP Holder or OTP Firm and that such persons have the same duties and obligations as their Exchange ETP Holder, OTP Holder or OTP Firm employer would benefit market participants by providing increased clarity regarding the Exchange's ability to enforce compliance with its rules by persons associated with an ETP Holder, OTP Holder or OTP Firm, thereby reducing any potential confusion with respect to the Exchange's interpretation or application of its rules. Adding these clarifying statements to the Exchange's rules would also further the goals of transparency and consistency across the Exchange's rules and would provide greater harmonization between Exchange rules and the rules of NYSE, FINRA and the Nasdaq Exchanges, resulting in less burdensome and more efficient regulatory compliance. For the same reasons, the addition of the proposed rule text would protect investors and the public interest and would therefore be consistent with Section 6(b)(5)⁸ of the Act. The proposed rule change would accordingly foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

Finally, the Exchange believes that the proposed change would be consistent with Section 6(b)(1)⁹ of the Act because it would provide increased clarity regarding the Exchange's ability to

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(1).

enforce compliance with its rules by persons associated with an ETP Holder, OTP Holder or OTP Firm, thereby reducing any potential confusion with respect to the Exchange's interpretation or application of its rules. As such, the proposed change would enable the Exchange to be so organized as to have the capacity to be able to enforce compliance by its exchange members and persons associated with its exchange members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange, consistent with Section 6(b)(1)¹⁰ of the Act.

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 adding clarity and transparency to the Exchange's rules and providing greater harmonization with the rules of its affiliate NYSE and the approved rules of FINRA and the Nasdaq Exchanges.

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)¹² thereunder. Because the 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 prior to 30 days from the date on which it was

¹⁰ 15 U.S.C. 78f(b)(1).

¹¹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹² 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, 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. The Exchange has satisfied this requirement.

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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2023-66 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-2023-66. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

¹³ 15 U.S.C. 78s(b)(2)(B).

comments on the Commission's internet website (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSEARCA-2023-66 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Sherry R. Haywood,

Assistant Secretary.

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¹⁴ 17 CFR 200.30-3(a)(12).