

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-88541; File No. SR-NYSENAT-2020-12)

April 1, 2020

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Add the Exchange's Supervision Rules to the List of Minor Rule Violations in Rule 10.9217

On March 18, 2020, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to add the Exchange's supervision rules to the list of minor rule violations in Rule 10.9217. On March 30, 2020, the Exchange filed Amendment No. 1 to the proposed rule change, which superseded and replaced the proposed rule change in its entirety, and is described in Items I and II below, which Items have been prepared by the self-regulatory organization.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

I. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to add the Exchange's supervision rules to the list of minor rule violations in Rule 10.9217. This Amendment No. 1 to SR-NYSENat-2020-12 replaces SR-NYSENat-2020-12 as originally filed and supersedes such filing in its entirety. The proposed

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> In Amendment No. 1, the Exchange clarified the relationship between its supervisory rules and those of its affiliate.

rule change is available on the Exchange’s website at [www.nyse.com](http://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 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 add the Exchange’s supervision rules to the list of minor rule violations in Rule 10.9217. Rule 10.9217 sets forth the list of rules under which an ETP Holder or Associated Person may be subject to a fine under a minor rule violation plan as described in Rule 10.9216(b).

Proposed Rule Change

First, the Exchange proposes to add the following new paragraph (d) to Rule 10.9217:

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 10.9000 Series rather than under this Rule.

The language is based on NYSE Arca, Inc. (“NYSE Arca”) Rule 10.9217(d). Existing

paragraphs (d) through (f) of Rule 9217 would become paragraphs (e), (f) and (g).

Second, the Exchange proposes to add Rules 11.3.2 (Violations Prohibited), 11.5.1 (Written Procedures) and 11.5.2 (Responsibility of ETP Holders) to the list of rules in Rule 10.9217 eligible for disposition pursuant to a fine under Rule 10.9216(b). Rules 11.3.2, 11.5.1 and 11.5.2 are the Exchange's supervision rules for equities trading.

Rule 11.3.2 provides that no ETP Holder shall engage in conduct in violation of the Exchange Act, the rules or regulations thereunder, the By-Laws, or Exchange Rules, and that every ETP Holder shall supervise persons associated with the ETP Holder as to assure compliance with those requirements.

Rule 11.5.1 governs written procedures and requires ETP Holders to establish, maintain, and enforce written procedures to supervise properly the activities of its Associated Persons and to assure their compliance with applicable securities laws, rules, regulations and statements of policy promulgated thereunder, with the rules of the designated self-regulatory organization, where appropriate, and with Exchange rules.

Rule 11.5.2 provides that final responsibility for proper supervision rests with the ETP Holder, and that the ETP Holder shall designate a partner, officer or manager in each office of supervisory jurisdiction, including the main office, to carry out the written supervisory procedures.

Rules 11.3.2, 11.5.1 and 11.5.2 are substantially similar to certain provisions of the New York Stock Exchange LLC's ("NYSE") supervision Rule 3110. Specifically, NYSE Rule 3110(a) requires, in part, that NYSE member organizations 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 NYSE rules and

that final responsibility for proper supervision rests with the member organization. NYSE Rule 3110(b)(1) requires NYSE 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 NYSE rules. Both NYSE Rules 3110(a) and (b)(1) are separately eligible for a minor rule fine under the NYSE’s version of Rule 9217.<sup>4</sup>

To effectuate this change, the Exchange proposes to add “Failure to comply with the supervision requirements of Rules 11.3.2 and 11.5.1” and “Failure to comply with the supervision requirements of Rules 11.3.2 and Rule 11.5.2” to the list of rule violations in current subparagraph (e) of Rule 9217 titled “Record Keeping and Other Minor Rule Violations.” As noted above, subparagraph (e) of Rule 9217 would become new subparagraph (f).

Similarly, the Exchange would add two new entries to the Fine Schedule in current Rule 9217(f)(2), which would become subparagraph (g)(2). First, the Exchange would add a new number 4 to the chart in subparagraph (f)(2) titled “Failure to comply with the supervision requirements as set forth in Rules 11.3.2 and 11.5.1” and corresponding proposed fine levels of \$2,000 for a first level fine, \$4,000 for a second level fine, and \$5,000 for a third level fine. Second, the Exchange would add a new number 5 to the chart in subparagraph (f)(2) titled “Failure to comply with the supervision requirements as set forth in Rules 11.3.2 and 11.5.2” and corresponding proposed fine levels of \$2,000 for a first level fine, \$4,000 for a second level fine, and \$5,000 for a third level fine.

The proposed fine levels are consistent with current Exchange fine levels and comparable

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<sup>4</sup> See NYSE Rules 3110 (Supervision) & 9217.

to those in the NYSE fine schedule.<sup>5</sup>

## 2. Statutory Basis

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

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

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<sup>5</sup> See NYSE 9217. The Exchange notes that it must provide the Commission prompt notice of any violation with sanction over \$2,500, in accordance with Securities Exchange Act Rule 19d-1(c). See 17 CFR 240.19d-1(c).

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

<sup>7</sup> 15 U.S.C. 78f(b)(5).

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, Rules 11.3.2, 11.5.1 and 11.5.2 are substantially similar to certain provisions of NYSE Rule 3110. NYSE Rule 3110(a) and (b)(1) are each separately eligible for a minor rule fine under NYSE Rule 9217.<sup>8</sup>

The Exchange further believes that the proposed amendments to Rule 10.9217 are consistent with Section 6(b)(6) of the Act,<sup>9</sup> 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.

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 on the Proposed Rule Change, as Modified by Amendment No. 1

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<sup>8</sup> See note 4, *supra*.

<sup>9</sup> 15 U.S.C. 78f(b)(6).

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, 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-NYSENAT-2020-12 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-NYSENAT-2020-12. 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-NAT-2020-12 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, as Modified by Amendment No. 1

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,<sup>11</sup> 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 proposed rule change, as modified by Amendment No. 1, is consistent with Sections 6(b)(1) and 6(b)(6) of the Act<sup>12</sup> 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, as modified by Amendment 1, is consistent with the public interest, the protection of investors, or otherwise

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<sup>10</sup> 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).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).



in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,<sup>13</sup> which governs minor rule violation plans.

As stated above, the Exchange proposes to add the Exchange's supervision rules to the list of Minor Rule violations. Similar supervision rules are eligible for a minor rule fine under an affiliated exchange. The Commission believes that the proposed rule, as modified by Amendment No. 1, provides a reasonable means of addressing violations that do not rise to the level of requiring 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 10.9217, 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).<sup>14</sup> Accordingly, the Commission believes the proposal, as modified by Amendment No. 1 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,<sup>15</sup> for approving the proposed rule change, as modified by Amendment No. 1, 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 already in use at

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<sup>13</sup> 17 CFR 240.19d-1(c)(2).

<sup>14</sup> See 17 CFR 240.19d-1(c).

<sup>15</sup> 15 U.S.C. 78s(b)(2).

affiliated exchanges. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>16</sup> and Rule 19d-1(c)(2) thereunder,<sup>17</sup> that the proposed rule change (SR- NYSE-NAT-2020-12), as modified by Amendment No. 1 be, and hereby is, approved on an accelerated basis.

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>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 17 CFR 240.19d-1(c)(2).

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