

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-87788; File No. 4-705)

December 18, 2019

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amended Proposed Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc., Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Cboe EDGA Exchange, Inc., and Cboe EDGX Exchange, Inc.

Notice is hereby given that the Securities and Exchange Commission (“Commission”) has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”),¹ approving and declaring effective an amendment to the plan for allocating regulatory responsibility (“Plan”) filed on December 3, 2019, pursuant to Rule 17d-2 of the Act,² by the Financial Industry Regulatory Authority, Inc. (“FINRA”), Cboe BZX Exchange, Inc. (“BZX”), Cboe BYX Exchange, Inc. (“BYX”), Cboe EDGA Exchange, Inc. (“EDGA”), and Cboe EDGX Exchange, Inc. (“EDGX”) (each, a “Participating Organization,” or “Bats Exchange,” and together, the “Participating Organizations,” “the Bats Exchanges,” or the “Parties”). The Plan replaces and supersedes the agreement between FINRA and the Bats Exchanges dated September 30, 2016, entitled “Agreement between Financial Industry Regulatory Authority, Inc., Bats BZX Exchange, Inc., Bats BYX Exchange, Inc., Bats EDGA Exchange, Inc., and Bats EDGX Exchange, Inc. Pursuant to Rule 17d-2 under the Securities Exchange Act of 1934.”³

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

³ See Securities Exchange Act Release No. 79057 (October 6, 2016), 81 FR 70728 (October 13, 2016).

I. Introduction

Section 19(g)(1) of the Securities Exchange Act of 1934 (“Act”),⁴ among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO’s own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or Section 19(g)(2) of the Act.⁵ Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (“common members”). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁸ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with the

⁴ 15 U.S.C. 78s(g)(1).

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

⁶ 15 U.S.C. 78q(d)(1).

⁷ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

⁸ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁹

When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.¹⁰ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for appropriate notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors; to foster cooperation and coordination among the SROs; to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system; and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

II. The Plan

On October 6, 2016, the Commission declared effective the Plan entered into between FINRA and the Bats Exchanges for allocating regulatory responsibility pursuant to Rule 17d-2.¹¹ The Plan is intended to reduce regulatory duplication for firms that are common members of FINRA and at least one of the Bats Exchanges by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations that are common among them. Included in the Plan is an exhibit that lists every rule of each Bats Exchange for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to members of one or more of the Bats Exchanges that are also members of FINRA and the associated persons therewith.

III. Proposed Amendment to the Plan

On December 3, 2019, the parties submitted a proposed amendment to the Plan (“Amended Plan”). The primary purposes of the Amended Plan are to (1) allocate surveillance, investigation, and enforcement responsibilities for Rule 14e-4 under the Act and (2) amend the Plan to reflect the name changes of the Bats Exchanges. The text of the proposed Amended Plan is as follows (additions are italicized; deletions are [bracketed]):

**AGREEMENT BETWEEN FINANCIAL INDUSTRY
REGULATORY AUTHORITY, INC.,
[BATS]CBOE BZX EXCHANGE, INC., [BATS]CBOE BYX EXCHANGE, INC.,
[BATS]CBOE EDGA EXCHANGE, INC., AND [BATS]CBOE EDGX EXCHANGE, INC.
PURSUANT TO
RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934**

¹¹ See Securities Exchange Act Release No. 79057 (October 6, 2016), 81 FR 70728 (October 13, 2016).

This Agreement, by and between the Financial Industry Regulatory Authority, Inc. (“FINRA”), [Bats]Cboe BZX Exchange, Inc. (“BZX”), [Bats]Cboe BYX Exchange, Inc. (“BYX”), [Bats]Cboe EDGA Exchange, Inc. (“EDGA”), and [Bats]Cboe EDGX Exchange, Inc. (“EDGX”) (collectively, the “Bats Exchanges” and each a “Bats Exchange”) is made this [30th] 2nd day of [~~September~~]December, 201[6]9 (the “Agreement”), pursuant to Section 17(d) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 17d-2 thereunder, which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and the Bats Exchanges may be referred to individually as a “party” and together as the “parties.” Upon approval by the Securities and Exchange Commission (“Commission” or “SEC”) this Agreement shall replace and supersede the agreement among FINRA and the Bats Exchanges dated September 30, 2016[~~between FINRA and BZX dated August 25, 2008; the agreement between FINRA and BYX dated September 3, 2010; the agreement between FINRA and EDGA dated March 31, 2010; and the agreement between FINRA and EDGX dated March 31, 2010~~].

WHEREAS, FINRA and the Bats Exchanges desire to reduce duplication in the examination and surveillance of their Common Members (as defined herein) and in the filing and processing of certain registration and membership records; and

WHEREAS, FINRA and the Bats Exchanges desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d-2 under the Exchange Act and to file such agreement with the Commission for its approval.

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter, FINRA and each Bats Exchange hereby agree as follows:

1. Definitions. Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) “Bats Exchanges Rules” or “FINRA Rules” shall mean: (i) the rules of each Bats Exchange, or (ii) the rules of FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) “Common Rules” shall mean the rules of each Bats Exchange that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on Exhibit 1 in that examination or surveillance for compliance with such provisions and rules would not require FINRA to develop one or more new examination or surveillance standards, modules, procedures, or criteria in order to analyze the application of the provision or rule, or a Common Member’s activity, conduct, or output in relation to such provision or rule; provided, however, Common Rules shall not include the application of the SEC, each Bats Exchange or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among [BATS Exchange, Inc., BATS-Y Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange Inc., EDGX Exchange Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Amex LLC, and NYSE Arca Inc. effective December 16, 2011] Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Chicago Stock Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry

Regulatory Authority, Inc., Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca Inc., Investors' Exchange LLC and Long-Term Stock Exchange, Inc. effective August 1, 2019, as may be amended from time to time. Common Rules shall not include any provisions regarding (i) notice, reporting or any other filings made directly to or from any Bats Exchange, (ii) incorporation by reference of any Bats Exchange Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA's exercise of discretion including, but not limited to exercise of exemptive authority, by any Bats Exchange, (iv) prior written approval of any Bats Exchange and (v) payment of fees or fines to any Bats Exchange.

(c) "Common Members" shall mean those Bats Exchange members that are also members of FINRA and the associated persons therewith.

(d) "Effective Date" shall have the meaning set forth in paragraph 13.

(e) "Enforcement Responsibilities" shall mean the conduct of appropriate proceedings, in accordance with FINRA's Code of Procedure and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under FINRA's Code of Procedure and sanctions guidelines.

(f) "Regulatory Responsibilities" shall mean the examination responsibilities, surveillance responsibilities and Enforcement Responsibilities relating to compliance by the Common Members with the Common Rules and the provisions of the Exchange Act

and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on Exhibit 1 attached hereto.

2. Regulatory Responsibilities. FINRA shall assume Regulatory Responsibilities for Common Members. Attached as Exhibit 1 to this Agreement and made part hereof, each Bats Exchange furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are Bats Exchanges Rules are substantially similar to the corresponding FINRA Rules (the "Certification"). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the rules of any Bats Exchange or FINRA, the Bats Exchanges shall submit an updated list of Common Rules to FINRA for review which shall add Bats Exchanges Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete Bats Exchanges Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be Bats Exchanges Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term "Regulatory Responsibilities" does not include, and each Bats Exchange shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the "Retained Responsibilities") the following:

(a) Surveillance, examination, investigation and enforcement with respect to trading activities or practices involving each Bats Exchange's own marketplace for rules that are not Common Rules;

(b) registration pursuant to its applicable rules of associated persons (i.e., registration rules that are not Common Rules);

(c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d-1 under the Exchange Act; and

(d) any Bats Exchanges Rules that are not Common Rules, except for any Bats Exchanges Rules for any broker-dealer subsidiary of [Bats Global Markets]Cboe Trading, Inc., as provided in paragraph 6.

3. Common Members. Prior to the Effective Date, each Bats Exchange shall furnish FINRA with a current list of Common Members, which shall be updated no less frequently than once each quarter.

4. No Charge. There shall be no charge to the Bats Exchanges by FINRA for performing the Regulatory Responsibilities under this Agreement except as otherwise agreed by the parties, either herein or in a separate agreement.

5. Reassignment of Regulatory Responsibilities. Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission, or industry agreement, restructuring the regulatory framework of the securities industry or reassigning Regulatory Responsibilities between self-regulatory organizations. To the extent such action is inconsistent with this Agreement, such action shall supersede the provisions hereof to the extent necessary for them to be properly effectuated and the provisions hereof in that respect shall be null and void.

6. Notification of Violations. In the event that FINRA becomes aware of apparent

violations of any Bats Exchanges Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify the Bats Exchanges of those apparent violations for such response as the Bats Exchanges deem appropriate. In the event that any of the Bats Exchanges becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, the applicable Bats Exchange shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided in this Agreement. With respect to apparent violations of any Bats Exchanges Rules by any broker-dealer subsidiary of Bats Global Markets, Inc., FINRA shall not make referrals to the Bats Exchanges pursuant to this paragraph 6. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA as provided in this Agreement. Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings. Apparent violations of Common Rules, FINRA Rules, federal securities laws, and rules and regulations thereunder, shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Common Member is the subject of an investigation relating to a transaction on a Bats Exchange, the Bats Exchange may in its discretion assume concurrent jurisdiction and responsibility.

7. Continued Assistance.

(a) FINRA shall make available to the Bats Exchanges all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Common Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish the Bats Exchanges any information it obtains about

Common Members which reflects adversely on their financial condition. The Bats Exchanges shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Common Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. The parties shall not assert regulatory or other privileges as against another with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

8. Statutory Disqualifications. When FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Common Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep the Bats Exchanges advised of its actions in this regard for such subsequent proceedings as the Bats Exchanges may initiate.

9. Customer Complaints. The Bats Exchanges shall forward to FINRA copies of all customer complaints involving Common Members received by the Bats Exchanges relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. Advertising. FINRA shall assume responsibility to review the advertising of Common Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. No Restrictions on Regulatory Action. Nothing contained in this Agreement shall restrict or in any way encumber the right of any party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Common Members, as any party, in its sole discretion, shall deem appropriate or necessary.

12. Termination. This Agreement may be terminated by the Bats Exchanges or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 4.

13. Effective Date. This Agreement shall be effective upon approval of the Commission.

14. Arbitration. In the event of a dispute among the parties as to the operation of this Agreement, the Bats Exchanges and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, D.C. in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other parties. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and

until this Agreement is terminated in accordance with its provisions. Nothing in this Section 14 shall interfere with a party's right to terminate this Agreement as set forth herein.

15. Notification of Members. The Bats Exchanges and FINRA shall notify Common Members of this Agreement after the Effective Date by means of a uniform joint notice.

16. Amendment. This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

17. Limitation of Liability. Neither FINRA nor any Bats Exchange nor any of their respective directors, governors, officers or employees shall be liable to the other parties to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or any Bats Exchange and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or any Bats Exchange with respect to any of the responsibilities to be performed by each of them hereunder.

18. Relief from Responsibility. Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA and the Bats Exchanges join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve the Bats Exchanges of any and all responsibilities with respect to matters allocated to FINRA pursuant to

this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

19. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

20. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

EXHIBIT 1

Cboe [Bats] BZX Exchange, Inc. (“BZX”), Cboe [Bats] BYX Exchange, Inc. (“BYX”), Cboe [Bats] EDGA Exchange, Inc. (“EDGA”), and Cboe [Bats] EDGX Exchange, Inc. (“EDGX”) Rules Certification for 17d-2 Agreement with FINRA

Each Bats Exchange hereby certifies that the requirements contained in the rules listed below are identical to, or substantially similar to, the comparable FINRA Rule, NASD Rule, Exchange Act provision or SEC Rule identified (“Common Rules”).

Common Rules shall not include provisions regarding (i) notice, reporting or any other filings made directly to or from any Bats Exchange, (ii) incorporations by reference of any Bats Exchange Rules that are not Common Rules (iii) exercise of discretion in a manner that differs from FINRA’s exercise of discretion including, but not limited to exercise of exemptive authority, by any Bats Exchanges, (iv) prior written approval of any Bats Exchanges, and (v) payment of fees or fines to any Bats Exchange.

<u>BZX RULE:</u>	<u>BYX RULE:</u>	<u>EDGA RULE:</u>	<u>EDGX RULE:</u>	<u>FINRA RULE, NASD RULE, EXCHANGE ACT PROVISION OR SEC RULE:</u>
Rule 2.5 Restrictions, Interpretation and Policy .02 Continuing Education Requirements#	Rule 2.5 Restrictions, Interpretation and Policy .02 Continuing Education Requirements#	Rule 2.5 Restrictions, Interpretation and Policy .02 Continuing Education Requirements#	Rule 2.5 Restrictions, Interpretation and Policy .02 Continuing Education Requirements#	FINRA Rule 12[5]40(a)(1)–(4) Continuing Education Requirements ¹ ; <u>FINRA Rule 1010(a); FINRA Bylaws Article V, Sec. 2</u>

¹ FINRA shall only have Regulatory Responsibilities to the extent that the allowance for additional time for a registered person to satisfy the regulatory element is consistently granted.

Rule 2.5 Restrictions, Interpretation and Policy .04 Termination of Employment	Rule 2.5 Restrictions, Interpretation and Policy .04 Termination of Employment	Rule 2.5 Restrictions, Interpretation and Policy .04 Termination of Employment	Rule 2.5 Restrictions, Interpretation and Policy .04 Termination of Employment	FINRA By-Laws of the Corporation, Article V, Section 3 Notification by Member to the Corporation and Associated Person of Termination; Amendments to Notification
Rule 2.6(g) Application Procedures for Membership or to become an Associated Person of a Member#	Rule 2.6(g) Application Procedures for Membership or to become an Associated Person of a Member#	Rule 2.6(g) Application Procedures for Membership or to become an Associated Person of a Member#	Rule 2.6(g) Application Procedures for Membership or to become an Associated Person of a Member#	FINRA By-Laws of the Corporation, Article IV, Section 1(c) Application for Membership
Rule 3.1 Business Conduct of Members*	Rule 3.1 Business Conduct of Members*	Rule 3.1 Business Conduct of Members*	Rule 3.1 Business Conduct of Members*	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade*
Rule 3.2 Violations Prohibited*	Rule 3.2 Violations Prohibited*	Rule 3.2 Violations Prohibited*	Rule 3.2 Violations Prohibited*	FINRA Rule 2010 Standards of Commercial Honor and Principles of Trade and FINRA Rule 3110 Supervision* ²

² FINRA shall only have Regulatory Responsibilities regarding the first phrase of the Bats Exchanges rules regarding prohibitions from violating the Securities Exchange Act of 1934 and the rules and regulations thereunder; responsibility for the remainder of the rule shall remain with the Bats Exchanges.

Rule 3.3 Use of Fraudulent Devices*	Rule 3.3 Use of Fraudulent Devices*	Rule 3.3 Use of Fraudulent Devices*	Rule 3.3 Use of Fraudulent Devices*	FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices*
Rule 3.5 Communications with the Public	Rule 3.5 Communications with the Public	Rule 3.5 Communications with the Public	Rule 3.5 Communications with the Public	FINRA Rule 2210 Communications with the Public
Rule 3.6 Fair Dealing with Customers	Rule 3.6 Fair Dealing with Customers	Rule 3.6 Fair Dealing with Customers	Rule 3.6 Fair Dealing with Customers	FINRA Rule 2020 Use of Manipulative, Deceptive or Other Fraudulent Devices* ³
Rule 3.7(a) Recommendations to Customers	Rule 3.7(a) Recommendations to Customers	Rule 3.7(a) Recommendations to Customers	Rule 3.7(a) Recommendations to Customers	FINRA Rule 2111(a) Suitability
Rule 3.8(a) The Prompt Receipt and Delivery of Securities	Rule 3.8(a) The Prompt Receipt and Delivery of Securities	Rule 3.8(a) The Prompt Receipt and Delivery of Securities	Rule 3.8(a) The Prompt Receipt and Delivery of Securities	FINRA Rule 11860 COD Orders
Rule 3.8(b) The Prompt Receipt and Delivery of Securities	Rule 3.8(b) The Prompt Receipt and Delivery of Securities	Rule 3.8(b) The Prompt Receipt and Delivery of Securities	Rule 3.8(b) The Prompt Receipt and Delivery of Securities	SEC Regulation SHO
Rule 3.9 Charges for Services Performed	Rule 3.9 Charges for Services Performed	Rule 3.9 Charges for Services Performed	Rule 3.9 Charges for Services Performed	FINRA Rule 2122 Charges for Services Performed
Rule 3.10 Use of Information	Rule 3.10 Use of Information	Rule 3.10 Use of Information	Rule 3.10 Use of Information	FINRA Rule 2060 Use of Information Obtained in Fiduciary Capacity
Rule 3.11 Publication of Transactions and Quotations#	Rule 3.11 Publication of Transactions and Quotations#	Rule 3.11 Publication of Transactions and Quotations#	Rule 3.11 Publication of Transactions and Quotations#	FINRA Rule 5210 Publication of Transactions and Quotations

³ FINRA shall not have Regulatory Responsibilities regarding .01 of each Bats Exchange Rule 3.6.

Rule 3.12 Offers at Stated Prices	Rule 3.12 Offers at Stated Prices	Rule 3.12 Offers at Stated Prices	Rule 3.12 Offers at Stated Prices	FINRA Rule 5220 Offers at Stated Prices
Rule 3.13 Payment Designed to Influence Market Prices, Other than Paid Advertising	Rule 3.13 Payment Designed to Influence Market Prices, Other than Paid Advertising	Rule 3.13 Payments Involving Publications that Influence the Market Price of a Security	Rule 3.13 Payments Involving Publications that Influence the Market Price of a Security	FINRA Rule 5230 Payments Involving Publications that Influence the Market Price of a Security
Rule 3.14 Disclosure on Confirmations	Rule 3.14 Disclosure on Confirmations	Rule 3.14 Disclosure on Confirmations	Rule 3.14 Disclosure on Confirmations	FINRA Rule 2232(a) Customer Confirmations and SEC Rule 10b-10 Confirmation of Transactions
Rule 3.15 Disclosure of Control	Rule 3.15 Disclosure of Control	Rule 3.15 Disclosure of Control	Rule 3.15 Disclosure of Control	FINRA Rule 2262 Disclosure of Control Relationship With Issuer
Rule 3.16 Discretionary Accounts	Rule 3.16 Discretionary Accounts	Rule 3.16 Discretionary Accounts	Rule 3.16 Discretionary Accounts	NASD Rule 2510 Discretionary Accounts ⁴
Rule 3.17 Customer's Securities or Funds	Rule 3.17 Customer's Securities or Funds	Rule 3.17 Customer's Securities or Funds	Rule 3.17 Customer's Securities or Funds	FINRA Rule 2150(a) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts - Improper Use

⁴ FINRA shall not have Regulatory Responsibilities for the Bats Exchanges' Rule to the extent the exception in NASD Rule 2510(d)(2) applies.

Rule 3.18 Prohibition Against Guarantees	Rule 3.18 Prohibition Against Guarantees	Rule 3.18 Prohibition Against Guarantees	Rule 3.18 Prohibition Against Guarantees	FINRA Rule 2150(b) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts - Prohibition Against Guarantees
Rule 3.19 Sharing in Accounts; Extent Permissible	Rule 3.19 Sharing in Accounts; Extent Permissible	Rule 3.19 Sharing in Accounts; Extent Permissible	Rule 3.19 Sharing in Accounts; Extent Permissible	FINRA Rule 2150(c)(1) Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts - Sharing in Accounts; Extent Permissible
Rule 3.21[(a)-(f)] Customer Disclosures	Rule 3.21[(a)-(f)] Customer Disclosures	Rule 3.21[(a)-(f)] Customer Disclosures	Rule 3.21[(a)-(f)] Customer Disclosures	FINRA Rule 2265 Extended Hours Trading Risk Disclosure
Rule 3.22 Influencing or Rewarding Employees of Others	Rule 3.22 Influencing or Rewarding Employees of Others	Rule 3.20 Influencing or Rewarding Employees of Others	Rule 3.20 Influencing or Rewarding Employees of Others	FINRA Rule 3220 Influencing or Rewarding Employees of Others
Rule 3.23 Telemarketing and <u>Interpretations and Policies .01</u>	Rule 3.23 Telemarketing and <u>Interpretations and Policies .01</u>	Rule 3.26 Telemarketing and <u>Interpretations and Policies .01</u>	Rule 3.26 Telemarketing and <u>Interpretations and Policies .01</u>	FINRA Rule 3230 Telemarketing

Rule 4.1 Requirements	Rule 4.1 Requirements	Rule 4.1 Requirements	Rule 4.1 Requirements	<u>Section 17 of the Exchange Act and the rules thereunder</u> ⁵ , and <u>FINRA Rule 4511(a) and (c) General Requirements</u>
Rule 4.3 Record of Written Complaints	Rule 4.3 Record of Written Complaints	Rule 4.3 Record of Written Complaints	Rule 4.3 Record of Written Complaints	FINRA Rule 4513 Records of Written Customer Complaints
Rule 5.1 Written Procedures	Rule 5.1 Written Procedures	Rule 5.1 Written Procedures	Rule 5.1 Written Procedures	FINRA Rule 3110(b)(1) Supervision-Written Procedures*
Rule 5.2 Responsibility of Members	Rule 5.2 Responsibility of Members	Rule 5.2 Responsibility of Members	Rule 5.2 Responsibility of Members	FINRA Rule 3110 (a)(4), (b)(4) and (b)(7) Supervision – Supervisory System/Written Procedures – Review of Correspondence and Internal Communications*
Rule 5.3 Records	Rule 5.3 Records	Rule 5.3 Records	Rule 5.3 Records	FINRA Rule 3110 Supervision *
Rule 5.4 Review of Activities	Rule 5.4 Review of Activities	Rule 5.4 Review of Activities	Rule 5.4 Review of Activities	FINRA Rule 3110(c) and (d) Supervision – Internal Inspections/ Transaction Review and Investigation*
Rule 5.6 Anti-Money Laundering Compliance Program#	Rule 5.6 Anti-Money Laundering Compliance Program#	Rule 5.6 Anti-Money Laundering Compliance Program#	Rule 5.6 Anti-Money Laundering Compliance Program#	FINRA Rule 3310 Anti-Money Laundering Compliance Program

⁵ FINRA shall not have Regulatory Responsibilities regarding requirements to keep records “in conformity with...Exchange Rules;” responsibility for such requirement remains with the Bats Exchanges.

Rule 9.3 Predispute Arbitration Agreements	Rule 9.3 Predispute Arbitration Agreements	Rule 9.3 Predispute Arbitration Agreements	Rule 9.3 Predispute Arbitration Agreements	FINRA Rule 2268 Requirements When Using Predispute Arbitration Agreements for Customer Accounts
Rule 11.18(e)(3) & (4) Trading Halts Due to Extraordinary Market Volatility	Rule 11.18(e)(3) & (4) Trading Halts Due to Extraordinary Market Volatility	Rule 11.16(e)(3) & (4) Trading Halts Due to Extraordinary Market Volatility	Rule 11.16(e)(3) & (4) Trading Halts Due to Extraordinary Market Volatility	FINRA Rule 6190(a)[(1) & (2)]& (b) Compliance with Regulation NMS Plan to Address Extraordinary Market Volatility
Rule 11.19(a) Short Sales#^^	Rule 11.19(a) Short Sales#^^	Rule 11.10(a)(5) Order Execution- Short Sales#^^	Rule 11.10(a)(5) Order Execution- Short Sales#^^	FINRA Rule 6182 Trade Reporting of Short Sales^^
Rule 12.1 Market Manipulation**	Rule 12.1 Market Manipulation**	Rule 12.1 Market Manipulation**	Rule 12.1 Market Manipulation**	FINRA Rule 6140(a) Other Trading Practices**
Rule 12.2 Fictitious Transactions**	Rule 12.2 Fictitious Transactions**	Rule 12.2 Fictitious Transactions**	Rule 12.2 Fictitious Transactions**	FINRA Rule 6140(b) Other Trading Practices**
Rule 12.3 Excessive Sales by a Member**	Rule 12.3 Excessive Sales by a Member**	Rule 12.3 Excessive Sales by a Member**	Rule 12.3 Excessive Sales by a Member**	FINRA Rule 6140(c) Other Trading Practices**
Rule 12.4 Manipulative Transactions**	Rule 12.4 Manipulative Transactions**	Rule 12.4 Manipulative Transactions**	Rule 12.4 Manipulative Transactions**	FINRA Rule 6140(d) Other Trading Practices**
Rule 12.5 Dissemination of False Information**	Rule 12.5 Dissemination of False Information**	Rule 12.5 Dissemination of False Information**	Rule 12.5 Dissemination of False Information**	FINRA Rule 6140(e) Other Trading Practices**
Rule 12.6 Prohibition Against Trading Ahead of	Rule 12.6 Prohibition Against Trading Ahead of	Rule 12.6 Prohibition Against Trading Ahead of	Rule 12.6 Prohibition Against Trading Ahead of	FINRA Rule 5320 Prohibition Against Trading Ahead of

Customer Orders^^	Customer Orders^^	Customer Orders^^	Customer Orders^^	Customer Orders^^
Rule 12.9 Trade Shredding	Rule 12.9 Trade Shredding	Rule 12.9 Trade Shredding	Rule 12.9 Trade Shredding	FINRA Rule 5290 Order Entry and Execution Practices
Rule 12.11 Best Execution^^	Rule 12.11 Best Execution^^	Rule 12.11 Best Execution^^	Rule 12.11 Best Execution^^	FINRA Rule 5310 Best Execution and Interpositioning^^
Rule 12.13 Trading Ahead of Research Reports^^	Rule 12.13 Trading Ahead of Research Reports^^	Rule 12.13 Trading Ahead of Research Reports^^	Rule 12.13 Trading Ahead of Research Reports^^	FINRA Rule 5280 Trading Ahead of Research Reports^^
Rule 12.14(a) Front Running of Block Transactions^^	Rule 12.14(a) Front Running of Block Transactions^^	Rule 12.14(a) Front Running of Block Transactions^^	Rule 12.14(a) Front Running of Block Transactions^^	FINRA Rule 5270 Front Running of Block Transactions^^
Rule 13.2 Failure to Deliver and Failure to Receive	Rule 13.2 Failure to Deliver and Failure to Receive	Rule 13.2 Short Sale Borrowing and Delivery Requirements	Rule 13.2 Short Sale Borrowing and Delivery Requirements	Regulation SHO Rules 200 and 203
Rule 13.3(a), (b)(i), (d) and Interpretation and Policy .01 Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting	Rule 13.3(a), (b)(i), (d) and Interpretation and Policy .01 Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting	Rule 13.3(a), (b)(i), (d) and Interpretation and Policy .01 Forwarding of Proxy and Other Issuer-Related Materials	Rule 13.3(a), (b)(i), (d) and Interpretation and Policy .01 Forwarding of Proxy and Other Issuer-Related Materials	FINRA Rule 2251 Processing and Forwarding of Proxy and Other Issuer-Related Materials
<u>Rule 26.11 Restrictions on Pledge and Lending of Public Customers' Securities</u>			<u>Rule 26.11 Restrictions on Pledge and Lending of Public Customers' Securities</u>	<u>FINRA Rule 4330 Customer Protection – Permissible Uses of Customers' Securities</u>

In addition, the following provisions shall be part of this 17d-2 Agreement:

Securities Exchange Act of 1934 (“SEA”):
Section 15(g)

SEC Rules under the SEA:

SEC Rule 200 of Regulation SHO – Definition of “Short Sale” and Marking Requirements^{^^}
SEC Rule 201 of Regulation SHO – Circuit Breaker^{^^}
SEC Rule 203 of Regulation SHO – Borrowing and Delivery Requirements^{^^}
SEA Rule 204 of Regulation SHO – Close-Out Requirement^{^^}
SEC Rule 101 of Regulation M – Activities by Distribution Participants^{^^}
SEC Rule 102 of Regulation M – Activities by Issuers and Selling Security Holders During a Distribution^{^^}
SEC Rule 103 of Regulation M – Nasdaq Passive Market Making^{^^}
SEC Rule 104 of Regulation M – Stabilizing and Other Activities in Connection with an Offering^{^^}
SEC Rule 105 of Regulation M – Short Selling in Connection With a Public Offering^{^^}
SEC Rules 17a-3 / 17a-4 – Records to be made by Certain Exchange Members, Brokers, and Dealers/Records to be Preserved by Certain Exchange Members, Brokers, and Dealers*
SEC Rule 14e-4 – Prohibited Transactions in Connection with Partial Tender Offers⁺⁺

[# FINRA shall not have Regulatory Responsibilities regarding notification or reporting to the Bats Exchanges and to the extent any exercise of discretion is the same.]

* FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among [BATS Exchange, Inc., BATS Y Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange Inc., EDGX Exchange Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Amex LLC, and NYSE Arca, Inc. effective December 16, 2011] Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Chicago Stock Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca Inc., Investors’ Exchange LLC and Long-Term Stock Exchange, Inc. effective August 1, 2019, as may be amended from time to time.

** FINRA shall not have Regulatory Responsibilities for these rules as they pertain to trading practices involving securities that do not meet the definition of NMS stock as defined in Rule 600(b)(47) of Regulation NMS. As of the current date, Bats Exchanges do not trade any non-NMS stock.

^{^^} FINRA shall perform the surveillance responsibilities for the double caret rules. These rules may be cited by FINRA in both the context of this Agreement and the Regulatory Services Agreement.

⁺⁺FINRA shall perform the surveillance responsibilities for SEC Rule 14e-4(a)(1)(ii)(D).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 e-mail to rule-comments@sec.gov. Please include File Number 4-705 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 4-705. This file number should be included on the subject line if e-mail 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 plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of FINRA, BZX, BYX, EDGX, and EDGA. 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 4-705 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act¹² and Rule 17d-2(c) thereunder¹³ in that the proposed Amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Amended Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by FINRA and at least one of the Bats Exchanges. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because the Bats Exchanges and FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

The Commission notes that, under the Amended Plan, the Bats Exchanges and FINRA have allocated regulatory responsibility for those rules of the Bats Exchanges, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Common Member's activity, conduct, or output in relation to such rule. In

¹² 15 U.S.C. 78q(d).

¹³ 17 CFR 240.17d-2(c).

addition, under the Amended Plan, FINRA would assume regulatory responsibility for certain provisions of the federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Amended Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Amended Plan, the Bats Exchanges will review the Certification, at least annually, or more frequently if required by changes in either the rules of any one of the Bats Exchanges or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add rules of any Bats Exchange not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete rules of any Bats Exchange included in the then-current list of Common Rules that no longer qualify as common rules; and confirm that the remaining rules on the list of Common Rules continue to be rules of each Bats Exchange that qualify as common rules.¹⁴ FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Amended Plan. Under the Amended Plan, each Bats Exchange will also provide FINRA with a current list of Common Members and shall update the list no less frequently than once each quarter.¹⁵ The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective an Amended Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all rules of the Bats Exchanges that are substantially similar to the rules of FINRA for Common Members of FINRA and the Bats Exchanges. Therefore, modifications to the Certification need

¹⁴ See paragraph 2 of the Amended Plan.

¹⁵ See paragraph 3 of the Amended Plan.

not be filed with the Commission as an amendment to the Amended Plan, provided that the Parties are only adding to, deleting from, or confirming changes to the rules of the Bats Exchanges in the Certification in conformance with the definition of Common Rules provided in the Amended Plan. However, should the Parties decide to add a rule of a Bats Exchange to the Certification that is not substantially similar to a FINRA rule; delete a rule of a Bats Exchange from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a Bats Exchange rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Amended Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act.¹⁶

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purposes of the amendment are to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e-4 under the Act, and to update the names of the Bats Exchanges. By declaring it effective today, the Amended Plan can become effective and be implemented without undue delay. The Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.¹⁷ Furthermore, the Commission does not believe that the

¹⁶ The Commission also notes that the addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Amended Plan for examining, and enforcing compliance by, Common Members, also would constitute an amendment to the Amended Plan.

¹⁷ See Securities Exchange Act Release No. 79057 (October 6, 2016), 81 FR 70728 (October 13, 2016).

amendment to the plan raises any new regulatory issues that the Commission has not previously considered.¹⁸

VI. Conclusion

This Order gives effect to the Plan filed with the Commission in File No. 4-705. The Parties shall notify all members affected by the Plan of their rights and obligations under the Plan.

IT IS THEREFORE ORDERED, pursuant to Section 17(d) of the Act, that the Plan in File No. 4-705, between FINRA, BZX, BYX, EDGA, and EDGX, filed pursuant to Rule 17d-2 under the Act, is approved and declared effective.

IT IS FURTHER ORDERED that BZX, BYX, EDGA, and EDGX are relieved of those responsibilities allocated to FINRA under the Plan in File No. 4-705.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

J. Matthew DeLesDernier
Assistant Secretary

¹⁸ See, e.g., Securities Exchange Act Release No. 85189 (February 25, 2019), 84 FR 7153 (March 1, 2019) (order approving an amendment to add Rule 14e-4 to a plan between FINRA and Miami International Securities Exchange, LLC, MIAX PEARL, LLC, and MIAX Emerald, LLC).

¹⁹ 17 CFR 200.30-3(a)(34).