

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100457; File No. SR-NYSEAMER-2024-42)

July 2, 2024

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Make Certain Conforming Clarifying Changes to Rule 601 to Harmonize with NYSE Arca 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 June 18, 2024, NYSE American LLC (“NYSE American” 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 certain conforming clarifying changes to Rule 601 (Sanctions Guidelines) to harmonize with Rule 10.16 (Sanctioning Guidelines - Options) of its affiliate NYSE Arca, Inc. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 certain conforming clarifying changes to Rule 601 (Sanctions Guidelines) to harmonize with Rule 10.16 (Sanctioning Guidelines - Options) of its affiliate NYSE Arca, Inc. (“NYSE Arca”).

In 2023, the Exchange adopted a new Rule 601 incorporating sanctions guidelines similar to Cboe Exchange, Inc. Rule 13.11, Supplementary Material .01, in place of the original sanction guidelines adopted pursuant to 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”).⁴ Recently, NYSE Arca adopted Rule 601 nearly verbatim as new NYSE Arca Rule 10.16, with three minor differences in the first two full paragraphs of the rule which further clarified the covered entities, provided examples of how disciplinary matters can be resolved, and clarified that the CRO’s delegates would be individuals with responsibility for the adjudication of disciplinary actions and thus included in the rule’s definition of “Adjudicatory Bodies.”⁵ In addition, NYSE Arca referenced summary sanctions in options-related matters

⁴ 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). See generally Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282.

⁵ See Securities Exchange Act Release No. 100047 (May 2, 2024), 89 FR 38939 (May 8, 2024) (SR-NYSEArca-2024-34). NYSE Arca adopted the original version of Rule 10.16 pursuant to the 2000 Order. See Securities Exchange Act Release Nos. 45416 (February 7, 2002), 67 FR 6777 (February 13, 2002) (SR-

governed by Rule 10.13 and appeals of Floor citations and summary sanctions governed by Rule 10.11 as examples of how disciplinary matters can be resolved, both of which are inapplicable to the Exchange.

In order to harmonize with NYSE Arca Rule 10.16 and add clarity and consistency to Rule 601, the Exchange proposes to incorporate the three changes from the NYSE Arca rule, as follows.

First, the Exchange would add “against ATP Holders, ATP Firms and covered persons as defined in Rule 9120(g)” following “To promote consistency and uniformity in the imposition of penalties” in the first sentence. Second, in the same sentence, the Exchange would add “, including letters of acceptance, waiver and consent,” following “appropriate remedial sanctions through the resolution of disciplinary matters.” The Exchange does not propose to adopt the NYSE Arca-specific references to summary sanctions in options-related matters governed by Rule 10.13 and appeals of Floor citations and summary sanctions governed by Rule 10.11. Third, the Exchange would add “and his or her delegees” following CRO in the second paragraph, thus bringing the CRO’s delegees within the definition of “Adjudicatory Bodies” therein.⁶

As proposed, Rule 601 would be amended as follows (deletions (bracketed) and additions (underlined)):

To promote consistency and uniformity in the imposition of
penalties against ATP Holders, ATP Firms and covered persons as

PCX-2001-23) (Notice); 45567 (March 15, 2002), 67 FR 13392 (March 22, 2002) (SR-PCX-2001-23) (Order).

⁶ For the further avoidance of doubt, neither the proposed list of ways that a disciplinary matter can be resolved nor the persons and entities comprising the definition of Adjudicatory Bodies as amended by this filing in Rule 601 are intended to be exhaustive.

defined in Rule 9120(g), the following Principal Considerations in Determining Sanctions should be considered in connection with the imposition of sanctions in all cases in determining appropriate remedial sanctions through the resolution of disciplinary matters, including letters of acceptance, waiver and consent, [through]offers of settlement, and [or after]formal disciplinary hearings. These Principal Considerations are not intended to be absolute. Based on the facts and circumstances presented in each case, the various individuals with responsibility for the adjudication of disciplinary actions, including the CRO and his or her delegees, Hearing Panels, Extended Hearing Panels, Hearing Officers, the Committee for Review, and the Board of Directors (collectively, “Adjudicatory Bodies”), may consider aggravating and mitigating factors in addition to those listed below.

No other changes are proposed to Rule 601.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Section 6(b)(5),⁸ 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

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

a national market system and, in general, to protect investors and the public interest.

The Exchange believes that harmonizing its sanction guidelines to incorporate certain clarifying conforming changes based on its affiliate's version of the rule 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 and consistency to the Exchange's 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. Finally, the Exchange believes that the proposed changes would promote fairness and consistency in the marketplace by eliminating differences and harmonizing language related to sanction guidelines for options market participants across affiliates.

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 is rather concerned with making conforming clarifying changes to the Exchange rules. Since the proposal does not substantively modify system functionality or processes on the Exchange, the proposed changes will not impose any burden on competition.

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) of the

Act⁹ and Rule 19b-4(f)(6)¹⁰ thereunder. 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 Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

A proposed rule change filed under Rule 19b-4(f)(6)¹³ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁴ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that it may become operative immediately upon filing to allow the Exchange to make conforming, clarifying changes that harmonize its sanction guidelines with the version adopted by its affiliate. The Commission believes that, as described above, the Exchange's proposal does not raise any new or novel issues. Therefore, the Commission believes that waving the 30-day operative delay is consistent with the protection of investors and the public interest.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 15 U.S.C. 78s(b)(3)(A).

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 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.

¹³ 17 CFR 240.19b-4(f)(6).

¹⁴ 17 CFR 240.19b-4(f)(6)(iii).

Accordingly, the Commission designates the proposed rule change to be operative upon filing.¹⁵

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 will institute proceedings 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-NYSEAMER-2024-42 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.

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

All submissions should refer to file number SR-NYSEAMER-2024-42. 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-NYSEAMER-2024-42 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.¹⁶

Sherry R. Haywood,

Assistant Secretary.

¹⁶ 17 CFR 200.30-3(a)(12), (59).