

are available at www.prc.gov, Docket Nos. MC2024–90, CP2024–92.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99062; File No. SR–NYSEARCA–2023–81]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Citations to Rule 600(b) of Regulation National Market System

December 1, 2023.

Pursuant to section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that on November 20, 2023, NYSE Arca, Inc. (“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 Exchange. 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 update citations to Rule 600(b) of Regulation National Market System (“Regulation NMS”) in Rule 5.3–O (Criteria for Underlying Securities); Rule 5.4–O (Withdrawal of Approval of Underlying Securities); Rule 7.31–E (Orders and Modifiers); Rule 9.5320–E (Prohibition Against Trading Ahead of Customer Orders); and Rule 11.6810 (Consolidated Audit Trail—Definitions). 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 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 update citations to Rule 600(b) of Regulation NMS in Rule 5.3–O (Criteria for Underlying Securities); Rule 5.4–O (Withdrawal of Approval of Underlying Securities); Rule 7.31–E (Orders and Modifiers); Rule 9.5320–E (Prohibition Against Trading Ahead of Customer Orders); and Rule 11.6810 (Consolidated Audit Trail—Definitions).

In 2021, the Securities and Exchange Commission (the “Commission”) amended Regulation NMS under the Act in connection with the adoption of the Market Data Infrastructure Rules.⁴ As part of that initiative, the Commission adopted new definitions in Rule 600(b) of Regulation NMS and renumbered the remaining definitions, including the definition of Intermarket Sweep Order (formerly Rule 600(b)(30)), Listed Option (formerly Rule 600(b)(35)), and NMS Stock (formerly Rule 600(b)(47)).

The Exchange accordingly proposes to update the relevant citations to Rule 600(b) in its rules as follows.

- The citation to the definition of Intermarket Sweep Order in Rule 7.31–E(e)(3) and Rule 9.5320–E, Commentary .04, would be changed to Rule 600(b)(38).
- The citation to the definition of NMS Stock in Rule 5.3–O, Rule 5.4–O, and Rule 11.6810(qq) would be changed to Rule 600(b)(55).
- The citation to the definition of Listed Option in Rule 11.6810(y) would be changed to Rule 600(b)(43).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Exchange Act,⁵ 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.

The Exchange believes that the proposed changes to its rules to correct citations to Rule 600(b) of Regulation NMS would remove impediments to and perfect the mechanism of a free and open market and a national market system because the proposed change is designed to update an external rule reference. The Exchange believes that member organizations 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. The Exchange further believes that the proposed amendment would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion.

B. Self-Regulatory Organization’s Statement on Burden on Competition

In accordance with section 6(b)(8) of the Act,⁶ the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather would modify Exchange rules to update citations to Rule 600(b) of Reg NMS. 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

Pursuant to section 19(b)(3)(A) of the Act⁷ and Rule 19b–4(f)(6)⁸ thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

⁴ See Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (S7–03–20).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78f(b)(8).

⁷ 15 U.S.C. 78s(b)(3)(A).

⁸ 17 CFR 240.19b–4(f)(6).

(iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.⁹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requested that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The proposed change raises no novel legal or regulatory issues and modifies the Exchange's rules to correct citations to Rule 600(b) of Regulation NMS, which should help prevent confusion and result in increased clarity within the Exchange's rules. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.¹¹

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.

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

⁹In 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.

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

¹¹ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

- Send an email to rule-comments@sec.gov. Please include file number SR-NYSEARCA-2023-81 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-2023-81. 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-2023-81 and should be submitted on or before December 28, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-99065; File No. 4-818]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing of Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and Nasdaq PHLX LLC

December 1, 2023.

Pursuant to section 17(d) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 17d-2 thereunder,² notice is hereby given that on November 17, 2023, the Financial Industry Regulatory Authority, Inc. ("FINRA") and Nasdaq PHLX LLC ("PHLX") (together with FINRA, the "Parties") filed with the Securities and Exchange Commission ("Commission" or "SEC") a plan for the allocation of regulatory responsibilities, dated November 15, 2023 ("17d-2 Plan" or the "Plan"). The Commission is publishing this notice to solicit comments on the 17d-2 Plan from interested persons.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to section 17(d) or section 19(g)(2) of the Act.⁴ Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁵ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁶ With respect to a common member, section 17(d)(1) authorizes the Commission, by rule or

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

³ 15 U.S.C. 78s(g)(1).

⁴ 15 U.S.C. 78q(d) and 15 U.S.C. 78s(g)(2), respectively.

⁵ 15 U.S.C. 78q(d)(1).

⁶ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

¹² 17 CFR 200.30-3(a)(12), (59).