

For the Commission, pursuant to delegated authority.<sup>17</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34754; File No. 812-15387]

### Hennessy Funds Trust, et al.

November 18, 2022.

**AGENCY:** Securities and Exchange Commission (“Commission”).

**ACTION:** Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the “Act”) for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c-1 under the Act and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

*Summary of Application:* Applicants request an order (“Order”) that permits: (a) The Funds (as defined below) to issue shares (“Shares”) redeemable in large aggregations only (“creation units”); (b) secondary market transactions in Shares to occur at negotiated market prices rather than at net asset value; (c) certain Funds to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; and (d) certain affiliated persons of a Fund to deposit securities into, and receive securities from, the Fund in connection with the purchase and redemption of creation units. The relief in the Order would incorporate by reference terms and conditions of the same relief of a previous order granting the same relief sought by applicants, as that order may be amended from time to time (“Reference Order”).<sup>1</sup>

*Applicants:* Hennessy Funds Trust, Hennessy Advisors, Inc. and Quasar Distributors, LLC.

*Filing Dates:* The application was filed on September 21, 2022 and amended on November 3, 2022 and November 16, 2022.

*Hearing or Notification of Hearing:* An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the Commission’s Secretary at

*Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on December 13, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0-5 under the Act, hearing requests should state the nature of the writer’s interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission’s Secretary.

**ADDRESSES:** The Commission: *Secretarys-Office@sec.gov*. Applicants: Teresa M. Nilsen, Hennessy Advisors, Inc., 7250 Redwood Blvd., Suite 200, Novato, California 94945, *terry@hennessyfunds.com*; Peter D. Fetzer, 777 East Wisconsin Avenue, Suite 3800, Milwaukee, Wisconsin 53202, *pfetzer@foley.com*.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, or Lisa Reid Ragen, Branch Chief, at (202) 551-6825 (Division of Investment Management, Chief Counsel’s Office).

**SUPPLEMENTARY INFORMATION:** For Applicants’ representations, legal analysis, and conditions, please refer to Applicants’ second amended and restated application, dated November 16, 2022, which may be obtained via the Commission’s website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC’s EDGAR system. The SEC’s EDGAR system may be searched at <https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html>. You may also call the SEC’s Public Reference Room at (202) 551-8090.

For the Commission, by the Division of Investment Management, under delegated authority.

**Sherry R. Haywood,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96336; File No. SR-NYSE-NAT-2022-25]

### Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Make Certain Revisions to the Preamble to Rule 10.9217 and Add Rule 2.1210 to the List of Minor Rule Violations in Rule 10.9217(f)

November 17, 2022.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on November 4, 2022, 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

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

The Exchange proposes to (1) make certain revisions to the preamble to Rule 10.9217 (Violations Appropriate for Disposition Under Rule 10.9216(b)); (2) add Rule 2.1210 (Registration Requirements) to the list of minor rule violations in Rule 10.9217(f) and associated fine levels in Rule 10.9217(g); and (3) make certain non-substantive clarifying changes to Rule 10.9217. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://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 III below. The Exchange has prepared summaries, set forth in sections A, B, and C below,

<sup>1</sup> Blue Tractor ETF Trust and Blue Tractor Group, LLC, Investment Company Act Rel. Nos. 33682 (November 14, 2019) (notice) and 33710 (December 10, 2019) (order).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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 (1) make certain revisions to the preamble to Rule 10.9217 (Violations Appropriate for Disposition Under Rule 10.9216(b)); (2) add Rule 2.1210 (Registration Requirements) to the list of minor rule violations in Rule 10.9217(f) and associated fine levels in Rule 10.9217(g); and (3) make certain non-substantive clarifying changes to Rule 10.9217.

Preamble to Rule 10.9217

The preamble to current Rule 10.9217 consists of four subsections (a) through (d). The Exchange propose to modify subsections (a) through (d) based on the preamble to the version of Rule 10.9217 adopted by the Exchange's affiliate NYSE Arca, Inc. ("NYSE Arca"), as follows.

Subsection (a) currently provides that any ETP Holder or Associated Person may be subject to a fine under Rule 10.9216(b) with respect to any rules listed in the rule and that the fine amounts and fine levels set forth therein apply to the fines imposed. Subsection (a) further provides that any fine imposed pursuant to the rule and not contested shall not be publicly reported, except as may be required by Rule 19d-1 under the Exchange Act or as may be required by any other regulatory authority.

The Exchange proposes that the current first sentence of subsection (a) would be unchanged except that the Exchange would add ", not to exceed \$5,000," after "fine" to clarify that a minor rule fine on the Exchange cannot exceed \$5,000.<sup>4</sup> The Exchange proposes to delete the second sentence providing that any fine imposed pursuant to this Rule and not contested shall not be publicly reported, except as may be required by Rule 19d-1 under the Exchange Act or as may be required by any other regulatory authority. This

<sup>4</sup> See Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968, 23968 n.6 (May 23, 2018) (SR-NYSE-2018-02) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Amended by Amendment No. 1, To Support the Re-Launch of NYSE National, Inc. on the Pillar Trading Platform). As part of Amendment No. 1, the Exchange, among other things, adopted NYSE American's maximum \$5,000 fine for minor rule violations under Rule 10.9217. See Amendment No. 1, n. 59, available at: <https://www.sec.gov/comments/sr-nysenat-2018-02/nysenat201802-3653908-162416.pdf>.

information is duplicative of information contained in Rule 10.9216(b)(4) and 10.9217(c) in greater detail and further contains a process for contesting a fine which, as discussed below, the Exchange proposes to eliminate. As proposed, NYSE National Rule 10.9217(a) would be the same as NYSE Arca Rule 10.9217(a).

Subsection (b) currently provides that if a person or organization that has been fined pursuant to the rule pays the fine, such payment shall be deemed a waiver of any right to a disciplinary proceeding under the Rule 10.9000 Series and of any right to review of the matter by the BCC, CFR or the Board of Directors. This provision incorporated requirements originally set forth in the Exchange's legacy Rule 8.15(c). The Exchange's affiliates' rules contained similar provisions.<sup>5</sup> The Exchange believes that provision would be redundant and unnecessary. As discussed below, the Exchange proposes to eliminate the specific process detailed in Rule 10.9217(c) to convert a minor rule fine into a disciplinary hearing. Moreover, under the Exchange's current procedures set forth in Rule 10.9216(b)(1), if Enforcement has reason to believe a violation has occurred and if the ETP Holder or Associated Person does not dispute the violation, Enforcement may prepare and request that the ETP Holder or Associated Person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such ETP Holder's or Associated Person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of review by the Exchange Board of Directors, the SEC, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. Under current Rule 10.9216(b)(4), if an ETP Holder or Associated Person executes the minor rule violation plan letter and the letter

<sup>5</sup> For instance, the New York Stock Exchange LLC's ("NYSE") legacy Rule 476A(c) provided that if the person against whom a minor rule violation fine is imposed pays the fine, such payment is deemed to be a waiver by such person of such person's right to a disciplinary proceeding under NYSE Rule 476 and any review of the matter by a Hearing Panel or the Exchange Board of Directors. NYSE's legacy rules came into effect when the NYSE adopted disciplinary rules modeled on the rules of the Financial Industry Regulatory Authority, Inc. ("FINRA"). See Securities Exchange Act Release No. 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR-NYSE-2013-02) (Order Approving Proposed Rule Change Adopting Investigation, Disciplinary, Sanction, and Other Procedural Rules That Are Modeled on the Rules of the Financial Industry Regulatory Authority and To Make Certain Conforming and Technical Changes). The NYSE recently proposed to delete its legacy disciplinary rules. See SR-NYSE-2022-48.

is accepted by the CRO, it is deemed final. The Exchange accordingly proposes to replace the current text of subsection (b) with the sentence "Regulatory Staff designated by the Exchange shall have the authority to impose a fine pursuant to this Rule." As proposed, NYSE National Rule 10.9217(b) would be the same as NYSE Arca Rule 10.9217(b).

Subsection (c) currently provides that any person or organization that has been fined pursuant to Rule 10.9217 may contest such fine by filing with Enforcement a written application containing: (1) an identification of the Exchange action over which the review is being requested; (2) the reason(s) why the applicant disagrees with such action; and (3) the relief sought. Such written application must be submitted not more than five (5) business days after receipt of written notification that a fine has been imposed pursuant to this Rule. The subsection further provides that if a determination is contested pursuant to this subsection, the matter shall become a formal disciplinary action, and any penalty imposed by a hearing panel shall be publicly reported to the Exchange membership after such decision has become "final" pursuant to Rule 10.8313. Further, any person or organization found in violation of a minor rule under this plan is not required to report such violation on SEC Form BD or Form U-4, provided that the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Finally, any fine imposed in excess of \$2,500 will be subject to current rather than quarterly reporting pursuant to Rule 19d-1 under the Act.

The Exchange proposes to no longer permit persons or organizations fined pursuant to Rule 10.9217 to contest the minor rule violation letter by filing a written application and converting it into a regular disciplinary proceeding. None of the Exchange's affiliates that adopted the FINRA disciplinary rules permit persons or organizations fined pursuant to their version of Rule 10.9217 to contest the fine in this manner, including affiliates such as the NYSE that also permitted such a procedures under its legacy rules.<sup>6</sup> The

<sup>6</sup> Under legacy NYSE Rule 476A(d), any person against whom a minor rule violation was imposed could contest the Exchange's determination by timely filing a written response meeting the requirements of an answer as provided in NYSE Rule 476(d), at which point the matter became a

proposed changes would thereby further harmonize the Exchange's Rule 10.9217 with the version adopted by the Exchange's affiliates. Moreover, the Exchange believes that its current disciplinary rules already provide similar and sufficient procedural protections to persons fined under Rule 10.9217. Currently, if an ETP Holder or Associated Person disputes a minor rule fine, Enforcement's only recourse would be to file a complaint under Rule 10.9211. Similarly, if an ETP Holder or Associated Person executes a minor rule plan letter under Rule 10.9216 and the CRO rejects the letter, the Exchange may take any other appropriate disciplinary action with respect to the alleged violation. Further, the ETP Holder or Associated Person shall not be prejudiced by the execution of the minor rule violation plan letter under Rule 10.9216(b)(1) and, under Rule 10.9216(b)(4), the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

In order to effectuate this change, the Exchange proposes to delete the first three sentences of subsection (c). The last two sentences, which are identical to NYSE Arca Rule 10.9217(c), would remain unchanged.

The Exchange does not propose any changes to current Rule 10.9217(d).

#### Addition of Rule 2.1210 to the List of Eligible Rules

The Exchange proposes to add Rule 2.1210 to the list of eligible rules in Rule 10.9217(f).

Rule 2.1210, which was adopted in 2018,<sup>7</sup> sets forth the requirements for persons engaged in the investment banking or securities business of an ETP Holder to be registered with the Exchange as a representative or principal in each category of registration

disciplinary proceeding subject to NYSE Rule 476. As adopted, NYSE Rule 9216 does not permit a Respondent (as defined in the disciplinary rules) to contest a minor rule violation letter by filing an answer and convert it into a regular disciplinary proceeding. See Securities Exchange Act Release No. 68678 (January 16, 2013), 78 FR 5213, 5226 (January 24, 2013) (SR-NYSE-2013-02) (Notice of Filing of Proposed Rule Change Adopting Investigation, Disciplinary, Sanction, and Other Procedural Rules That Are Modeled on the Rules of the Financial Industry Regulatory Authority and To Make Certain Conforming and Technical Changes). As noted above, the NYSE recently filed to delete its legacy disciplinary rules. See also note 4, *supra*.

<sup>7</sup> See Securities Exchange Act Release No. 84350 (October 3, 2018), 83 FR 51030 (October 10, 2018) (SR-NYSE-2018-21) (Notice of Filing and Immediate Effectiveness of Amendments to Rules Regarding Qualification, Registration and Continuing Education Applicable to Equity Trading Permit Holders).

appropriate to his or her functions and responsibilities as specified in Rule 2.1220.

The Exchange proposes to add Rule 2.1210 to the list of rules in Rule 10.9217(f) eligible for disposition pursuant to a fine. A substantially similar version of Rule 2.1210 was adopted by the NYSE in 2018<sup>8</sup> and is currently eligible for minor rule fines under the NYSE's version of Rule 9217.<sup>9</sup> The Exchange also proposes to add first, second and third level fines for violations of Rule 2.1210 to Rule 10.9217(g)(2) as new item 6. As proposed, failure to comply with the registration requirements of Rule 2.1210 would be eligible for a \$1,000 fine for the first violation, \$2,500 for the second violation and \$5,000 for the third and subsequent violations. The proposed fine levels would be the same as the applicable fine levels for individuals violating NYSE Rule 1210 set forth in NYSE Rule 9217.<sup>10</sup> Current item 6 under Rule 10.9217(g)(2) governing failure to comply with the CAT Compliance Rules in the Rule 6.6800 Series would become new item 7. As discussed below, the Exchange would add a new footnote 2 to current item 6 (new item 7) setting forth the range for violations of the CAT Compliance Rules and delete "Up to \$2,500.00" from the chart.

The Exchange believes that the proposed change would strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation.

#### Non-Substantive Clarifying Changes

The Exchange proposes to add clarifying language regarding the disposition of minor rule fines for violations of the CAT Compliance Rules in the Rule 6.6800 Series based on language adopted by the Exchange's affiliates. Specifically, the Exchange would add a new footnote 2 to current item 6 (proposed item 7, discussed above) of Rule 10.9217(g)(2) that would provide as follows:

For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6.6800 Series, the

<sup>8</sup> See Securities Exchange Act Release No. 84336 (October 2, 2018), 83 FR 50727 (October 9, 2018) (SR-NYSE-2018-44) (Notice of Filing and Immediate Effectiveness of Amendments To Rules Regarding Qualification, Registration and Continuing Education Applicable to Members and Member Organizations).

<sup>9</sup> See NYSE Rule 9217.

<sup>10</sup> As set forth in Rule 10.9217(c), any fine imposed in excess of \$2,500 would be subject to current rather than quarterly reporting to the Commission pursuant to Rule 19d-1 under the Act.

Exchange may impose a minor rule violation fine of up to \$2,500. For more serious violations, other disciplinary action may be sought.

The language is identical to that adopted by the Exchange's affiliates NYSE and NYSE Chicago, Inc.<sup>11</sup> As noted, "Up to \$2,500.00" would be deleted from the chart in current item 6 as redundant of proposed footnote 2. The proposed change is not intended to make a substantive change. Violations of the CAT Compliance Rules are currently eligible for minor rule fines and \$2,500 is currently the maximum eligible fine.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>12</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>13</sup> 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.

#### Preamble to Rule 10.9217

The Exchange believes that harmonizing the preamble to Rule 10.9217 with that of its affiliates would remove impediments to and perfect the mechanism of a free and open market and a national market system by a providing greater harmonization between Exchange rules and those of its affiliates in connection with minor rule fines, thereby fostering cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system. Moreover, by adopting the same applicable minor rule standards for violations of those standards as its affiliates, the Exchange would promote regulatory consistency.

More specifically, the Exchange believes that the proposed changes to Rule 10.9217(a) clarifying that minor rule fines cannot exceed \$5,000 and deleting duplicative information

<sup>11</sup> See NYSE Rule 9217(d) ("For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6800 Series, the Exchange may impose a minor rule violation fine of up to \$2,500. For more serious violations, other disciplinary action may be sought."); NYSE Chicago 10.9217(f), n. \*\* (same).

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

regarding the public reporting of uncontested minor rule fines would further the goal of transparency and add clarity to the Exchange's rules. The Exchange believes that the proposed changes would also be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. In addition, the Exchange believes that deleting current rule text in Rule 10.9217(b) providing that payment of a minor fine is deemed a waiver of any right to a disciplinary proceeding and of any right to review would be redundant of the Exchange's current procedures set forth in Rule 10.9216(b)(1) whereby execution of a minor rule violation plan letter accepted by the CRO is final and waives the right to a hearing and any right of review by an ETP Holder or Associated Person. Finally, the proposed elimination of the procedure set forth in Rule 10.9217(c) to contest the minor rule violations would further harmonize the Exchange's Rule 10.9217 with the version adopted by the Exchange's affiliates. As discussed above, the Exchange believes that its current disciplinary rules already provide similar and sufficient procedural protections to persons fined under Rule 10.9217. Eliminating the legacy contestation procedure in Rule 10.9217(c) would accordingly promote efficiency by applying uniform procedures for contesting a minor rule fine across exchanges.

#### Addition of Rule 2.1210 to the List of Eligible Rules

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in Rule 10.9217 does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through formal disciplinary action if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. The option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient

manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct.

The proposed rule change is thus designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the registration requirements set forth in Rule 2.1210 where a more formal disciplinary action may not be warranted or appropriate. In addition, the Exchange believes that adding rules based on the rules of its affiliate to the Exchange's minor rule plan, and adding associated fine levels based on the treatment of similar registration rule violations by its affiliate NYSE, would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of substantially similar rules that are already eligible for minor rule treatment, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct. As noted, the proposed fine levels would be the same as the applicable fine levels for individuals violating NYSE Rule 1210 set forth in NYSE Rule 9217.

The Exchange further believes that the proposed amendments to Rule 10.9217 are consistent with Section 6(b)(6) of the Act,<sup>14</sup> which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the Act, the rules and regulations thereunder and 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. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations of proposed Rule 2.1210 pursuant to the Exchange's rules. Finally, the Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.<sup>15</sup> Rule 10.9217 does not preclude an ETP Holder or Associated Person from contesting an alleged violation under Rule 10.9216(b) and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

#### Non-Substantive Clarifying Changes

The Exchange believes that the proposed non-substantive clarifying changes described above would add

clarity, consistency and transparency to the Exchange's rules. The Exchange believes that adding such clarity and transparency would also be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. In addition, the Exchange believes that the incorporating language relating to violations of the CAT Compliance Rules adopted by the Exchange's affiliates would promote fairness and consistency in the marketplace by eliminating differences and harmonizing language related to minor rule treatment of similar rule violations across affiliates. The proposed change is not intended to make any substantive change to the applicability of minor rule fines to violations of the CAT Compliance Rules or the amount of those fines.

#### *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 change is not designed to address any competitive issue but rather to update the Exchange's rules to strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct and to align the Exchange's rule setting forth violations eligible for a minor rule fine more closely with that of its affiliates.

#### *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. 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 (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSENAT-2022-25 on the subject line.

<sup>14</sup> 15 U.S.C. 78f(b)(6).

<sup>15</sup> 15 U.S.C. 78f(b)(7) and 78f(d).

### 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-2022-25. 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 (<http://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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSENAT-2022-25 and should be submitted on or before December 14, 2022.

### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>16</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>17</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to 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 also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act<sup>18</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d-1(c)(2) under the Act,<sup>19</sup> which governs minor rule violation plans.

As stated above, the Exchange proposes to (1) make certain revisions to the preamble to Rule 10.9217 (Violations Appropriate for Disposition Under Rule 10.9216(b)); (2) add Rule 2.1210 (Registration Requirements) to the list of minor rule violations in Rule 10.9217(f) and associated fine levels in Rule 10.9217(g); and (3) make certain non-substantive clarifying changes to Rule 10.9217.

The Commission believes that Rules 10.9216(b) and 10.9217 are an effective way to discipline a member for a minor violation of a rule. More specifically, the Commission believes that the proposed revisions to the preamble of Rule 10.9217 are consistent with the Act because they would add clarity to the Exchange's rules and may help the Exchange's ability to better carry out its oversight and enforcement responsibilities. The proposed revisions to the preamble of Rule 10.9217 also would align Rule 10.9217 with the rules of the Exchange's affiliates. The Commission believes that the proposed addition of Rule 2.1210 (Registration Requirements) to the Exchange's list of current minor rule violations provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. Furthermore, the Commission believes that amending the associated fine schedule is consistent with the Act because it may help the Exchange's ability to better carry out its oversight and enforcement responsibilities by levying appropriate fines for minor violations of the rules included in Rule 10.9217, including minor violations of Rule 2.1210. Finally the Commission believes that the Exchange's proposal to make certain non-substantive changes to Rule 10.9217 are consistent with the Act

because these changes will add clarity to the Exchange's rules.

In approving the proposed rule change, the Commission in no way minimizes the importance of compliance with the Exchange's rules and all other rules subject to fines under Rules 10.9216(b) and 10.9217. The Commission believes that a violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, Rules 10.9216(b) and 10.9217 provide 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 Rules 10.9216(b) and 10.9217 or whether a violation requires formal disciplinary action.

For the same reasons as discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal will assist the Exchange in preventing fraudulent and manipulative practices by allowing the Exchange to adequately enforce compliance with, and provide appropriate discipline for, violations of Exchange rules. Moreover, the proposed changes raise no new or novel issues. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act<sup>21</sup> and Rule 19d-1(c)(2) thereunder,<sup>22</sup> that the proposed rule change (SR-NYSENAT-2022-25) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Sherry R. Haywood**,  
Assistant Secretary.

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<sup>16</sup> 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).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> 15 U.S.C. 78f(b)(1) and 78f(b)(6).

<sup>19</sup> 17 CFR 240.19d-1(c)(2).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> 17 CFR 240.19d-1(c)(2).

<sup>23</sup> 17 CFR 200.30-3(a)(12).