

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100047; File No. SR-NYSEARCA-2024-34)

May 2, 2024

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Revise Rule 10.16

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 23, 2024, 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 revise Rule 10.16 to adopt streamlined sanction guidelines for its options marketplace based on NYSE American LLC Rule 601 and make certain conforming changes. 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 specified in Item IV below. The Exchange has prepared summaries, set forth in sections

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 revise Rule 10.16 (NYSE Arca Sanctioning Guidelines - Options) to adopt streamlined sanction guidelines for its options marketplace based on NYSE American LLC ("NYSE American") Rule 601 and make certain conforming changes.

Background and Proposed Rule Change

The current Sanction Guidelines in Rule 10.16 were adopted pursuant to the provisions of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Administrative Proceedings Pursuant to Section 19(h)(1) of the Act (the "2000 Order"), which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules, including the duty of best execution with respect to the handling of orders after the broker-dealer routes the order to such respondent exchange, limit order display, priority, firm quote, and trade reporting rules.⁴ Like its affiliate NYSE American, which also adopted sanction guidelines in response to the 2000 Order,⁵ the Exchange incorporated fine ranges in its sanctions guidelines for specific rule violations. Unlike NYSE American, the Exchange's suggested monetary

⁴ See Securities Exchange Act Release Nos. 45416 (February 7, 2002), 67 FR 6777 (February 13, 2002) (SR-PCX-2001-23) (Notice); 45567 (March 15, 2002), 67 FR 13392 (March 22, 2002) (SR-PCX-2001-23) (Order). See generally Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282.

⁵ Other exchanges subject to the 2000 Order, however, did not adopt specific fine ranges as part of their sanction guidelines. See, e.g., Securities Exchange Act Release Nos. 45427 (February 8, 2002), 67 FR 6958 (February 14, 2002) (Notice); 45571 (March 15, 2002), 67 FR 13382 (March 22, 2002) (SR-CBOE-2001-71) (Order Granting Accelerated Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Incorporate Certain Principal Considerations in Determining Sanctions and To Incorporate in the Exchange's Minor Rule Violation Plan Violations of the Exchange's Order Handling Rules).

sanctions are very broad (\$10,000-\$100,000 in four instances and \$10,000-\$150,000 in two instances). The current Exchange sanction guidelines are otherwise similar to the sanction guidelines adopted by NYSE American in response to the 2000 Order.

Recently, NYSE American adopted a new Rule 601 incorporating sanctions guidelines similar to Cboe Exchange, Inc. (“Cboe”) Rule 13.11, Supplementary Material .01, in place of those original sanction guidelines.⁶ The new, streamlined sanction guidelines adopted by NYSE American eliminated specific fine ranges for violations and continued to reflect a principles-based approach to sanctions guidelines applicable to all options rules. The Exchange believes that adopting the same NYSE American sanction guidelines that do not contain specific recommended fine ranges for a subset of rules would similarly modernize and update Rule 10.16 in important respects while continuing to provide flexible guidelines for determining appropriate remedial sanctions consistent with the intention of the original rule.⁷ Further, because both NYSE American Rule 601 and Cboe Rule 13.11 take a more streamlined approach, the Exchange believes the proposed rule would more clearly and succinctly set forth current relevant considerations regarding the adjudication of disciplinary actions.

In addition, the Exchange believes that the proposed rule would be consistent with the 2000 Order. The Exchange’s current sanction guidelines are similar to the guidelines that NYSE American replaced. Moreover, the text of NYSE American Rule 601 was based on Cboe Rule 13.11 that was also adopted to satisfy the 2000 Order. As proposed, the Exchange would

⁶ See Securities Exchange Act Release No. 98798 (October 25, 2023), 88 FR 74544 (October 31, 2023) (SR-NYSEAMER-2023-49) (Notice of Filing and Immediate Effectiveness of Proposed Change To Delete Legacy Disciplinary Rules 475, 476, 476A, and 477 and Make Conforming Changes to Rule 41, Rules 8001, 8130(d), 8320(d), 9001, 9216(b)(1), 9810(a), and 781 of the Office Rules, Rules 2A, 12E, 3170(a)(3), 902NY and Adopt a New Rule 600 and Make Conforming Changes to Rules 3170(C)(3), and Adopt a New Rule 601).

⁷ See 67 FR at 6771.

reproduce the text of NYSE American Rule 601 almost verbatim. In addition, by modernizing and updating the Exchange's sanctions guidelines, the Exchange would further enhance its disciplinary processes consistent with the 2000 Order. Finally, the proposed rule would promote regulatory consistency across options exchanges in determining appropriate remedial sanctions for violations of options rules.

As is currently the case, proposed Rule 10.16 would not apply to the equities market.⁸ As such, proposed Rule 10.16 would carry forward the current practice whereby the various bodies with responsibility for the adjudication of disciplinary actions, including Hearing Panels, Hearing Officers, the Committee for Review ("CFR"), and the Board of Directors ("Board"), defined in the proposed Rule collectively as "Adjudicatory Bodies," would consider relevant Exchange precedent or such other precedent as they deem appropriate in determining sanctions imposed against OTP Holders or OTP Firms and their covered persons as defined in Rule 10.9120(g) of the Exchange's disciplinary rules. The proposed definition of Adjudicatory Bodies would be updated to reflect the terms provided for in the current disciplinary rules, including "Hearing Panels" and "Extended Hearing Panels" in place of "Ethics and Business Conduct Committee," and "Committee for Review" and "Chief Regulatory Officer ("CRO")," given the role of each in the disciplinary and settlement processes. In addition, for the avoidance of doubt, the Exchange would include the CRO's delegees in the definition of Adjudicatory Bodies, which corresponds to the current definition of Adjudicatory Bodies as inclusive of Exchange regulatory staff. Similarly for the avoidance of doubt, the Exchange would add letters of acceptance, waiver and consent to the list of ways a disciplinary matter can be resolved as well as summary sanctions in options-related matters governed by Rule 10.13 and appeals of

⁸ See note 4 and accompanying text, supra.

Floor citations and summary sanctions governed by Rule 10.11, which are unique to the Exchange.⁹ The remainder of the proposed Rule would be identical to NYSE American Rule 601.

Finally, the Exchange would conform Rules 10.0 (Legacy Disciplinary Proceedings, Other Hearings and Appeals) and 10.9001 (Effective Date of Rule 10.9000 Series) to reflect the change in the title of Rule 10.16 replacing “Sanctioning” with “Sanctions.”

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁰ 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, 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 change furthers the objectives of Section 6(b)(7) of the Act,¹¹ in particular, in that it provides fair procedures 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.

Specifically, the Exchange believes that adopting sanction guidelines that are substantively the same as NYSE American Rule 601 would continue to permit the Exchange to

⁹ For the further avoidance of doubt, neither the list of ways that a proposed disciplinary matter can be resolved nor the persons and entities comprising the definition of Adjudicatory Bodies in proposed Rule 10.16 are intended to be exhaustive.

¹⁰ 15 U.S.C. 78f(b)(5).

¹¹ 15 U.S.C. 78f(b)(7).

impose sanctions consistently and fairly by reference to a streamlined rule, thereby continuing to provide fair procedures for the disciplining of members and persons associated with members, the denial of membership to any person seeking Exchange membership, the barring of any person from becoming associated with a member, 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 pursuant to Section 6(b)(7)¹² of the Act.

The proposed rule would provide flexible and appropriate principles-based guidelines applicable to all options rules for determining remedial sanctions consistent with the intention of the Exchange's current sanctions guidelines rule.¹³ Moreover, the Exchange believes that by adopting NYSE American Rule 601's more streamlined approach to sanctions guidelines, the Exchange believes the proposed rule would more clearly and succinctly set forth the current relevant considerations regarding the adjudication of disciplinary actions. Further, the Exchange believes that the proposed rule would also be consistent with the 2000 Order because the proposed rule is substantively the same as NYSE American Rule 601, which was in turn based on Cboe Rule 13.11 that was adopted to satisfy the same Commission order. Indeed, the Exchange believes that by modernizing and updating its sanctions guidelines, proposed Rule 10.16 would further enhance its disciplinary processes consistent with the 2000 Order and further ensure that the Exchange implements the most appropriate disciplinary mechanisms for violations and a fair process in determining same. Finally, the proposed rule would promote regulatory consistency and uniformity across options exchanges in determining appropriate remedial sanctions and the imposition of penalties.

¹² 15 U.S.C. 78f(b)(7).

¹³ See 67 FR at 6771.

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 Exchange Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with adopting updated, streamlined sanction guidelines based on the rules of the Exchange's affiliate that are consistent with a previous Commission order and continue to permit the Exchange to impose sanctions consistently and fairly.

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) of the Act and Rule 19b-4(f)(6) thereunder.¹⁴

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.

¹⁴ 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.

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-2024-34 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-2024-34. 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 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-2024-34 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.¹⁵

J. Matthew DeLesDernier,

Deputy Secretary.

¹⁵ 17 CFR 200.30-3(a)(12).