

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-101831; File No. SR-NYSEARCA-2024-108)

December 6, 2024

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 2.4

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 December 3, 2024, NYSE Arca, Inc. (“NYSE Arca” 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 Rule 2.4 to add clarity to the process for a broker-dealer to become or remain an ETP Holder, OTP Holder or OTP Firm or remain an ETP Holder, OTP Holder or OTP Firm on the Exchange notwithstanding the existence of a statutory disqualification. 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 to amend Rule 2.4 to add clarity to the process for a broker-dealer to become or remain an ETP Holder, OTP Holder or OTP Firm on the Exchange notwithstanding the existence of a statutory disqualification.

Background and Proposed Rule Filing

Section 3(a)(39) of the Act defines the term “statutory disqualification” and the circumstances that can cause a person (either a Member, or a person associated with a Member) to be subject to a statutory disqualification.⁴ Absent relief, a statutory disqualification would preclude a broker-dealer or person associated with a broker-dealer from certain activities, including membership in a self-regulatory organization (“SRO”).

There is, however, a well-established process through which a broker-dealer (or a person associated with a broker-dealer) may continue to operate in the securities industry (and either become a member of, or continue as a member of, one or more SROs) despite being subject to a statutory disqualification.⁵ In particular, SEC Rule 19h-1⁶ describes several ways an SRO may seek relief for a member (or prospective member) that is subject to a statutory disqualification, including whether an SRO must file a notice with the Commission in order to allow the

⁴ 15 USC 78c(a)(39).

⁵ See FINRA Regulatory Notice 09-19 (“Amendments to FINRA Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications”).

⁶ 17 CFR 240.19h-1.

disqualified firm to become or continue as a member with the SRO (a “19h-1 Notice”). A 19h-1 Notice does not, for instance, need to be filed by an SRO if the firm subject to a statutory disqualification is a member of at least one other SRO, and that SRO intends to file a 19h-1 Notice for the firm.⁷

Rule 2.4 (Application Procedures) governs application procedures for persons applying to become an ETP Holder, every individual or organization applying to become the holder of an OTP and every individual applying to become a Nominee of an OTP Firm, and provides in subsection (e) that the Exchange shall approve an application if it finds that the applicant meets all of the qualifications for holding an ETP or OTP, as applicable, and shall reject an application if it does not make such a finding or if it finds that, if the application were approved, the ETP Holder, OTP Holder or OTP Firm, as applicable, would be subject to suspension or expulsion under the provisions of the Bylaws, Rules or procedures of the Exchange or the rules, regulations and procedures promulgated under the Securities Exchange Act of 1934, as amended.⁸

Recently, a non-member broker-dealer firm subject to a statutory disqualification that is currently under review by the Financial Industry Regulatory Authority, Inc. (“FINRA”) applied for Exchange membership.⁹

In reviewing this application, the Exchange determined that this situation is not explicitly addressed in its rules as it is in the rules of other exchanges.¹⁰ Specifically, BOX, Cboe BZX,

⁷ Id. at (a)(3).

⁸ See Rule 2.4(e).

⁹ The processing of new membership applications at the Exchange includes statutory disqualification disclosures and background investigations of prospective ETP Holders and persons associated with an ETP Holder. Review, assessment, and processing of these membership applications has been conducted on behalf of the Exchange by FINRA pursuant to a regulatory services agreement.

¹⁰ See Cboe EDGX Exchange, Inc. (“Cboe EDGX”) Rule 2.5(a) & Interpretation and Policies .04; Cboe BZX Exchange, Inc. (“Cboe BZX”) Rule 2.5(a) & Interpretation and Policies .04; Cboe BYX Exchange, Inc. (“Cboe BYX”) Rule 2.5(a) & Interpretation and Policies .04; Cboe EDGA Exchange, Inc. (“Cboe EDGA”)

Cboe BYX, Cboe EDGX, and Cboe EDGA each amended their respective rules in 2016 to provide more clarity as to the authority of each exchange to determine whether to admit a prospective member that is subject to a statutory disqualification.¹¹ The 2016 rule change filings of these exchanges also amended several other aspects of their application procedures, but the Exchange only seeks to harmonize its rules insofar as they apply to ETP Holders, OTP Holders or OTP Firms and prospective ETP Holders, OTP Holders or OTP Firms (and associated persons of ETP Holders, OTP Holders or OTP Firms) that are subject to a statutory disqualification in order to address the membership application described herein.¹²

The Exchange accordingly proposes to align its rule with these other exchanges specifically with respect to the process of assessing an applicant for membership that is subject to a statutory disqualification.¹³ As discussed below, the Exchange is making the proposed rule changes and seeks waiver of the 30-day operative delay in order to address an unusual and time

Rule 2.5(a) & Interpretation and Policies .04; and BOX Options Exchange LLC (“BOX”) Rule 2040(a) & IM-2040-08.

¹¹ See Securities Exchange Act Release No. 78449 (August 1, 2016), 81 FR 51947 (August 5, 2016) (SR-BOX-2016-26); Securities Exchange Act Release No. 79229 (November 3, 2016), 81 FR 78875 (November 9, 2016) (SR-BatsBZX-2016-67); Securities Exchange Act Release No. 79233 (November 3, 2016), 81 FR 78869 (November 9, 2016) (SR-BatsBYX-2016-28); Securities Exchange Act Release No. 79234 (November 3, 2016), 81 FR 78867 (November 9, 2016) (SR-BatsEDGA-2016-23); Securities Exchange Act Release No. 79236 (November 3, 2016), 81 FR 78878 (November 9, 2016) (SR-BatsEDGX2016-59).

¹² The 2016 rule filings also added some other conditions for eligibility for exchange membership such as adding a restriction that members must meet any condition the exchange placed on such member, which the Exchange believes are adequately addressed in other Exchange rules. See, e.g., Rule 2.2 (Qualifications and Application of Individual OTP Applicants); Rule 2.3 (Qualifications of Firm Applicants); Rule 2.5 (Denial of or Condition to Trading Permits). Moreover, the Rule 10.9520 Series sets forth procedures for a covered person (defined in Rule 10.9120(g) as an Associated Person of an ETP Holder, OTP Holder or OTP Firm, an Approved Person, and any other person subject to the jurisdiction of the Exchange) to become or remain associated with a Participant or Participant Firm notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act, and for a current ETP Holder, OTP Holder, OTP Firm or covered person to obtain relief from the eligibility or qualification requirements of the Exchange’s Rules, referred to in the Rule as “eligibility proceedings.”

¹³ The proposed changes mirror the language in the following rules: BOX Rule 2040(a) and IM-2040-08; Cboe BZX Rule 2.5(a) and Interpretation and Policies .04; Cboe BYX Rule 2.5(a) and Interpretation and Policies .04; Cboe EDGA Rule 2.5(a) and Interpretation and Policies .04; and Cboe EDGX Rule 2.5(a) and Interpretation and Policies .04.

sensitive situation in which a firm subject to a statutory disqualification seeks to become an Exchange permit holder during the pendency of the process by which the firm is seeking relief from the statutory disqualification.

To effectuate these changes, the Exchange proposes to add Commentary .01 to Rule 2.4 to provide that the Exchange could approve an applicant for membership (or association with a member) that is subject to a statutory disqualification when a proceeding is pending before another SRO to determine whether to permit an ETP Holder, OTP Holder, OTP Firm or covered person¹⁴ to become or continue membership or association notwithstanding a statutory disqualification. This provision, which is consistent with SEC Rule 19h-1(a)(3), would provide as follows (additions underlined):

.01 Statutory Disqualification Proceedings Pending Before Another SRO. The Exchange may waive the provisions of Rule 2.4(e) when a proceeding is pending before another self-regulatory organization to determine whether to permit a member or associated person of a member to become or continue membership or association notwithstanding a statutory disqualification. In the event the Exchange determines to waive the provisions of Rule 2.4(e) with respect to an existing or prospective ETP Holder, OTP Holder, OTP Firm or covered person, the Exchange shall

¹⁴ Covered person is defined in Rule 10.9120(g) of the Exchange's disciplinary rules to mean an Associated Person of an ETP Holder, OTP Holder or OTP Firm, an Approved Person, and any other person subject to the jurisdiction of the Exchange. The Rule 10.9500 Series sets forth procedures for a covered person to become or remain associated with an ETP Holder, OTP Holder or OTP Firm notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act and for a current ETP Holder, OTP Holder, OTP Firm or covered person to obtain relief from the eligibility or qualification requirements of the Exchange's Rules.

determine whether it will concur in any Exchange Act Rule 19h-1 filing made by another self-regulatory organization with respect to the permit holder or covered person.

This Commentary is substantively identical to IM-2040-8 to BOX Rule 2040 and Interpretation and Policies .04 to Cboe BZX, BYX, EDGX, and EDGA Rules 2.5, except for language clarifying that the new supplementary material would apply to both prospective and existing Exchange members and covered persons.

The Exchange also proposes a conforming amendment to Rule 2.4(e) to add a clause providing that except as otherwise permitted by the Exchange, no person may become an ETP Holder, OTP Holder or OTP Firm or continue as an ETP Holder, OTP Holder or OTP Firm in any capacity on the Exchange where such person is subject to a statutory disqualification. The proposed language is based on the rules of the Exchange's affiliates the New York Stock Exchange LLC ("NYSE") and NYSE American LLC ("NYSE American"), specifically NYSE Rule 346 (Statutory Disqualification – Association of Member Organizations, and Persons Associated With Member Organizations) and NYSE American Rule 342 (Association of Members, Member Organizations, and Persons Associated With Member Organizations), and is also substantively identical to BOX Rule 2040(a)(3) and Cboe BZX, BYX, EDGX, and EDGA Rules 2.5(a)(3).

The Exchange believes that the proposed rule change would appropriately align its rules with the Commission's rules regarding statutory disqualifications and harmonize the Exchange's process with several other SROs. The Exchange notes that in assessing the statutory disqualification of an ETP Holder, OTP Holder or OTP Firm or prospective ETP Holder, OTP Holder or OTP Firm, it must act consistent with the protection of investors and in the public

interest and cannot unfairly discriminate against ETP Holders, OTP Holders or OTP Firms or prospective ETP Holders, OTP Holders or OTP Firms.¹⁵ Moreover, as noted above, an ETP Holder, OTP Holder or OTP Firm can seek relief from the Exchange's eligibility or qualification requirements pursuant to the Rule 10.9520 Series.¹⁶ In addition, any prospective ETP Holder, OTP Holder or OTP Firm that has been denied membership in the Exchange or barred from becoming associated with a ETP Holder, OTP Holder or OTP Firm is entitled to certain due process pursuant to Rule 10.14 (Hearings and Review of Decisions by the Exchange), which includes, but is not limited to, potential review by the Commission.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act¹⁷ in general, and furthers the objectives of Section 6(b)(5),¹⁸ 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.

The Exchange believes that the proposed rule change would better align the Exchange's rules with the Commission's rules regarding statutory disqualifications and enable a consistent process across the Exchange and several other SROs to make appropriate filings with respect to persons subject to a statutory disqualification, thereby protecting investors and the public interest by providing more clarity and consistency with respect to the process of seeking relief from a

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ See note 12, supra.

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

statutory disqualification and in general enabling the Exchange to more efficiently administer membership applications involving statutory disqualifications. The Exchange further believes that the proposed change 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, and add clarity, transparency and consistency to the Exchange's disciplinary rules. The Exchange believes that market participants would benefit from the increased clarity, thereby reducing potential confusion. In addition, the proposed changes would align Rule 2.4 with the equivalent rules of BOX, Cboe BZX, Cboe BYX, Cboe EDGA, Cboe EDGX, as well as the rules of the Exchange's 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 rule change is not intended to address competitive issues but rather is concerned solely with aligning the Exchange's rules with those of other exchanges and with the Commission's approach to handling firms that are subject to statutory disqualification.

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

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 Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

A proposed rule change filed under Rule 19b-4(f)(6)²¹ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),²² the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. NYSE Arca has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. NYSE Arca states that waiving the 30-day delay in this manner would allow the Exchange to address an unusual and time sensitive situation in which a firm subject to a statutory disqualification seeks to become an Exchange member organization during the pendency of the process by which the firm is seeking relief from the statutory disqualification. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.

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 shall institute proceedings to determine whether the proposed rule should be

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 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, along with a brief description and text of 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. NYSE Arca has satisfied this requirement.

²¹ 17 CFR 240.19b-4(f)(6).

²² 17 CFR 240.19b-4(f)(6)(iii).

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-NYSEARCA-2024-108 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-2024-108. 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-2024-108 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.²³

Sherry R. Haywood,

Assistant Secretary.

²³ 17 CFR 200.30-3(a)(12).