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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-87212; File No. SR-NYSE-2019-44]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Add Certain Rules to the List of Minor Rule Violations in Rule 9217, Delete Obsolete Rules, and Increase the Maximum Fine for Minor Rule Violations

October 3, 2019

I. Introduction

On August 8, 2019, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to (1) add certain rules to the list of minor rule violations in Rule 9217; (2) delete obsolete rules from Rule 9217; and (3) increase the maximum fine for minor rule violations to \$5,000 in order to more closely align the Exchange’s minor rule plan with that of its affiliates. The proposed rule change was published for comment in the Federal Register on August 22, 2019.³ On September 13, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.⁴ The Commission received no comment letters on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 86696 (August 16, 2019), 84 FR 43836.

⁴ In Amendment No. 1, the Exchange: (1) Clarified that fines exceeding \$2,500 would not

II. Description of the Proposal, as Modified by Amendment No. 1

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 Rule 9216(b). The Exchange proposes to add the following introductory paragraph 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.” This language is based on NYSE Arca Rule 10.9217(d).

The Exchange proposes to add the following rules to the list of rules in Rule 9217 eligible for disposition pursuant to a fine under Rule 9216(b):

- Rule 7.30 (Authorized Traders)
- Rule 76 (“Crossing” Orders)
- Rule 103(a)(i) (Registration and Capital Requirements of DMM Units)
- Rule 1210 (Registration Requirements)
- Rule 3110(a) and (b)(1) (Supervision)

The Exchange also proposes that all of the registration and other requirements set forth in Rule 345 be eligible for a minor rule fine.

Rule 7.30 establishes requirements for member organizations relating to Authorized Traders. The rule is based on NYSE Arca Rule 7.30-E (Authorized Traders), which is eligible

be eligible for quarterly reporting under Commission Rule 19d-1(c) and (2) made technical and conforming changes. Because the changes in Amendment No. 1 do not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 replaced and supercedes the original filing in its entirety and is available at <https://www.sec.gov/comments/sr-nyse-2019-44/srnyse201944-6120985-192149.pdf>.

for NYSE Arca's Minor Rule Plan.⁵

Rule 76 is substantially similar to NYSE American Rule 934NY(a)(1) (Crossing) and NYSE Arca Rule 6.47-O(a)(1) ("Crossing" Orders — OX), which govern manual crosses on those respective exchanges' options trading Floors. NYSE American Rule 934NY(a)(1) is eligible for NYSE American's Minor Rule Plan, and NYSE Arca Rule 6.47-O(a)(1) is eligible for NYSE Arca's Minor Rule Plan.⁶

Rule 103(a)(1) provides that no member organization shall act as a Designated Market Maker ("DMM") unit in any security unless such member organization is registered as a DMM unit in such security with the Exchange and unless the Exchange has approved of the member organization acting as a DMM unit and not withdrawn such approval. The rule is substantially similar to NYSE Arca Rule 7.20-E(a) (Registration of Market Makers) and NYSE National Rule 7.20 (Registration of Market Makers), which similarly require that market makers on those exchanges be registered in a security and that the registration has not been suspended or cancelled. Both NYSE Arca Rule 7.20-E(a) and NYSE National Rule 7.20 are eligible for minor rule fines.⁷

Similarly, Rule 1210, which was adopted in October 2018,⁸ sets forth the requirements

⁵ See Securities Exchange Act Release No. 81225 (July 27, 2017), 82 FR 36033, 36035 (August 2, 2017) (SR-NYSE-2017-35). See also NYSE Arca Rule 10.12(i)(4) (NYSE Arca Rule 7.30-E); NYSE Arca Rule 10.9217(f)(4). NYSE Arca Rule 10.12 is NYSE Arca's legacy minor rule plan and applies only to matters for which a written statement was served under Rule 10.12 prior to May 27, 2019; thereafter, Rules 10.9216(b) and 10.9217 apply. See generally NYSE Arca Rules 10.0 (preamble) and 10.9001.

⁶ See NYSE American Rule 9217 (Rule 934NY); NYSE Arca Rules 10.12(h)(3) and 10.9217(e)(3). See note 5, *supra*.

⁷ See NYSE Arca Rules 10.12(i)(5) and 10.9217(f)(5); NYSE National Rule 10.9217(d).

⁸ See Securities Exchange Act Release No. 84336 (October 2, 2018), 83 FR 50727 (October 9, 2018) (SR-NYSE-2018-44).

for persons engaged in the investment banking or securities business of a member organization to be registered with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in Rule 1220. The Exchange proposes to add Rule 1210 to the list of minor rules in Rule 9217. The Exchange states that having the ability to issue a minor rule fine for failing to comply with the registration requirements of Rule 1210 would be consistent with and complement the Exchange's current ability to issue minor rule fines for other registration violations (e.g., Rule 345).

Rule 3110 is the Exchange's supervision rule. The Exchange proposes to add subsections (a) and (b)(1) of Rule 3110, governing failure of a member organization to establish and maintain a supervisory system and failure to establish, maintain, and enforce written supervisory procedures, respectively, to Rule 9217. Failure to supervise individuals and accounts is currently eligible for minor rule fines in the rules of the Exchange's affiliate NYSE Arca.⁹

Finally, Rule 345 sets forth certain employee registration, approval and other exchange requirements, including the requirements pertaining to the registration of a securities lending representative, Securities Trader or direct supervisor thereof. Currently, the only violation of Rule 345 that is eligible for a minor rule fine is failure of a member organization to have individuals responsible and qualified for the position of Securities Lending Supervisor. The Exchange proposes that all of registration and other requirements set forth in Rule 345 be eligible for a minor rule fine. The proposed change would be consistent with the practice on the Exchange's affiliates whose comparable rule is eligible for a minor rule fine.¹⁰

⁹ See NYSE Arca Rules 11.18 (Supervision), 10.12(j)(8) and 10.9217(g)(8).

¹⁰ See, e.g., NYSE Arca Rules 2.24 (Registration—Employees of ETP Holders), 10.12(j)(11) and 10.9217(g)(11). See also NYSE National Rules 2.2 (Obligations of ETP Holders and the Exchange) and 10.9217(e).

The Exchange proposes to delete the following rules from Rule 9217 as they are obsolete:

- Rule 706, which was deleted in 2014.¹¹
- Rule 312(h), which is marked “Reserved” in the Exchange’s rules and was deleted in 2010.¹²
- Rule 382(a). Rule 382 is also marked “Reserved” and was deleted in 2011.¹³
- Rule 791(c), which was also deleted in 2014.¹⁴
- Rules 352(b) and (c). Rule 352 is marked “Reserved” and was deleted in 2009.¹⁵
- Rule 392, which is also marked “Reserved” and was deleted in 2009.¹⁶
- Rule 410A, which was deleted in 2013.¹⁷

¹¹ See Securities Exchange Act Release No. 72916 (August 26, 2014), 79 FR 52094 (September 2, 2014) (SR-NYSE-2014-44).

¹² See Securities Exchange Act Release No. 61557 (February 22, 2010), 75 FR 9472 (March 2, 2010) (SR-NYSE-2010-10). NYSE Rule 4110(c)(2), based on the comparable FINRA rule, incorporates Rule 312(h) in part. The Exchange is not proposing to add Rule 4110(c)(2) to Rule 9217.

¹³ See Securities Exchange Act Release No. 64888 (July 14, 2011), 76 FR 43368 (July 20, 2011) (SR-NYSE-2011-33). NYSE Rule 4311, based on the comparable FINRA rule, was based in part on NYSE Rule 382. The Exchange is not proposing to add Rule 4311 to Rule 9217.

¹⁴ See Release No. 72916, supra note 11, at 52094.

¹⁵ See Securities Exchange Act Release No. 61158 (December 11, 2009), 74 FR 67942 (December 21, 2009) (SR-NYSE-2009-123). Rule 352 was replaced by Rule 2150. Violations of Rule 2150(b) and (c) are currently eligible for a minor rule fine under Rule 9217.

¹⁶ See Securities Exchange Act Release No. 59965 (May 21, 2009), 74 FR 25783 (May 29, 2009) (SR-NYSE-2009-25).

¹⁷ See Securities Exchange Act Release No. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR-NYSE-2013-02) (Notice); see also Securities Exchange Act Release No. 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR-NYSE-2013-02) (Approval Order). Rule 410A was replaced by Rule 8211. Both rules were initially retained in Rule 9217, but there is no longer any reason to retain Rule 410A in Rule 9217.

- Rule 445(4), which is marked “Reserved” and was deleted in 2009.¹⁸

The Exchange also proposes to correct a typographical error in Rule 9217. Rule 9217 refers to Rule 3010(a). The correct reference should be to Rule 3110(a), the Exchange’s supervision rule, which was added to Rule 9217 in 2014.¹⁹

Eligible Fine Amounts

The maximum fine for minor rule violations under Rule 9216(b) is currently \$2,500. The maximum fine under the Exchange’s legacy minor rule plan set forth in Rule 476A previously was \$5,000. In adopting its current disciplinary rules in 2013, the Exchange stated that it was appropriate to lower the maximum fine amount to achieve harmony with the rules of the Financial Industry Regulatory Authority (“FINRA”).²⁰ The Exchange’s affiliates NYSE American, NYSE National and NYSE Arca, however, have since harmonized their disciplinary rules with the Exchange and adopted or retained a \$5,000 maximum fine for minor rule violations.²¹ The Exchange accordingly proposes to adopt the same maximum fine amount in order to harmonize the maximum fine level with its affiliated exchanges. The Exchange also proposes to adopt the same 24-month rolling period to calculate second and subsequent fines as that used by its affiliated exchanges.

To effectuate this change, the Exchange proposes to add the following fine chart

¹⁸ See Securities Exchange Act Release No. 61273 (December 31, 2009), 75 FR 1091 (January 8, 2010) (SR-NYSE-2009-134).

¹⁹ See Securities Exchange Act Release No. 73554 (November 6, 2014), 79 FR 67508 (November 13, 2014) (SR-NYSE-2014-56).

²⁰ See Release No. 68678, *supra* note 17, at 5226.

²¹ For instance, the maximum fine for minor rule violations under NYSE Arca’s legacy Minor Rule Plan set forth in Rule 10.12 is \$5,000. NYSE Arca retained the \$5,000 maximum when it adopted its new disciplinary rules. See NYSE Arca Rule 10.9217(a). See also NYSE American Rule 9217 and NYSE National Rule 10.9217.

contained in Rule 476A, the Exchange’s legacy rule governing the imposition of minor rule fines, to Rule 9217.²²

<u>Fine Amount</u>	<u>Individual</u>
First Time Fined	\$1,000
Second Time Fined**	\$2,500
Subsequent Fines**	\$5,000
<u>Fine Amount</u>	<u>Member Organization</u>
First Time Fined	\$2,500
Subsequent Fines**	\$5,000

** Within a “rolling” 24-month period.

As noted, rather than the 12-month rolling period in Rule 476A, the Exchange proposes a 24-month “rolling” period from the date of the violation in order to harmonize with its affiliates.²³

In order to add clarity to the Exchange’s rules, the Exchange also proposes to add a paragraph immediately before the proposed chart based on NYSE Arca Rule 10.9217(h) that sets forth how the beginning and end of the 24-month rolling period is to be determined. Except for references that reflect the Exchange’s membership and use of the phrase “minor rule violation plan letter” rather than “Notice of Minor Rule Plan Fine,” the paragraph is substantially the same

²² When the Exchange adopted Rule 9217 as part of its adoption of FINRA’s disciplinary rules, the Exchange retained the list of rules set forth in Rule 476A. See Release No. 69045, supra note 17, at 15396. The Exchange did not retain the chart in Rule 476A because, as noted above, the maximum fine under Rule 476A previously was \$5,000.

²³ See NYSE Arca Rule 10.9217 (violations applied in a rolling 24-month period); NYSE American Rule 9217 (same).

as NYSE Arca Rule 10.9217(h).²⁴

In order to further harmonize the Exchange's rules with those of its affiliates, and because a fine of \$5,000 would exceed the maximum amount in Rule 19d-1(c)(2) under the Act for a minor rule plan,²⁵ the Exchange proposes to change the titles of Rules 9216 and 9217. Specifically, the phrase "Plan Pursuant to SEA Rule 19d-1(c)(2)" would be replaced with "Procedure for Imposition of Fines for Minor Violation(s) of Rules" in the title of Rule 9216. The same phrase in Rule 9217 would be replaced with "Rule 9216(b)." The titles of both rules would thereby be the same as the titles of NYSE Arca Rules 10.9216 and 10.9217 and NYSE National Rules 10.9216 and 10.9217, respectively. The Exchange proposes to make similar conforming changes to Rule 9216(b)(1) by removing references to "SEA Rule 19d-1(c)(2)" and the maximum fine level of \$2,500, and by adding language specifying that the Exchange may impose a fine in accordance with the fine amounts and fine levels set forth in Rule 9217.

III. Discussion and Commission Findings

After careful review, 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.²⁶ In particular, the Commission finds

²⁴ As discussed above, the Exchange is not required to impose a fine for a violation under its Minor Rule Plan. Instead, the Exchange may, at its discretion, bring formal disciplinary action against a member or associated person that has violated its rules.

²⁵ 17 CFR 240.19d-1(c)(2). The Exchange recognizes that fines exceeding \$2,500 would not be eligible for quarterly reporting under Commission Rule 19d-1(c). Fines that do not exceed \$2,500 would continue to be reported quarterly in compliance with Commission Rule 19d-1(c).

²⁶ 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).

that the proposed rule change is consistent with Section 6(b)(5) of the Act,²⁷ which requires, among other things, that the rules of a national securities exchange be 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. The Commission further believes that the proposed amendments to Rule 9217 are consistent with Section 6(b)(6) of the Act,²⁸ 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.

The Commission believes that Rule 9216(b) is an effective way to discipline a member for a minor violation of a rule. The Commission finds that the Exchange's proposal to add rules to Rule 9217 is consistent with the Act because it may help the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings may not be warranted. The Commission also believes that the Exchange's proposal to delete obsolete rules is also consistent with the Act because it will clarify the Exchange's rule book. Finally, the Commission believes that the Exchange's proposed fine schedule is appropriate. The Commission notes that the proposed fine schedule aligns with the fine schedules of the Exchange's affiliates.

In approving the proposed rule change, the Commission in no way minimizes the

²⁷ 15 U.S.C. 78f(b)(5).

²⁸ 15 U.S.C. 78f(b)(6).

importance of compliance with the Exchange's rules and all other rules subject to fines under Rule 9216(b). The Commission believes that a violation of any self regulatory organization's rules, as well as Commission rules, is a serious matter. However, Rule 9216(b) provides a reasonable means of addressing rule violations that may not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under Rule 9216(b) or whether a violation requires formal disciplinary action.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²⁹ that the proposed rule change (SR-NYSE-2019-044), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁰

Jill M. Peterson,

Assistant Secretary.

²⁹ 15 U.S.C. 78s(b)(2).

³⁰ 17 CFR 200.30-3(a)(12).

