

functions.”³⁰⁴ “to avoid any disincentives such as placing an inappropriate burden on competition and a reduction in market quality,”³⁰⁵ and “to build financial stability to support the Company as a going concern.”³⁰⁶

Under the Commission’s Rules of Practice, the “burden to demonstrate that a NMS plan filing is consistent with the Exchange Act and the rules and regulations issued thereunder. . . is on the plan participants that filed the NMS plan filing.”³⁰⁷ The description of the NMS plan filing, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.³⁰⁸ Any failure of the plan participants that filed the NMS plan filing to provide such detail and specificity may result in the Commission not having a sufficient basis to make an affirmative finding that the NMS plan filing is consistent with the Exchange Act and the applicable rules and regulations thereunder.³⁰⁹

VI. Commission’s Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Amendment. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Amendment is consistent with Section 11A, Section 6(b)(4), Section 6(b)(5), Section 6(b)(8), Section 15A(b)(5), Section 15A(b)(6), Section 15A(b)(9), or any other provision of the Exchange Act, or the rules and regulations thereunder, or the funding principles of the CAT NMS Plan. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 608(b)(2)(i) of Regulation NMS,³¹⁰ any request for an opportunity to make an oral presentation.³¹¹ The Commission asks

that commenters address the sufficiency and merit of the Participants’ statements in support of the Proposed Amendment,³¹² in addition to any other comments they may wish to submit about the proposed rule changes. In addition, the Commission seeks comment on the following:

1. Commenters’ views on any questions in the Solicitation of Comments Section of the Order Instituting Proceedings related to a prior funding model amendment that are relevant to the Proposed Amendment;³¹³

2. Commenters’ views on whether the proposed definition of “CAT Executing Broker” is clear and whether identification of those brokers who meet the definition is easily available through CAT Data; and

3. Commenters’ views on the incentives of the Participants to control Prospective CAT Costs.

The Commission also requests that commenters provide analysis to support their views, if possible.

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Amendment should be approved or disapproved by July 14, 2023. Any person who wishes to file a rebuttal to any other person’s submission must file that rebuttal by July 28, 2023. 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 email to rule-comments@sec.gov. Please include file number 4–698 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 4–698. 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 4–698 and should be submitted on or before July 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹⁴

J. Matthew DeLesDernier,
Deputy Secretary.

[FR Doc. 2023–13340 Filed 6–22–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–97745; File No. SR–NYSENAT–2023–11]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change for Amendments to the Exchange’s Rules Regarding Continuing Education Requirements

June 16, 2023.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b–4 thereunder,³ notice is hereby given that on June 5, 2023, NYSE National, Inc. (“NYSE National” 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

³⁰⁴ *Id.* at Section 11.2(d).

³⁰⁵ *Id.* at Section 11.2(e).

³⁰⁶ *Id.* at Section 11.2(f).

³⁰⁷ 17 CFR 201.701(b)(3)(ii).

³⁰⁸ *Id.*

³⁰⁹ *Id.*

³¹⁰ 17 CFR 242.608(b)(2)(i).

³¹¹ Rule 700(c)(ii) of the Commission’s Rules of Practice provides that “[t]he Commission, in its sole discretion, may determine whether any issues relevant to approval or disapproval would be facilitated by the opportunity for an oral presentation of views.” 17 CFR 201.700(c)(ii).

³¹² See Notice, *supra* note 6.

³¹³ See Securities Exchange Act Release No. 95634 (Aug. 30, 2022), 87 FR 54558, 54577–79 (Sept. 6, 2022).

³¹⁴ 17 CFR 200.30–3(a)(85).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b–4.

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 amend Commentary .09 under NYSE National Rule 2.2 (Eligibility of Other Persons to Participate in the Continuing Education Program Specified in Rule 2.2(e)(3)) applicable to ETP Holders to provide eligible individuals another opportunity to elect to participate in the Maintaining Qualifications Program ("MQP"). 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 continuing education program for registered persons of broker-dealers ("CE Program") currently requires registered persons to complete continuing education consisting of a Regulatory Element and a Firm Element. The Regulatory Element, which is administered by FINRA on behalf of the Exchange, focuses on regulatory requirements and industry standards, while the Firm Element is provided by each firm and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

The CE Program is codified under the rules of the self-regulatory organizations. The CE Program for registered persons of NYSE National members is codified under Rule 2.2(e).⁴ This proposed rule change is based on a filing recently submitted by the

Financial Industry Regulatory Authority, Inc. ("FINRA"), and is intended to harmonize the Exchange's continuing education rules with those of FINRA so as to promote uniform standards across the securities industry.⁵ The proposed rule change is discussed in detail below.

On May 25, 2022, the Exchange amended NYSE National Rules 2.1210 (Registration Requirements) and 2.2(e) (Continuing Education Requirements) to, among other things, provide eligible individuals who terminate any of their representative or principal registration categories the option of maintaining their qualification for any terminated registration categories by completing annual continuing education through a new program, the MQP.⁶ By that time, however, the First Enrollment Period, defined below, had expired leaving many eligible individuals from being able to participate in the MQP. This proposed rule change will provide those eligible individuals a second opportunity to elect to participate in the MQP to maintain their qualification.

Prior to the MQP, individuals whose registrations as representatives or principals had been terminated for two or more years could reregister as representatives or principals only if they requalified by retaking and passing the applicable representative- or principal-level examination or if they obtained a waiver of such examination(s) (the "two-year qualification period"). The MQP provides these individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration.⁷ Specifically, the MQP provides eligible individuals a maximum of five years following the termination of a representative or principal registration category to reregister without having to requalify by examination or having to obtain an examination waiver, subject to

satisfying the conditions and limitations of the MQP, including the annual completion of all prescribed continuing education.

Under NYSE National Rule 2.2, Commentary .09, the MQP has a look-back provision that, subject to specified conditions, extended the option to participate in the MQP to individuals who: (1) were registered as a representative or principal within two years immediately prior to May 25, 2022 (the implementation date of the MQP); and (2) individuals who were participating in the Financial Services Affiliate Waiver Program ("FSAWP") under NYSE National Rule 2.1210, Commentary .08 (Waiver of Examinations for Individuals Working for a Financial Services Industry Affiliate of an ETP Holder) immediately prior to May 25, 2022 (collectively, "Look-Back Individuals").⁸

In the FINRA Rule Change, FINRA noted that in Regulatory Notice 21-41 (November 17, 2021), it announced that Look-Back Individuals who wanted to take part in the MQP were required to make their election between January 31, 2022, and March 15, 2022 (the "First Enrollment Period"). In addition to the announcement in Regulatory Notice 21-41, FINRA notified the Look-Back Individuals about the MQP and the First Enrollment Period via two separate mailings of postcards to their home addresses and communications through their FINRA Financial Professional Gateway ("FinPro") accounts.⁹

In the FINRA Rule Change, FINRA further noted that shortly after the First Enrollment Period had ended, a number of Look-Back Individuals contacted FINRA and indicated that they had only recently become aware of the MQP. FINRA noted that it also received anecdotal information that a number of these individuals may not have learned of the MQP, or the First Enrollment Period, in a timely manner, or at all, due to communication and operational issues.¹⁰ In addition, the original six-

⁵ See Securities Exchange Act Release No. 97184 (March 22, 2023), 88 FR 18359 (March 28, 2023) (SR-FINRA-2023-005) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 1240.01 To Provide Eligible Individuals Another Opportunity To Elect To Participate in the Maintaining Qualifications Program) ("FINRA Rule Change").

⁶ See Securities Exchange Act Release No. 95062 (June 7, 2022), 87 FR 35836 (June 13, 2022) (SR-NYSE-NAT-2022-07) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change of Amendments to the Exchange's Rules Regarding Continuing Education Requirements).

⁷ The MQP does not eliminate the two-year qualification period. Thus, eligible individuals who elect not to participate in the MQP can continue to avail themselves of the two-year qualification period (*i.e.*, they can reregister within two years of terminating a registration category without having to requalify by examination or having to obtain an examination waiver).

⁸ The FSAWP is a waiver program for eligible individuals who have left a member firm to work for a foreign or domestic financial services affiliate of a member firm. NYSE National stopped accepting new participants for the FSAWP beginning on May 25, 2022; however, individuals who were already participating in the FSAWP prior to that date had the option of continuing in the FSAWP.

⁹ Look-Back Individuals were able to notify FINRA of their election to participate in the MQP through their FinPro accounts.

¹⁰ According to FINRA, this may have been a result of the timing of FINRA's announcements relating to the MQP, which coincided with the holiday season and the transition to the New Year. Further, given that Look-Back Individuals were out of the industry at the time of these announcements, it was unlikely that they would have learned of the MQP, or the First Enrollment Period, through informal communication channels.

⁴ See also Commentary .06 to Rule 2.1210 (All Registered Persons Must Satisfy the Regulatory Element of Continuing Education).

week enrollment period may not have provided Look-Back Individuals with sufficient time to evaluate whether they should participate in the MQP. For these reasons, FINRA recently amended its rules to provide Look-Back Individuals a second opportunity to elect to participate in the MQP (the “Second Enrollment Period”). For similar reasons, NYSE National is also proposing to amend its rules to provide Look-Back Individuals with a Second Enrollment Period.¹¹ The Second Enrollment Period will be between the date of filing of this proposed rule change, and December 31, 2023. In addition, the proposed rule change requires that Look-Back Individuals who elect to participate in the MQP during the Second Enrollment Period complete any prescribed 2022 and 2023 MQP content by March 31, 2024.¹²

NYSE National believes that Look-Back Individuals generally have greater awareness of the MQP, including due to news coverage, since the program’s launch.¹³ NYSE National believes that greater public awareness of the MQP, coupled with a seven-month enrollment period, should help ensure that all Look-Back Individuals are aware of the MQP and the availability of the Second Enrollment Period and should provide them with ample time to decide whether to participate in the MQP.

Look-Back Individuals who elect to enroll during the Second Enrollment Period would need to notify FINRA of their election to participate in the MQP through a manner to be determined by FINRA.¹⁴ NYSE National also notes that

¹¹ The current rule text also provides that if Look-Back Individuals elect to participate in the MQP, their five-year participation period will be adjusted by deducting from that period the amount of time that has lapsed between the date that they terminated their registrations and May 25, 2022. To reflect the availability of the Second Enrollment Period, the proposed rule change clarifies that for all Look-Back Individuals who elect to participate in the MQP, their participation period would also be for a period of five years following the termination of their registration categories, as with other MQP participants.

¹² Look-Back Individuals who elect to enroll in the MQP during the Second Enrollment Period would also need to pay the annual program fee of \$100 for both 2022 and 2023 at the time of their enrollment.

¹³ See, e.g., Joanne Cleaver, FINRA Sets Big Change in Motion with New Option for Licensing Grace Period, *InvestmentNews* (June 23, 2022), <https://www.investmentnews.com/finra-sets-big-change-in-motion-with-new-option-for-licensing-grace-period-222942>.

¹⁴ In the FINRA Rule Change, FINRA noted that it anticipates that Look-Back Individuals will make their selection to enroll in the MQP during the Second Enrollment Period through their FinPro accounts. See *Enrolling in the MQP*, <https://www.finra.org/registration-exams-ce/finpro/mqp> (describing the MQP enrollment process). FINRA further noted that it will inform Look-Back

Look-Back Individuals who elect to participate in the MQP during the Second Enrollment Period would continue to be subject to all of the other MQP eligibility and participation conditions. For example, as clarified in the proposed rule change, Look-Back Individuals electing to participate during the Second Enrollment Period would have only a maximum of five years following the termination of a registration category in which to reregister without having to requalify by examination or having to obtain an examination waiver.¹⁵

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the “Act”),¹⁶ in general, and furthers the objectives of Section 6(b)(5),¹⁷ 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.

NYSE National believes that providing Look-Back Individuals a second opportunity to elect to participate in the MQP is warranted because participation in the MQP would reduce unnecessary impediments to requalification for these individuals without diminishing investor protection. In addition, the proposed rule change is consistent with other goals, such as the promotion of diversity and inclusion in the securities industry by attracting and retaining a broader and diverse group of professionals. The MQP also allows the industry to retain expertise from skilled individuals, providing investors with the advantage of greater experience among the individuals working in the industry. NYSE National believes that providing Look-Back Individuals a second opportunity to elect to participate in the

Individuals if it determines to provide an alternative enrollment method.

¹⁵ For example, if a Look-Back Individual terminated a registration category on May 1, 2020, and elects to participate in the MQP on December 1, 2023, the individual’s maximum participation period would be five years starting on May 1, 2020, and ending no later than May 1, 2025. If the individual does not reregister with a member firm by May 1, 2025, the individual would need to requalify by examination or obtain an examination waiver in order to reregister after that date.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

MQP will further these goals and objectives.

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 Exchange believes that the proposed rule change, which harmonizes its rules with the recent rule change adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets. The Exchange believes that the harmonization of the CE program requirements across the various markets will reduce burdens on competition by removing impediments to participation in the national market system and promoting competition among participants across the multiple national securities exchanges.

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

NYSE National has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b-4(f)(6)²⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²¹ 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

¹⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁹ 17 CFR 240.19b-4(f)(6).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 17 CFR 240.19b-4(f)(6)(iii).

Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. NYSE National has indicated that the immediate operation of the proposed rule change is appropriate because it would allow the Exchange to implement the proposed changes to its continuing education rules without delay, thereby eliminating the possibility of a significant regulatory gap between the FINRA rules and the Exchange rules, providing more uniform standards across the securities industry, and helping to avoid confusion for Exchange members that are also FINRA members. NYSE National also noted that FINRA plans to conduct additional public outreach efforts to promote awareness of the MQP and the availability of the Second Enrollment Period among Look-Back Individuals. Therefore, NYSE National additionally indicated that the immediate operation of the proposed rule change is appropriate because it would ensure that there is sufficient time for Look-Back Individuals to consider whether they wish to participate in the program before the December 31, 2023 deadline. For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.²²

At any time within 60 days of the filing of such 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 shall institute proceedings under Section 19(b)(2)(B) ²³ of the Act 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-NYSENAT-2023-11 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-NYSENAT-2023-11. 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 such 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-NYSENAT-2023-11 and should be submitted on or before July 14, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

J. Matthew DeLesDernier,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97748; File No. SR-NYSEAMER-2023-32]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the Partial Cabinet Solution Bundles Offered as Part of Its Co-Location Services

June 16, 2023.

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 5, 2023, 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.

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

The Exchange proposes to amend the Partial Cabinet Solution bundles offered as part of its co-location services. The description of the Partial Cabinet Solution bundles in the Connectivity Fee Schedule ("Fee Schedule") would be updated accordingly. 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.

²² For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²³ 15 U.S.C. 78s(b)(2)(B).

²⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.