



REGULATORY INFORMATION MEMO – ALL NYSE MARKETS

TO: ALL NYSE, NYSE MKT AND NYSE ARCA MEMBERS AND MEMBER ORGANIZATIONS

FROM: NYSE REGULATION

SUBJECT: NYSE REGULATION JANUARY 1, 2016 LAUNCH OF CERTAIN SURVEILLANCE, INVESTIGATIONS, AND ENFORCEMENT FUNCTIONS CURRENTLY PERFORMED BY FINRA – **DISCIPLINARY RULES AND PROCEEDINGS (INFORMATION MEMO #3)**

I. PURPOSE

The purpose of this Information Memo is to provide members and member organizations with a description of the process for disciplinary proceedings that will be in effect upon the launch of NYSE Regulation's (NYSER) new program on January 1, 2016.

II. BACKGROUND

As described in prior Information Memos, NYSER is in the process of repatriating certain surveillance, investigation and enforcement functions currently performed by FINRA.¹ This work will relate to the regulation of rules that specifically govern the NYSE markets: the New York Stock Exchange LLC (equities and bonds) (NYSE), NYSE Arca, Inc. (equities and options) (Arca), and NYSE MKT LLC (equities and options) (MKT) (collectively, the NYSE Exchanges).

Beginning in January 2016, NYSER will investigate and prosecute matters arising from its surveillance of the NYSE markets. FINRA will continue investigating and prosecuting matters arising from its cross-market surveillances, as well as from its examination of members of the NYSE Exchanges. Where appropriate, both NYSER and FINRA will refer matters to other regulatory or government agencies, such as the Securities and Exchange Commission (SEC), for investigations within their respective jurisdictions.

III. DISCIPLINARY RULES

In connection with the launch of NYSER's program, the NYSE Exchanges are in the process of proposing to the SEC changes to existing disciplinary rules. An important driver of the changes is to harmonize the disciplinary rules across all NYSE Exchanges.

¹ See, e.g., Information Memo Numbers 15-6 and 15-7 (Information Memo #1, #2).

NYSE Disciplinary Rules

Since 2013, NYSE has used disciplinary rules that are substantially similar to the text of the FINRA Rule 8000 Series and Rule 9000 Series relating to investigations and disciplinary proceedings. On November 13, 2015, the SEC approved NYSE rule changes that permit NYSE to perform investigation and enforcement functions currently performed on NYSE's behalf by FINRA. The revised NYSE disciplinary rules will be operative on January 1, 2016.² Highlights of the changes to the NYSE rules include:

- allowing disciplinary actions to be investigated and prosecuted by NYSE, while allowing FINRA staff to continue to perform investigative and disciplinary activities related to exams and cross-market surveillance;
- providing that NYSE's Chief Regulatory Officer (CRO) will be responsible for authorizing complaints and settlements;
- explaining that the CRO and regulatory staff will function independently of the commercial interests of the exchange and its member organizations (this requirement is consistent with longstanding policies and practices at the exchange); and
- adding provisions to prevent conflicts of interest that could arise when NYSE staff leave the exchange.

MKT and Arca Disciplinary Rules

Disciplinary processes for MKT, and for Arca Equities and Arca Options are each currently governed by separate sets of rules. NYSE is in the process of working to revise the MKT and Arca disciplinary rules to conform with the NYSE Rule 8000 and 9000 Series. The proposed rule changes are intended to simplify, conform, and modernize NYSE's disciplinary processes by generally aligning them across the NYSE Exchanges.

IV. DISCIPLINARY PROCESS

The disciplinary process for matters handled by NYSE, from investigation through final disposition, will be substantially similar to the process for matters currently handled by FINRA on behalf of the NYSE Exchanges.

NYSE Disciplinary Process

Under the newly revised NYSE Rule 9200 Series, formal disciplinary action will continue to occur through two processes: settlements (pursuant to NYSE Rules 9216 and 9270) and formal complaints (pursuant to NYSE Rules 9210 through 9212).³ Before issuing a complaint or settling a matter under those rules, both

² The changes to current rule text are set forth in Exhibit 5 to SR-NYSE-2015-35, Partial Amendment No. 3, available at <https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-filings/filings/2015/NYSE-2015-35.pdf>.

³ The revised NYSE rules generally maintain current processes for resolving matters through minor rule violation plan letters (pursuant to NYSE Rules 9216(b) and 9217), eligibility proceedings (pursuant to the Rule 9520 Series),

NYSE and FINRA staff will be required to obtain authorization from NYSE's Disciplinary Action Committee (DAC), which will be chaired by the CRO, and will include at least two appointees who are senior members of NYSE staff whose responsibilities do not include investigating and prosecuting disciplinary matters. This structure will ensure that the initiation and resolution of disciplinary actions are approved by individuals who are not charged with investigating and prosecuting such matters. Such authorization will replace the current, similar requirement for obtaining the approval of FINRA's Office of Disciplinary Affairs.

For the sake of efficiency, NYSE will litigate formal actions before FINRA's Office of Hearing Officers.⁴ The NYSE's final decision can continue to be appealed to the SEC, followed by the appropriate United States Court of Appeals. Hearings will take place before a Hearing Panel. Hearing Panels will continue to be chaired by a FINRA Hearing Officer, who appoints two Panelists pursuant to specified criteria. Parties may appeal determinations or penalties imposed by a Hearing Panel to the NYSE Board of Directors, or a committee acting on behalf of the Board.

MKT and Arca Disciplinary Processes

Until the SEC approves revisions to the MKT and Arca disciplinary rules, proceedings will continue to be governed by each of those exchange's existing disciplinary rules. Specifically, NYSE will handle MKT disciplinary matters in accordance with MKT Rules 475-477, and Arca matters will be governed by Arca Equities Rules 10 and 11 and Arca Options Rules 10 and 13. Pursuant to MKT and Arca internal procedures, authorization by NYSE's DAC will be required before NYSE or FINRA staff issue a complaint or settle a matter.

NYSE will promptly issue notices to the MKT and Arca membership once changes to those exchanges' disciplinary rules have been approved. The notices will describe the new disciplinary rules and processes.

V. TRANSFER OF PENDING CASES

Disciplinary cases currently being handled by FINRA will either remain with the Legal Section of FINRA's Department of Market Regulation or be transferred to NYSE Enforcement, depending on the nature of the case and the stage of the proceedings. Generally, cross-market matters and matters arising from the FINRA examination process will continue to be prosecuted by FINRA. Existing matters that are specific to the NYSE markets will be transferred to NYSE Enforcement. In order to avoid disruption, however, any matter that has proceeded to litigation or is in an advanced stage of settlement negotiations with FINRA will remain with FINRA through conclusion. Before an active disciplinary matter is transferred from FINRA to NYSE, the affected members and member organizations will receive written notification from NYSE and FINRA, which will include information about the NYSE Enforcement attorney being assigned to the case.

expedited proceedings (pursuant to the Rule 9550 Series), procedures for exemptions (pursuant to the Rule 9600 Series), and cease and desist orders (pursuant to the Rule 9800 Series).

⁴ See NYSE Rules 9213, 9230-9235.

VI. MEMBER OUTREACH

NYSER is conducting a series of Webinars to further explain the scope of its program. Invitations to these webinars have been sent by NYSER in a member notice.⁵ The next Webinar is scheduled for Monday, November 30, 2015 at 4:30 EST. In addition, member organizations wishing to discuss the program in greater detail may send an email to NYSERegulation@theice.com to set up a call or in person visit with NYSER staff.

VII. NYSER STAFF CONTACTS

NYSER's staff is committed to working with all members through this transition to make it as seamless as possible.

For questions relating to this memo, please contact NYSER at NYSERegulation@theice.com or (212) 656-5102.

⁵ Information Memo Number 15-7 (Information Memo #2).