

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88269; File No. SR-NYSEAMER-2020-11)

February 24, 2020

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change for Certain Conforming Changes to Rule 9217

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 February 11, 2020, NYSE American LLC (“NYSE American” 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 and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes certain conforming changes to Rule 9217 in order to more closely align the Exchange’s rule with that of its affiliates. 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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes certain conforming changes to Rule 9217 in order to more closely align the Exchange’s rule with that of its affiliates.

Rule 9217 sets forth the list of rules under which a member organization or covered person may be subject to a fine under a minor rule violation plan as described in proposed [sic] Rule 9216(b). The Exchange proposes the following amendments to Rule 9217.

First, the Exchange proposes to add the following paragraph to the introduction to Rule 9217:

Nothing in this Rule shall require the Exchange to impose a fine for a violation of any rule under this Minor Rule Plan. If the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed under the Rule 9000 Series rather than under this Rule.

The language is based on the rules of the Exchange’s affiliates New York Stock Exchange LLC (“NYSE”) and NYSE Arca, Inc. (“NYSE Arca”).⁴

Second, the Exchange proposes to add subsections (a), (b)(1) and (b)(5) of Rule 3110 - Equities to the list of rules in Rule 9217 eligible for disposition pursuant to a fine under Rule

⁴ See NYSE Rule 9217 & NYSE Arca Rule 10.9217.

9216(b).

Rule 3110 - Equities is the Exchange's supervision rule for equities trading. Rule 3110(a) - Equities governs supervisory systems and requires member organizations to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules.

Subsection (b)(1) governs written procedures and requires member organizations to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules.

Subsection (b)(5) requires a member organization's supervisory procedures to include procedures to capture, acknowledge, and respond to all written (including electronic) customer complaints.

Rule 3110 - Equities is substantially similar to NYSE Rule 3110. Subsections (a), (b)(1) and b(5) of NYSE Rule 3110 are each separately eligible for a minor rule fine under NYSE Rule 9217.⁵

Finally, the Exchange proposes to correct a typographical error in Rule 9217(ii)(7)(b), which refers to ensuring compliance with, among other things, NYSE Arca Rules. The correct reference should be to the NYSE American Rules.

2. Statutory Basis

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

⁵ See NYSE Rules 3110 (Supervision) & 9217.

⁶ 15 U.S.C. 78f(b).

further 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 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.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules. The Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of its rules governing supervision requirements in situations where either a cautionary action letter or a more formal disciplinary action may not be warranted or appropriate.

In addition, the Exchange believes that adding rules based on the rules of its affiliate to the Exchange's minor rule plan would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of substantially similar rules that are eligible for minor rule treatment on the Exchange's affiliate, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct. As noted above, Rule 3110 - Equities is substantially similar to NYSE Rule 3110. Subsections (a), (b)(1) and b(5) of NYSE Rule 3110 are each separately eligible for a minor rule fine under NYSE Rule 9217.⁸

The Exchange further believes that the proposed amendments to Rule 9217 are consistent

⁷ 15 U.S.C. 78f(b)(5).

⁸ See NYSE Rules 3110 (Supervision) & 9217.

with Section 6(b)(6) of the Act,⁹ which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the 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 rule change would provide the Exchange ability to sanction minor or technical violations pursuant to the Exchange's rules.

Finally, the Exchange also believes that correction of a typographical error would remove impediments to and perfect the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rulebook.

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 change is not designed to address any competitive issue but rather to update the Exchange's rules to strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

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. 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

⁹ 15 U.S.C. 78f(b)(6).

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-NYSEAMER-2020-11 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-NYSEAMER-2020-11. 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-NYSEAMER-2020-11 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to 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 Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act¹² which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,¹³ which governs minor rule violation plans.

As stated above, the Exchange proposes to add to its list of equities rule violations rules that are identical to those of its affiliated exchange. The Commission believes that the proposed rule provides a reasonable means of addressing violations that do not rise to the level of requiring

¹⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78f(b)(1) and 78f(b)(6).

¹³ 17 CFR 240.19d-1(c)(2).

formal disciplinary proceedings, while providing greater flexibility in handling certain violations. However, the Commission expects, as suggested by the Exchange's proposed introduction to its Rule 9217, that the Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the rule is appropriate, or whether a violation requires formal disciplinary action. The Commission further notes that, as before, the Exchange must give the Commission prompt notice of any violation with sanction over \$2,500, in accordance with Securities Exchange Act Rule 19d-1(c).¹⁴ Accordingly, the Commission believes the proposal raises no novel or significant issues.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁵ for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the Federal Register. The proposal merely adds rules and language from affiliated exchanges. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

¹⁴ See 17 CFR 240.19d-1(c).

¹⁵ 15 U.S.C. 78s(b)(2).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹⁶ and Rule 19d-1(c)(2) thereunder,¹⁷ that the proposed rule change (SR- NYSEAMER-2020-11) be, and hereby is, approved and declared effective on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 240.19d-1(c)(2).

¹⁸ 17 CFR 200.30-3(a)(12).