

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-95020; File No. SR-NYSECHX-2022-10)

June 1, 2022

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Investigation, Disciplinary, Sanction, and Other Procedural Rules Modeled on the Rules of the Exchange's Affiliates

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 May 20, 2022, the NYSE Chicago, Inc. ("NYSE Chicago" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt investigation, disciplinary, sanction, and other procedural rules modeled on the rules of its affiliates, and to make certain conforming and technical changes. 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

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<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.

received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt investigation, disciplinary, sanction, and other procedural rules modeled on the rules of its affiliates, and to make certain conforming and technical changes.

**Background and General Description of Proposed Rule Change**

Beginning in 2013, each of the Exchange’s affiliates have adopted rules relating to investigation, discipline, sanction, and other procedural rules based on the rules of the Financial Industry Regulatory Authority (“FINRA”).<sup>4</sup> To facilitate rule harmonization among self-regulatory organizations (“SROs”), the Exchange proposes the NYSE Chicago Rule 10.8000 and 10.9000 Series based on the text of the NYSE Arca Rule 10.8000 and Rule 10.9000 Series, with certain changes, as described below.

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<sup>4</sup> In 2013, the Commission approved the New York Stock Exchange LLC’s (“NYSE”) adoption of FINRA’s disciplinary rules. See Securities Exchange Act Release No. 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR-NYSE-2013-02). In 2016, NYSE American LLC (“NYSE American”) adopted its Rule 8000 and Rule 9000 Series based on the NYSE and FINRA Rule 8000 and Rule 9000 Series. See Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR-NYSEMKT-2016-30). In 2018, the Commission approved NYSE National, Inc.’s (“NYSE National”) adoption of the NYSE National Rule 10.8000 and Rule 10.9000 Series based on the NYSE American and FINRA Rule 8000 and Rule 9000 Series. See Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR-NYSENat-2018-02). In 2019, NYSE Arca, Inc. (“NYSE Arca”) adopted the NYSE Arca Rule 10.8000 and 10.9000 Series based on the NYSE American Rule 8000 and Rule 9000 Series. See Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR-NYSEArca-2019-15) (“NYSE Arca Notice”).

The Exchange notes that all but five Participants<sup>5</sup> are already subject to similar rules by virtue of their membership in the NYSE, NYSE American, NYSE National, NYSE Arca, FINRA and/or the NASDAQ Stock Market LLC (“NASDAQ”), whose disciplinary rules are similar to FINRA’s rules. The overwhelming majority of Exchange’s Participant and Participant Firms are thus already subject to rules similar to the proposed rules described herein.

Set forth below are (1) a description of the Exchange’s current disciplinary rules (current Article 12, Rules 1-10, and Article 13); (2) a description of the proposed rule change and transition; (3) a more detailed description of the proposed rules with a comparison to the current rules; (4) a description of technical and conforming amendments; and (5) a description of current rules that will not be carried over into the proposed rule set and the reason(s) therefor.

### **Description of Current NYSE Chicago Article 12**

The Exchange’s current rules governing disciplinary proceedings and appeals are set forth in Article 12 (Disciplinary Matters and Trial Proceedings Investigation and Charges) in Rules 1 through 10.

#### **Article 12, Rule 1 (Investigation and Charges)**

Article 12, Rule 1 concerns investigations and the commencement of disciplinary actions by the Exchange.

Article 12, Rule 1(a) governs investigations and the written report of investigative

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<sup>5</sup> There are currently 66 Participants on the Exchange. The term “Participant” is defined in Article 1, Rule 1(s) to mean, among other things, any Participant Firm that holds a valid Trading Permit and that a Participant shall be considered a “member” of the Exchange for purposes of the Act. If a Participant is not a natural person, the Participant may also be referred to as a Participant Firm, but unless the context requires otherwise, the term Participant shall refer to an individual Participant and/or a Participant Firm. For the avoidance of doubt, this rule filing and the proposed disciplinary rules will use the phrase Participant and/or Participant Firm.

findings. Under Article 12, Rule 1(a), the staff of the Market Regulation Department has the authority to conduct investigations of any possible violation of any Exchange rule or any provision of the federal securities laws (or any rule thereunder) by any Participant, associated person<sup>6</sup> thereof or any other person or organization subject to the jurisdiction of the Exchange. Except in emergency situations, Article 12, Rule 1(a) requires staff to prepare a written report of such investigation whenever seeking to institute a proceeding pursuant to Article 12, Rule 1(b)(1) to be presented to the Chief Regulatory Officer (“CRO”).

Article 12, Rule 1(b)(1)-(2) govern written charges. Under Article 12, Rule 1(b)(1), if in the CRO’s judgment it appears from the written investigative report that any Participant, Associated Person thereof or any other person or organization subject to the Exchange’s jurisdiction (the “Respondent”) is violating or has violated any provision of the Bylaws, Exchange rules or of the federal securities laws or the regulations thereunder, the CRO shall direct staff to prepare and present written charges against the Respondent, except as otherwise provided in the Exchange’s rules. The written charges must identify each Respondent and specifically state each Exchange rule or provision of the federal securities laws (or any rule thereunder) alleged to have been violated. Charges must be served upon a Respondent and filed with the Secretary of the Exchange (the “Secretary”).

Article 12, Rule 1(b)(2) provides that, in addition to the process set out in paragraph (1) above, the Board of Directors (the “Board”) and the Executive Committee each have the authority to direct the CRO to authorize the institution of a disciplinary proceeding when, on information and belief, either the Board or the Committee is of the opinion that any Participant,

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<sup>6</sup> “Associated Person” has the meaning set forth in Section 3(a)(21) of the Exchange Act. See Article 1, Rule 1(d). The term is sometimes capitalized in the Exchange’s rules and will be capitalized herein.

Associated Person thereof or any other person or organization subject to the jurisdiction of the Exchange is violating or has violated any provision of the Bylaws or rules of the Exchange or of the federal securities laws or the regulations thereunder.

Article 12, Rule 1(c) governs service of charges, orders, notices or any instrument on Respondents and provides that these may be served upon the Respondent either personally or by leaving same at his or its place of business during office hours or by deposit in the United States post office, postage prepaid via registered or certified mail with return receipt requested, addressed to the Respondent at the last business address given by the Respondent to the Exchange.

The settlement procedure is set forth in Article 12, Rule 1(d). A Respondent can settle a proceeding instituted pursuant to Article 12, Rule 1, at any time by entering into a settlement agreement with the Exchange without admitting or denying the charges, except as to jurisdiction, which must be admitted. Under the rule, settlement agreements must include a waiver by the Respondent of all rights of appeal to the Executive Committee, the Board, Securities and Exchange Commission (the "Commission"), and United States Court of Appeals or to otherwise challenge or contest the validity of the decision if the offer of settlement is accepted. The rule also requires settlement agreements to contain a proposed penalty to be imposed which must be reasonable under the circumstances and consistent with the seriousness of the alleged violations.

All settlement agreements require CRO approval. Where the CRO rejects an offer of settlement, the offer of settlement is deemed withdrawn and will not be given consideration in the determination of the issues involved in the disciplinary proceeding. Moreover, the Respondent will be granted an additional 10-day period from the time of receipt of the non-acceptance of the offer to file any response required under Article 12, Rule 5(b), described

below.

Supplementary Material .01 to Article 12, Rule 1 provides that prior to making a report pursuant to paragraph (a) of Rule 1, the staff may notify the person(s) who is (are) the subject of the report of the general nature of the allegations and of the specific provisions of the Act, rules and regulations promulgated thereunder or constitutional provisions, by-laws or rules of the Exchange or any interpretation thereof or any resolution of the Board regulating the conduct of business on the Exchange, that appear to have been violated. Under the rule, the subject(s) may, within the time frame set forth in the notice from the staff, submit a written statement to the Exchange setting forth their interests and position in regard to the subject matter of the investigation. To assist a subject in preparing such a written statement he or she shall, upon request, have access to any documents and other materials in the investigative file of the Exchange that were furnished by him or her or his or her agents to the Exchange.

**Article 12, Rule 2 (Summary Procedure)**

Article 12, Rule 2 sets forth the Exchange's summary procedure rules.

Under Article 12, Rule 2(a), if in the CRO's judgment it appears from the investigation and report provided for in Article 12, Rule 1(a) that the Respondent committed a minor infraction of the Bylaws or Rules of the Exchange, the CRO may summarily censure the Respondent or impose a fine not in excess of \$500 or both.

Any fine imposed pursuant to subsection (a) of Article 12, Rule 2 and not contested shall not be publicly reported, except as may be required by Rule 19d-1 under the Act, and as may be required by any other regulatory authority.

Any contested fine will be publicly reported to the same extent that Exchange disciplinary proceedings will be publicly reported. In any action taken by the Exchange pursuant

to Article 12, Rule 2, the person against whom a fine is imposed shall be served (as provided in Article 12, Rule 1(c)) with a written statement signed by the CRO or his designee, setting forth the

- (1) rule(s) or policy(ies) alleged to have been violated;
- (2) act or omission constituting each such violation;
- (3) fine imposed for each such violation;
- (4) date on which such action is taken; and
- (5) date on which such determination becomes final and such fine becomes due and payable to the Exchange, or on which such action must be contested as provided below.

Any person against whom a minor fine is imposed under the Rule may contest the Exchange's determination by filing with the Secretary not later than 30 days after the service of the Notice of Fines, a written response meeting the requirements of an Answer as provided in Article 12, Rule 4(b) at which point the matter shall become a "Disciplinary Proceeding" subject to the provisions of Article 12 applicable to disciplinary proceedings.

Article 12, Rule 2(b)(1) governs collateral proceedings involving a Participant, partner, officer, registered employee or Associated Person that is suspended or expelled from any other securities exchange or any national securities association, or is suspended or barred from being associated with any member or member organization of such exchange or association, or is suspended or barred by any governmental securities agency from dealing in securities or being associated with any broker or dealer in securities. In those circumstances, the CRO may suspend or expel such person or organization as a Participant, partner, officer, registered employee or Associated Person. Pursuant to the Rule, no such suspension by the CRO may commence before or expire after the suspension imposed by such other exchange, association or agency, and no

such expulsion may be imposed by the CRO unless such person or organization has been expelled or barred by such other exchange, association or agency. Finally, Article 12, Rule 2(b) does not preclude any proceeding against any Participant, partner, officer, registered employee or Associated Person under any other Rule of the Exchange.

Under Article 12, Rule 2(b)(2), the procedure required by Article 12, Rule 1 is inapplicable to contested proceedings under Article 12, Rule 2(b). A Respondent in a collateral proceeding, however, must be given not less than ten days' notice in writing that the Chief Executive Officer (“CEO”) will appoint a Hearing Officer pursuant to the provisions of Article 12, Rule 5 to conduct a hearing to determine whether or not to suspend or expel the Respondent as provided in Article 12, Rule 2(b).

At such hearing, the respondent Participant or any respondent partner, officer, registered employee or associated person of a Participant Firm shall be afforded an opportunity to explain why it would be inappropriate for the Hearing Officer to accept the finding of such other exchange, association or agency or to suspend or expel the Respondent notwithstanding the suspension, expulsion or bar by such other exchange, association or agency. In the event that the Hearing Officer determines not to accept the finding by such other exchange, association or agency, he may order a proceeding under any other Rule of Article 12. In the event that the Respondent fails or refuses to appear before the Hearing Officer, the Hearing Officer may nevertheless determine the matter and suspend or expel the Respondent as provided in Article 12, Rule 2(b). A written notice of the result shall be served upon the Respondent in a manner provided by Article 12, Rule 1(c) and a copy shall be sent to each member of the Board.

Any action by the Hearing Officer pursuant to Article 12, Rule 2(b) can be reviewed in accordance with the procedure specified in Article 12, Rule 6. In the event no request for review

is filed within 15 days after the Respondent is notified of the determination of the Hearing Officer, such determination shall become final and not subject to appeal at the Exchange.

Under Article 12, Rule 2(b)(3), a Participant, partner, officer, registered employee or Associated Person may consent to the penalty or suspension or expulsion from the Exchange solely by reason of the imposition of the suspension, expulsion or bar by such other exchange, association or agency, and without either the separate determination of the Hearing Officer as provided above in Article 12, Rule 2(b)(2) or the procedure provided by Article 12, Rule 1. The required consent takes effect immediately and must be in writing, signed by the Respondent, and delivered to the Exchange not later than two business days after the Exchange gives the Respondent with written notice of a proceeding under Article 12, Rule 2(b).

**Article 12, Rule 3 (Admission of Charges by Respondent)**

Article 12, Rule 3 governs admission of charges by a Respondent.

Under Article 12, Rule 3(a), where a respondent makes a written admission of charges prepared and presented pursuant to Article 12 and waives his or its right to be heard on the penalty to be imposed, the CRO may determine and impose the penalty. The CRO's determination is final.

Under Article 12, Rule 3(b), if a Respondent makes written admission of the charges and also makes a written request for a hearing on the penalty to be imposed, the CRO shall promptly order a hearing be conducted pursuant to the procedures set forth in Article 12, Rule 5 that would be limited to such matters as are in extenuation or aggravation of the circumstances or as shall have material bearing on the penalty only. Under the Rule, the Respondent and the staff who investigated the charges shall be given an opportunity to be heard at such hearing conducted for the purpose of determining the penalty. A written notice of the result shall be served upon the

Respondent in a manner provided by Rule 1(c) of this Article. Any penalty imposed under this paragraph may be reviewed pursuant to Rule 6 of this Article.

**Article 12, Rule 4 (Hearing Procedure)**

Article 12, Rule 4 sets forth hearing procedures.

Article 12, Rule 4(a) provides that, in the absence of a written admission by the Respondent or other settlement of charges pursuant to Article 12, Rule 1(d), a hearing of the charges before a Hearing Officer appointed by the CEO for the purpose of conducting the particular hearing shall be held.

Subsection (b) governs the answer to charges, and provides that a written answer to the charges shall be filed by the Respondent with the Secretary (with copies to the Market Regulation Department) within 30 days from the date of service of the charges or within such further time as the Hearing Officer may grant. The answer to the charges must specifically admit or deny each charge, and any charge not specifically denied is deemed to be admitted. Affirmative defenses must be asserted in the answer or deemed waived. If a Respondent fails to file an answer within the required timeframe, the allegations of the charging document are deemed admitted, and the Hearing Officer will hold a hearing to determine the appropriate sanctions.

Subsection (c) sets forth prehearing procedure. Article 12, Rule 4(c)(1) provides that the parties must exchange witness lists for the hearing no less than 30 days prior to the hearing. No person who is not identified on a witness list will be permitted to give evidence at the hearing, unless the party requesting the testimony of such witness shows good cause for failing to have previously included the person on the witness list and the party requesting the testimony of such witness can show that the failure to permit such testimony would result in undue hardship.

Subsection (c)(2) provides that any party may request production of all or some of the documents<sup>7</sup> that its adversary intends to introduce as evidence either in support of or to counter the charges. Production requests for some of the documents to be introduced as evidence must reasonably specify which documents are to be produced, and the party making the request shall do so at least 45 days prior to the hearing and be responsible for paying all reasonable costs associated with the production of such documents.

Further, the rule provides that all documents must be produced at least 30 days prior to the hearing. If a request is made to produce all or some of the documents that are intended to be introduced as evidence at the hearing, the party responding to the request will be precluded from introducing at the hearing any documents that were not produced in response to the request, unless (1) there is good cause shown for failing to produce the document(s) 30 days prior to the hearing, and (2) failure to permit introduction of such evidence would result in undue hardship.

Upon request of any party, the Hearing Officer may shorten or lengthen the time periods for the exchange of witness lists or the production of documents.

Subsection (d) governs the conduct of the hearing. Under Article 12, Rule 4(d), the Hearing Officer must schedule the time and place at which the Hearing shall be held within 30 days of the filing of an answer by the Respondent.

The rule further provides that formal rules of evidence do not apply in any part of any disciplinary proceedings, although the parties may stipulate as to the rules relating to the introduction of evidence at the hearing. Such stipulations must be in writing and filed with the Hearing Officer and the Secretary no less than 5 days prior to the scheduled date for the

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<sup>7</sup> For purposes of Article 12, Rule 4(c), the term “documents” means a writing, drawing, graph, report, table, chart, photograph, video or audio recording, or any other data compilation, including data stored by computer, from which information can be obtained.

commencement of the hearing.

The Respondent has the right to be present at the hearing and be permitted to examine and cross-examine all witnesses produced by the Exchange, and also to present testimony, defense or explanation. The rule affords the Market Regulation Department the right to produce witnesses and other evidence in support of the charges, cross-examine all witnesses produced by the Respondent, and introduce additional witnesses and evidence solely in rebuttal to the Respondent's evidence. The Respondent in turn has the right to cross-examine any rebuttal witnesses and enter additional evidence to counter any rebuttal evidence entered by the Exchange staff. Both parties have the right to make opening and closing oral arguments. The Market Regulation Department has the right to make a rebuttal oral argument after Respondent's opening and closing argument. Finally, Article 12, Rule 4(d) requires that a transcript of the testimony at the proceedings be made.

Article 12, Rule 4(e) governs appointment of the Hearing Officer and requires that the Hearing Officer for each particular matter be selected by the CEO. Under the rule, prospective Hearing Officers must disclose to the Exchange their employment history for the past 10 years, any past or current material business or other financial relationships with the Exchange or any members of the Exchange, and any other information deemed relevant by the Exchange. Disclosures relating to the particular Hearing Officer selected by the CEO must be provided to a Respondent upon request after the selection of the Hearing Officer. In selecting a Hearing Officer for a particular matter, the CEO should give reasonable consideration to the prospective Hearing Officer's professional competence and reputation, experience in the securities industry, familiarity with the subject matter involved, the absence of bias and any actual or perceived conflict of interest, and any other relevant factors.

Article 12, Rule 4(f) governs the decision of the Hearing Officer. After considering the entire record, a Hearing Officer must prepare a written Order setting forth the determination as to whether the Respondent committed the violations alleged in the charging document or otherwise established at the Hearing and, if so, the sanction(s) to be imposed. The Hearing Officer must sign two copies of the written Order and deliver one signed copy to the Respondent and file the other with the Secretary (with copies to the Market Regulation Department).

The rule requires the Order to make specific findings as to each charge brought by the Exchange and, where a violation is found, impose appropriate sanctions, including expulsion or suspension of a Participant's Trading Permit, the imposition of limitations on the activities, privileges, functions, and/or operations of a Participant or person associated with a Participant, the imposition of fine(s), censure, suspending or barring a person or organization from being associated with a Participant or any other fitting sanction. Absent the granting of an extension of time by either the Board or the Executive Committee for good cause shown, the Hearing Officer shall issue an Order within 90 days of the conclusion of the hearing.

Article 12, Rule 4(g) governs a Respondent's right to counsel. Under Article 12, Rule 4(g), Respondent shall have the right to be represented by legal or other counsel at the Respondent's own expense except in the case of summary procedure under Article 12, Rule 2(a), Rule 3 or Rule 4(a), and under the Minor Rules Violation Plan ("MRVP") of Article 12, Rule 8.<sup>8</sup> The rule also provides that preparation of the charges and the presentation of evidence in support of charges is the responsibility of the Market Regulation Department and that Exchange counsel shall be counsel to the Hearing Officer. Pursuant to Article 12, Rule 4(g), Exchange counsel

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<sup>8</sup> Article 12, Rule 4(g) mistakenly refers to the MRVP as being in Article 12, Rule 9 which, as noted below, is marked "Reserved." See note 12 [sic], infra.

must not be an employee in the Market Regulation Department and must not have directly participated in any examination, investigation or decision associated with the initiation or conduct of the particular proceeding.

Article 12, Rule 4(h) governs the impartiality of Hearing Officer. The rule requires that when a Hearing Officer considers a disciplinary matter, he or she is expected to function impartially and independently of the staff members who prepared and prosecuted the charges. Under the rule, Exchange counsel may assist the Hearing Officer in preparing his written recommendations or judgments.

Within 15 days of the appointment of the Hearing Officer, a Respondent may move for disqualification of the Hearing Officer based upon bias or conflict of interest. Motions to disqualify a Hearing Officer must be in writing, state with specificity the facts and circumstances giving rise to the alleged bias or conflict of interest, and filed with the Hearing Officer and the Secretary (with copies to the Market Regulation Department). The Exchange may file a brief in opposition to the Respondent's motion within 15 days of service. Article 12, Rule 4(h) requires the Hearing Officer to rule on such motions no later than 30 days from filing by the Respondent. Prior adverse rulings against the Respondent or his attorney in other matters do not, in and of themselves, constitute grounds for disqualification. If a Hearing Officer believes the Respondent has provided satisfactory evidence in support of the motion to disqualify, the Hearing Officer shall remove himself or herself and request the CEO to reassign the hearing to another Hearing Officer. If the Hearing Officer determines that the Respondent's grounds for disqualification are insufficient, the Hearing Office must deny the Respondent's motion for disqualification by setting forth the reasons for the denial in writing. The Hearing Officer will thereupon proceed with the hearing. Ruling by the Hearing Officer on motions to disqualify are not subject to

interlocutory review.

**Article 12, Rule 5 (Review)**

Article 12, Rule 5 governs review of penalties and decisions.

Subsection (a) of Article 12, Rule 5 provides for review by the Judiciary Committee. The Judiciary Committee is governed by Article 2, Rule 3, which provides that whenever, in accordance with the Rules, a disciplinary matter is to be reviewed by a Judiciary Committee, the CEO shall appoint five disinterested Participants of the Exchange and/or general partners or officers of Participant Firms as a Judiciary Committee, for that purpose. A new Judiciary Committee is appointed to consider and determine each such matter. In the event of a vacancy on a Judiciary Committee after it has begun its proceedings, the remaining members appointed by the CEO shall complete consideration and disposition of the matter. Once a Judiciary Committee has determined the matter for which it was appointed and has notified the Secretary in writing of its decision, it shall be dissolved automatically.

Under Article 12, Rule 5(a), a Respondent has 15 days from the date of service of notice of a penalty imposed under Article 12, Rule 2(b), Rule 4(b) or Rule 5 to demand a review of the penalty imposed. The Exchange in turn has 15 days from the date of service of notice of an Order under Article 12, Rule 2(b), Rule 4(b)<sup>9</sup> or Rule 5 containing a decision with a finding that the Respondent did not commit any of the violations as alleged in the charging document or imposing a penalty that Exchange staff deems inadequate to demand a review thereof.

Demand for review shall be made in writing and filed with the Secretary, with copies to the opposing party. In the event no request for review is filed within 15 days after the parties are

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<sup>9</sup> Article 12, Rule 5(a) mistakenly refers to an Order under Article 12, Rule 4(b). As discussed, Article 12, Rule 4(b) governs answers to charges. The Hearing Officer's decision is governed by subsection (f).

notified of the Hearing Officer's determination, such determination becomes final and conclusive.

Under Article 12, Rule 5(a), a Judiciary Committee appointed by the Board or the Executive Committee will review the terms of an Order under Article 12, Rule 2(b), Rule 4(b) or Rule 5. Under Article 12, Rule 5, the Judiciary Committee may not reverse, or modify, in whole or in part, the decision of the Hearing Officer under Article 12, Rule 2(c), Rule 4(b) or Rule 5 if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. Modifications may include an increase or decrease of the penalty imposed. Unless the Judiciary Committee decides to open the record for the introduction of evidence to hear argument, such review shall be upon the factual record as certified to the Judiciary Committee by the Secretary.

Under Article 12, Rule 5(a), both the Respondent and the Exchange staff have the right to file memoranda (not to exceed 25 pages, inclusive of attachments). The appellant must file its memorandum with the Secretary within 45 days of service of the notice of appeal, or within such other time as directed by the Executive Committee. The appellee must file its memorandum within 30 days of the filing of the appellant's memorandum, or within such other time as directed by the Executive Committee. In its sole discretion, the Judiciary Committee may hear oral argument by the parties. The decision of the Judiciary Committee must be in writing and address the principal arguments forwarded by the appellant and appellee. The decision of the Judiciary Committee will be the final decision of the Exchange, except as provided in Article 12, Rule 5(b), described below.

Article 12, Rule 5(b) provides a process for review by the Board of matters subject to Judiciary Committee review under Rule 5(a). Article 12, Rule 5(b) provides that,

notwithstanding Article 12, Rule 5 (a), if the Judiciary Committee determines that a matter presented to it for review involves an issue of sufficient importance, it may request that the Board, rather than the Judiciary Committee, conduct the review. The Board may in its discretion determine to review any decision of the Judiciary Committee. Under Article 12, Rule 5(b), any review by the Board shall be upon the record as certified to the Board by the Secretary, and the Board may not reverse or modify any decision if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The Board may also consider any memoranda submitted by the Respondent or Exchange staff to the Judiciary Committee pursuant to Article 12, Rule 5(a). The Board may, in its sole discretion, hear oral argument by the parties. Under the rule, modifications may include an increase or decrease of the penalty imposed on the Respondent. Any decision by the Board shall be the final decision of the Exchange.

**Article 12, Rule 6 (Effective Date of Judgment)**

Article 12, Rule 6 governs the effective date of judgments. The rule provides that enforcement of any Orders or penalties imposed under Article 12 shall be stayed upon the filing of a notice of appeal under Article 12, Rule 6(a) pending the outcome of final review by a Judiciary Committee or the Board as provided for in Article 12 or until the decision otherwise becomes final, subject, however, to the power of the Hearing Officer to impose such limitations on the Respondent as are necessary or desirable, in the Hearing Officer's judgment, for the protection of the Respondent's customers, creditors or the Exchange or for the maintenance of just and equitable principles of trade.

**Article 12, Rule 7 (Disciplinary Jurisdiction)**

Article 12, Rule 7 describes the Exchange's disciplinary jurisdiction.

Article 12, Rule 7(a) provides that a Participant or a person associated with a Participant alleged to have violated or aided and abetted a violation of any provision of the Act, the rules and regulations promulgated thereunder, or any constitutional provisions by-law or rule of the Exchange or any interpretation thereof or resolution of the Board of the Exchange regulating the conduct of business on the Exchange is subject to the disciplinary jurisdiction of the Exchange and, after notice and opportunity for a hearing, may be appropriately disciplined by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a Participant or any other fitting sanction, in accordance with the provisions of these Rules.

Subsection (b) of Article 12, Rule 7 provides that any Participant or person associated with a Participant shall continue to be subject to the disciplinary jurisdiction of the Exchange following such person's termination of their Trading Permit or association with a Participant with respect to any matter that occurred prior to such termination; provided that written notice of the commencement of an inquiry into such matters is given by the Exchange to such former Participant or Associated Person within one year of receipt by the Exchange of written notice of the termination of such person's status as a Participant or person associated with a Participant.

### **Rule 8 (Minor Rule Violations)**

Article 12, Rule 8 sets forth the Exchange's MRVP.<sup>10</sup> Under Article 12, Rule 8, in lieu

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<sup>10</sup> The Exchange adopted its current MRVP in 1996. See Securities Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (June 6, 1996) (SR-CHX-95-25) (Order). The original procedure authorizing the Exchange, in lieu of commencing disciplinary proceeding, to impose a fine, not to exceed \$2,500, on any member, member organization, associated person or registered or nonregistered employee of a member or member organization for any violation of an Exchange rule which the Exchange determines to be minor in nature was contained in Article 12, Rule 9, now Article 12, Rule 8. The recommended dollar amounts for the first, second, third and subsequent violations, as calculated on a twelve-month rolling basis, of a rule designated as a minor

of commencing a “disciplinary proceeding” as that term is used in Article 12 of the Exchange’s rules, the Exchange may, subject to the requirements set forth in this Rule, impose a censure or fine, not to exceed \$5,000,<sup>11</sup> on any Participant, Associated Person, or registered or non-registered employee of a Participant, for any violation of a rule of the Exchange, which violation the Exchange shall have determined is minor in nature.<sup>12</sup> For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6.6800 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.

Any censure or fine imposed pursuant to Article 12, Rule 8 and not contested shall not be publicly reported, except as may be required by Rule 19d-1 under the Act, and as may be required by any other regulatory authority. Any censure or fine that is contested may be publicly

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rule violation was contained in a separate Recommended Fine Schedule in the Fee Schedule. See id., 61 FR at 28918-19 & n. 10.

In 2011, the Exchange increased the maximum fine pursuant to the MRVP from \$2,500 to \$5,000 and also increased the recommended fines from \$100/\$500/\$1000 for 1st, 2nd and 3rd tier fines, respectively, to \$250/\$750/\$1500. The Exchange also recommended fines of \$500/\$1000/\$2500 for other, more serious trading rule violations (i.e., ones involving the potential for customer harm), as well as violations of the obligation to establish, maintain and enforce written supervisory procedures, and to provide information to the Exchange in connection with regulatory inquiries or other matters. Recommended fines of \$1000/\$2500/\$5000 were reserved for Trading Ahead violations. The Exchange also expanded the rolling time period in which violations would result in escalation to the next highest tier from 12 to 24 months. See Securities Exchange Act Release No. 64370 (April 29, 2011), 76 FR 25727, 25727 (May 5, 2011) (SR-CHX-2011-07) (Notice); Securities Exchange Act Release 64686 (June 16, 2011), 76 FR 36596 (June 22, 2011) (SR-CHX-2011-07) (Order).

<sup>11</sup> Proposed Rule 10.9217 would retain the Exchange’s maximum \$5,000 fine for minor rule violations under current Article 12, Rule 8.

<sup>12</sup> As set forth in Article 12, Rule 8(f), the Exchange is not required to impose a censure or fine with respect to the violation of any rule or policy included in any such listing and the Exchange shall be free, whenever it determines that any violation is not minor in nature, to proceed under other provisions of Article 12 rather than under Article 12, Rule 8.

reported to the same extent that Exchange disciplinary proceedings may be publicly reported. Any fine imposed pursuant to Article 12, Rule 8 that (1) does not exceed \$2,500 and (2) is not contested, shall be reported by the Exchange to the Securities and Exchange Commission on a periodic, rather than a current, basis, except as may otherwise be required by

Act Rule 19d-1 and by any other regulatory authority. Under Article 12, Rule 8(b), the Chief Enforcement Counsel or CRO have the authority to impose a fine pursuant to the rule.

Under Article 12, Rule 8(c), in any action taken by the Exchange pursuant to the rule, the person against whom a censure or fine is imposed shall be served as provided in Article 12, Rule 1(c) with a written statement, signed by an Exchange officer setting forth (1) the rule(s) or policy(ies) alleged to have been violated; (2) the act or omission constituting each violation; (3) the sanctions imposed for each violation; (4) the date on which such action is taken; and (5) the date on which such determination becomes final and such fine, if any, becomes due and payable to the Exchange, or on which such action must be contested as provided in paragraph (e) of Article 12, Rule 8, such date to be not less than 15 days after the date of service of the written statement. Pursuant to Article 12, Rule 8(d), if the person fined pursuant to the rule pays the fine, such payment is deemed a waiver of any right to a disciplinary proceeding under Article 12 and any right to review or appeal. Commentary .01 to Article 12, Rule 8 provides that, with respect to subsection (d), a failure to pay a fine imposed Article 12, Rule 8 by the time it is due, without timely contesting the action upon which such fine was based pursuant to Article 12, Rule 8(e), shall be deemed a waiver by the person against whom the fine is imposed of such person's right to a disciplinary proceeding under Article 12 and any right to review or appeal.

Under Article 12, Rule 8(e), any person censured or fined pursuant to the rule may contest such censure or fine by filing with the Secretary a written response meeting the

requirements of an Answer as provided in Article 12, Rule 4(b) no later than the date by which such determination must be contested. The Secretary may deny the answer if such answer is untimely or the answer fails to meet the standards of Article 12, Rule 4(b). If the Secretary denies the answer without leave to amend and refile, the sanction imposed by the Exchange pursuant to Article 12, Rule 8(b) shall become final and the censure shall be imposed and/or fine become due and payable. Unless denied by the Secretary, an answer filed by Respondent is deemed accepted, at which point the matter shall become a “Disciplinary Proceeding” subject to the provisions of Article 12 applicable to disciplinary proceedings.

Pursuant to Article 12, Rule 8(f), the Exchange must prepare and announce to its Participants from time to time a listing of the Exchange rules and policies as to which the Exchange may impose censures or fines as provided in this Rule that must also indicate the specific or recommended dollar amount that may be imposed as a fine hereunder with respect to any violation of such rule or policy, or may indicate the minimum and maximum dollar amount that may be imposed by the Exchange with respect to any such violation. In applying the Recommended Fine Schedule, the Exchange shall consider a violation as having occurred at the time that the underlying conduct of the Participant occurred. Nothing in Article 12, Rule 8 requires the Exchange to impose a censure or fine pursuant to this Rule with respect to the violation of any rule or policy included in any such listing and the Exchange shall be free, whenever it determines that any violation is not minor in nature, to proceed under other provisions of Article 12 rather than under Rule 8. Under Article 12, Rule 8(g), any fine assessed under Rule 8 cannot be deemed to satisfy any damages or liability incurred from the violation.

Finally, Article 12, Rule 8(h) sets forth the Exchange rules and policies that are subject to the MRVP.

### **Rule 10 (Pending Proceedings)<sup>13</sup>**

Article 12, Rule 10 provides that the Exchange will report to the Central Registration Depository (“CRD”) the initiation of, and all significant changes in the status of, a formal disciplinary proceeding. For purposes of this rule, significant changes in the status of a pending formal disciplinary proceeding include, but are not limited to, issuance of a decision by the Hearing Officer the filing of an appeal to and/or the issuance of a decision by a Judiciary Committee or the Exchange's Board.

### **Article 13 (Suspension - Reinstatement)**

Article 13 addresses suspensions, and reinstatements.

Article 13, Rule 1 governs automatic suspensions. Under the rule, a Participant failing to perform his or its contracts, or being insolvent, shall immediately inform the Secretary of the Exchange in writing that he or it is unable to perform his or its contracts or is insolvent. Such Participant's Trading Permit shall thereupon be suspended by the CEO and prompt notice of such suspension shall be given to all Participants. Such suspension shall continue until the Participant's Trading Permit is reinstated by the Board.

Article 13, Rule 2 governs emergency suspensions. Under Article 13, Rule 2(a)(1), whenever it appears to the CRO (after verification and with such opportunity for comment by the Participant as the circumstances reasonably permit) that a Participant, or, with respect to Article 13, Rule 2(a)(1)(B), any Associated Person has:

- failed to perform his or its contracts or is insolvent or is in such financial or operational condition or otherwise conducting his or its business in such a manner that he or it cannot be permitted to continue in business with safety to his or its

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<sup>13</sup> Article 12, Rule 9 is marked “Reserved.”

customers or creditors or to the Exchange, including but not limited to, the reasonable belief that the Participant is violating and will continue to violate any provision of the Rules of the Exchange, the federal securities laws (or rules promulgated thereunder) or any condition or restriction imposed pursuant to the provisions of Article 7, Rule 3(d) or Article 7, Rule 8(a) (Article 13, Rule 2(a)(1)(A)); or

- failed to perform or is failing to perform any material responsibility imposed on the Participant as a result of its registration as an Institutional Broker or Market Maker (or an associated person thereof who is registered as an Institutional Broker Representative or Market Maker Authorized Trader, respectively) and, as a result, cannot be permitted to continue in business with safety to its customers or creditors or to the Exchange ((Article 13, Rule 2(a)(1)(B)); or
- been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization (Article 13, Rule 2(a)(1)(C)),

the CRO may suspend such Participant Firm Trading Permit or such Participant's registration under Article 6 or limit or prohibit such Participant, Participant Firm's or associated person with respect to access to services offered by the Exchange, or limit or revoke such Participant's registration as Institutional Broker or Market Maker and if so suspended, revoked, limited or prohibited, prompt notice of action shall be given to all Participants and the written statement described below shall be provided to the person affected by the suspension, limitation or prohibition.

Unless the CRO determines after further inquiry that lifting the suspension, revocation,

limitation or prohibition without further proceedings is appropriate, such suspension, limitation, revocation or prohibition shall continue until the Participant Firm's Trading Permit, such Participant's registration or the access of the associated person is reinstated or terminated pursuant to the provisions of Article 13, Rule 3 or unless otherwise determined pursuant to Article 13, Rule 2(b).

Under Article 13, Rule 2(a)(2), whenever it appears to the CRO that a person who is not a Participant (after verification and with such opportunity for comment by the person as circumstances reasonably permit) does not meet the qualification requirements or prerequisites for access to services offered by the Exchange and such person cannot be permitted to continue to have such access with safety to investors, creditors, Participants or the Exchange, the CRO may limit or prohibit any person with respect to such access.

Under Article 13, Rule 2(a)(3), the CRO shall, within two business days of taking action pursuant to Article 13, Rule 2 (whether with respect to a Participant, an associated person of a Participant or any other person), furnish such person with a written statement setting forth the reasons and specific grounds which constitute the basis for the action taken.

Article 13, Rule 2(b) governs appeals of CRO action under Article 13, Rule 2(a). Subsection (b) provides that, in the event the CRO takes any action pursuant to Article 13, Rule 2(a), any person named in such action shall have the right to appeal. Appeals pursuant to Article 13, Rule 2(b) shall be made by filing a written notice of appeal with the secretary of the Exchange within five days after notification of the action. The notice shall state with particularity the action complained of, the appellant's reasons for taking exception to the decision and the relief sought. Appeals filed under Article 13, Rule 2(b) are considered and decided by a panel appointed by the Board, composed of three Board members, at least two of whom shall be

public members of the Board. No member of such panel shall have any direct or indirect interest in the matter presented before them which might preclude such member from rendering an objective and impartial determination. All appeals heard pursuant to Article 13, Rule 2(b) are expedited to the maximum extent possible and, in any event, shall be heard within ten days. Appellants are notified of the composition of the panel and the time, place and date when the panel will meet. Written materials in support of the appeal or requests to make an oral presentation shall be filed with the panel prior to the date when the panel will meet. The panel will grant requests for oral presentation. After consideration of the appeal, the panel shall, by vote of a majority of its members, affirm, reverse, or modify the action upon which the appeal was made. All decisions by the panel are final.

Finally, under Article 13, Rule 2(c), any appeal from a decision of the CRO shall be made pursuant to the procedures set out in Article 15 (Hearings and Reviews).

Commentary .01 to Article 13, Rule 2 provide that any Exchange Officer designated by the CRO may suspend the trading privileges of a Participant on the Exchange's facilities pursuant to the provisions of Article 13, Rule 2 if a Qualified Clearing Agency refuses to act to clear and settle the trades of that Participant. The CRO must approve any such suspensions within two (2) days of the action. If the CRO does not approve the action taken, the suspension shall be immediately lifted as of the time of his or her decision or after the expiration of two days, whichever is earlier.

Article 13, Rule 3 governs failure to obtain reinstatement and provides that if a Participant suspended under the provisions of Article 13, Rule 1 or Article 13, Rule 2(a) fails to obtain reinstatement within one year from the time of his or its suspension, or within such further time as the Board may grant, or fails to obtain reinstatement as hereinafter provided, his or its

Trading Permit shall be terminated. Any person suspended under Article 13 may, at any time, be reinstated by the Board upon their own motion.

Article 13, Rule 4 sets forth the procedure for reinstatement.

Article 13, Rule 4(a) provides that when a Participant (or any Associated Person) suspended under the provisions of Article 13, Rule 1 applies for reinstatement, he or it shall be investigated by the staff to determine if the circumstances which brought about the suspension have been corrected and if any specified requirements imposed as a condition of reinstatement have been met, prior to the consideration of the application by the Executive Committee.

Article 13, Rule 4(b) provides that if the staff recommends that the applicant not be reinstated, the applicant shall be sent a statement of reasons therefore and may, within 15 days of the receipt thereof, file a request with the Executive Committee that it consider his or its application together with a written statement indicating why in his or its opinion the staff recommendation is in error or insufficient to preclude his or its reinstatement.

Under Article 13, Rule 4(c), if the staff recommends that the applicant be reinstated or if the applicant files a request with the Executive Committee pursuant to Article 13, Rule 4(b), the Executive Committee shall consider and vote upon the application for reinstatement. An affirmative vote of two-thirds of the members of the Executive Committee present at the time of voting shall be required for reinstatement.

Under Article 13, Rule 4(d), in the event the applicant does not receive two-thirds vote, he or it shall have the right to a hearing before the Executive Committee, conducted in accordance with procedures set forth in a notice of such hearing to be given to the applicant. Following the hearing, the Executive Committee shall again vote upon the applicant, a two-thirds vote of the members of the Executive Committee present at the time of voting being required for

reinstatement. The applicant may petition the Board for review of any adverse determination made by the Executive Committee following a hearing, a two-thirds vote of the members of the Board present at the time of voting being required for reinstatement. The Board shall not reverse, modify or remand for further consideration any determination made by the Executive Committee if the factual conclusions in such determination are supported by substantial evidence and such determination is not arbitrary, capricious or an abuse of discretion.

Finally, Article 13, Rule 5 governs termination of rights by suspension and provides that a Participant suspended under the provisions of Article 13 shall be deemed not in good standing and shall be deprived during the term of his or its suspension of all rights and privileges of a holder of a Trading Permit, as provided in Article 3, Rule 2(b). The suspension of a Participant or any Associated Person thereof shall create a vacancy in any office or position held by him.

#### **Proposed Rule Change**

The Exchange proposes the Rule 10.8000 Series (Investigations and Sanctions) and the Rule 10.9000 Series (Code of Procedure), which would be based on the text of the NYSE Arca Rule 10.8000 and 10.9000 Series. The Exchange proposes to include the new disciplinary rules in current Rule 10 that would be renamed “Disciplinary Proceedings; Suspension, Cancellation and Reinstatement.”

Unless otherwise specified below, the individual rules in the proposed Rule 10.8000 Series and Rule 10.9000 Series are based on the individual rules of the counterpart NYSE Arca Rule 10.8000 and 10.9000 Series without any differences, except that the Exchange would:

- describe its own transition process in Article 12, Rule 10 and in proposed Rules 10.8001, 10.8130(d), and 10.9001 as well as for Article 13, which governs suspension and reinstatement;

- use the terms “Participant” and “Participant Firm,” together or separately, as applicable, rather than “ETP Holder,” “OTP Holder” and “OTP Firm,” consistent with the Exchange’s other rules;
- define “covered person” in proposed Rule 10.9120 to mean an Associated Person<sup>14</sup> and any other person subject to the jurisdiction of the Exchange. The NYSE Arca rule is similar except for the reference to Approved Persons, a registration category that has no direct analogue on the Exchange;
- not utilize Floor-Based Panelists referenced in NYSE Arca Rules 9120(q), 9212(a)(2)(B), 9221(a)(3), 9231(b)(2) and (c)(2), and 9232(c) because the Exchange does not have a trading floor;
- retain the text of the Exchange’s currently applicable list of minor rule violations in proposed Rule 10.9217, move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and make certain corrections and additions;<sup>15</sup>
- adopt substantially the same appellate and call for review processes as its affiliate NYSE Arca except that the Exchange will not be adopting appeals panels as provided for in NYSE Arca Rule 3.3 (Board Committees) and NYSE Arca Rule 10.9310(b). NYSE Arca retained appeals panels from its legacy disciplinary

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<sup>14</sup> See Article 1, Rule 1(d). See also *id.* at (d) & note 7 [sic], *supra*.

<sup>15</sup> The Exchange has filed a separate notice and comment filing to adopt proposed Rules 9216(b) and 9217 and to move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and make certain amendments and corrections. See SR-NYSECHX-2022-08. These rules relating to minor rule violations would not be operative until approval of the Exchange’s companion rule filing.

rules. The Exchange does not have a similar current process; and

- make certain other technical and conforming changes as described below and herein.

The Exchange also proposes to adopt the following rules in order to harmonize its rules with those of its affiliates, as described in detail below:<sup>16</sup>

- a new Rule 11.21 governing disruptive quoting and trading activity modeled on NYSE Arca Rule 11.21; and
- a new Article 2, Rule 4 that would create a Committee for Review (“CFR”) as a sub-committee of the Regulatory Oversight Committee (“ROC”) that would replace the Judiciary Committee as the Exchange’s appellate body reviewing disciplinary decisions on behalf of the Board under the proposed disciplinary rules.

Finally, the Exchange proposes certain changes to Article 7, Rule 12 governing non-payment of any debt for Trading Permit fees, fines, transaction fees, or other sums owing the Exchange or its subsidiaries, to reflect that failure to pay any fine, sanction or cost levied in connection with a disciplinary action would be governed by proposed Rule 10.8320.

First, the heading of Article 7, Rule 12 would become “Failure to Pay Fees.” Second, the

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<sup>16</sup> The Exchange has filed a separate filing to adopt a new Rule 11.2210 governing communications with the public that would incorporate FINRA Rule 2210 by reference and rename and amend Article 8, Rule 13 governing advertising, promotion and telemarketing. See SR-NYSECHX-2022-09. The Exchange will also file a request with the Commission for an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act with respect to the incorporation by reference of proposed Rule 11.2210 and to the extent Rule 11.2210 is effected solely by virtue of a change to cross-referenced FINRA rule. To the extent any rules in this proposed filing refer to Rule 11.2210, such rules would not be effective with respect to Rule 11.2210 until such separate filing is operative.

Exchange would replace “any debt for Trading Permit fees, fines, transaction fees, or other sums owing the Exchange or its subsidiaries” with “a fee.” For the avoidance of doubt, and consistent with the requirements of Article 15 (Hearings and Reviews), the Exchange would add text providing that Exchange actions under Article 7, Rule 12 would be subject to the procedural safeguards set forth in Article 15, which sets out the procedures to seek an opportunity to be heard and to appeal from non-disciplinary actions taken by the Exchange pursuant to its Rules. Amended Article 7, Rule 12 would also specify that failure to pay any fine levied in connection with a disciplinary action shall be governed by proposed Rule 10.8320. Finally, the Exchange would remove “pursuant to Article 12” following “disciplinary proceedings.”

### **Transition**

Once the proposed rule change is effective, the Exchange intends to announce by Information Memorandum with at least 30 days advance notice the effective date of the new rules.<sup>17</sup> To further facilitate an orderly transition from the current rules to the new rules, the Exchange proposes that matters already initiated under the current rules would be completed under such rules. The proposed transition is substantially the same as the NYSE Arca transition to its Rule 10.8000 and 10.9000 Series.

Specifically, the Exchange proposes that current Article 12, whose coverage overlaps the proposed Rule 10.8000 and Rule 10.9000 Series, would continue to apply to an investigation or proceeding instituted under Article 12, Rule 1 prior to the effective date of the new rules and would continue to apply until such proceeding was final. Article 12 would also continue to apply to any Participant, Participant Firm or person associated with a Participant or Participant

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<sup>17</sup> The proposed Information Memorandum would be substantially the same as that published for NYSE Arca. See NYSE Arca Equities RB-19-060 NYSE Arca Options RB-19-02 (April 26, 2019).

Firm over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry pursuant to Article 12, Rule 7(b) prior to the effective date of the new rules. In all other cases, the proposed Rule 10.8000 and Rule 10.9000 Series, as described below, would apply.

Until the effective date, the Exchange could suspend from trading on the Exchange any Participant or Participant Firm that fails to pay any debt for Trading Permit fees, fines, transaction fees, or other sums owing the Exchange or its subsidiaries under current Article 7, Rule 12, which would remain in effect until payment was made. Thereafter, the Exchange would proceed against an individual or entity subject to its jurisdiction that failed to pay a fine, monetary sanction, or cost levied in connection with a disciplinary action under proposed Rule 10.8320.

As described above, Article 13, Rule 1 governs automatic suspensions by the CEO of the Exchange of Participants for failure to perform its contracts or being insolvent. Article 13, Rule 2 governing emergency regulatory suspensions by the CRO that overlap with the Rule 10.9500 Series. The Exchange proposes that emergency suspensions under Article 13, Rule 2 would continue to apply to a proceeding for which the Exchange has issued a written notice or statement thereunder prior to the effective date of the new rules. Thereafter, the proposed Rule 10.9500 Series would govern all emergency suspensions. Automatic suspensions under Article 13, Rule 1 would be unaffected by the proposed changes.

When the transition is complete, the Exchange intends to submit a proposed rule change that would delete the provisions of Article 12 and Article 13 that are no longer necessary.

#### Jurisdiction

The Exchange proposes a new Rule 2.0 titled “Disciplinary Jurisdiction” based on current

Article 12, Rule 7, which describes the Exchange’s current disciplinary jurisdiction.<sup>18</sup> Proposed Rule 2.0(a) would be substantially the same as current Article 12, Rule 7(a) except that the Exchange would:

- add “Participant Firm” to the first sentence of the proposed rule to explicitly include such firms and persons associated with Participant Firms within the scope of the Exchange’s jurisdiction;
- include the phrase “or any other person or organization subject to the jurisdiction of the Exchange” in that same first sentence of the proposed rule consistent with current Article 12, Rule 1 and in order to explicitly include such persons or organizations within the scope of the Exchange’s jurisdiction;
- omit the reference to “constitutional provisions” from the list of potential violations as moot since the Exchange no longer has a Constitution;
- conform the potential sanctions with NYSE Arca’s Rule 2.0(a), that exchange’s comparable jurisdiction rule;
- replace the reference to “these Rules” with “the Rule 10.8000 and 10.9000 Series” to add clarity and transparency;
- add the following sentence from NYSE Arca Rule 2.0 in order to harmonize the Exchange’s rules with that of its affiliates and clarify the scope of the Exchange’s disciplinary jurisdiction: “A Participant or Participant Firm may be charged with any violation committed by its employees or other person associated with such Participant or Participant Firm, as though such violation

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<sup>18</sup> The new Rule 2.0 titled “Rule 2.0. Disciplinary Jurisdiction” would appear below “Rule 2 Trading Permits.”

were its own.”

Proposed Rule 2.0(b) would be based on NYSE Arca Rule 2.0(b) and would provide that a Participant or Participant Firm that resigns or has its membership canceled or revoked, and a person who is no longer a covered person as defined in Rule 10.9120 or a covered person whose registration has been revoked or canceled, shall continue to be subject to the Exchange’s disciplinary jurisdiction as set forth in proposed Rule 10.8130.

Proposed Rule 2.0(c) would be based on NYSE Arca Rule 2.0(c). The proposed rule would provide that the Board may authorize any officer, on behalf of the Exchange, subject to the approval of the Board, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Act. The proposed rule would further provide that any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision would affect the oversight of such other self-regulatory organization by the Commission. Finally, proposed Rule 2.0(c) would provide that, notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide.

As proposed, Rule 2.0 would set forth the scope of the Exchange’s disciplinary jurisdiction under the Rule 10.8000 and 10.9000 Series. As discussed below, proposed Rule 10.8130 would address the Exchange’s retention of jurisdiction, and would enable the Exchange to generally retain jurisdiction to file a complaint against a Participant, Participant Firm or a

covered person for two years after such status was terminated. Current Article 12 would continue to apply to any Participant, Participant Firm or covered person over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry under Article 12, Rule 7(b) prior to the effective date.

To continue the current coverage of the Exchange’s disciplinary rules, the proposed rule change would use the terms “Participant,” “Participant Firm” and “covered person,” which would be defined in proposed in Rule 10.9120 to mean an Associated Person<sup>19</sup> and any other person subject to the jurisdiction of the Exchange, to describe the persons to which the proposed Rule 10.8000 and 10.9000 Series apply. The NYSE Arca rule is similar except for the reference to Approved Persons, a registration category that has no direct analogue on the Exchange.

#### **Proposed Rule 10.8000 Series**

The Proposed Rule 10.8000 Series would address Investigations and Sanctions.

Proposed Rule 10.8001 (Effective Date of Rule 10.8000 Series) would include the effective date of the proposed rule change for the Rule 10.8000 Series, noting the exception for the retention of jurisdiction dates in proposed Rule 10.8130(d), as described below.

The text of NYSE Arca Rules 10.8110 through 10.8330 would be adopted as Rules 10.8110 through 10.8330 with proposed changes to reflect the Exchange’s membership and to update the cross-references in proposed Rule 10.8130(b)(1) to the rules governing termination of registration (Article 6, Rule 2; Article 16, Rule 1; and Article 17, Rule 1). Proposed Rule 10.8100 (General Provisions) would include proposed Rules 10.8110 through 10.8130.<sup>20</sup>

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<sup>19</sup> See Article 1, Rule 1(s). See also *id.* at (d) & note 6, *supra*.

<sup>20</sup> NYSE Arca Rules 10.8212, 10.8213, and 10.8312 are marked “Reserved” in the NYSE Arca’s rulebook. As such, to maintain consistency with NYSE Arca’s rule numbering, the Exchange has designated proposed Rules 10.8212, 10.8213, and 10.8312 as “Reserved.”

Proposed Rule 10.8110 (Availability of Rules for Customers) would require Participants and Participant Firms to make available a current copy of the Exchange's rules for examination by customers upon request. Although there is no comparable requirement in the current Rules, the Exchange's rules are currently available on the Exchange's website.<sup>21</sup>

Proposed Rule 10.8120 (Definitions) would provide cross-references to definitions of the terms "Adjudicator," "covered person," and "Regulatory Staff" in proposed Rule 10.9120.

Proposed Rule 10.8120 is technical in nature.

Proposed Rule 10.8130 (Retention of Jurisdiction) would set forth retention of jurisdiction provisions that are substantially the same as NYSE Arca Rule 10.8130, except for (1) references to reflect the Exchange's membership, (2) the cross-references in paragraph (b)(1) and (d), and (3) clarifying in paragraph (d) for purposes of the transition Article 12 would continue to apply to a Participant, Participant Firm or covered person over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry pursuant to Article 12, Rule 7(b) prior to the effective date of the new disciplinary rules.

Generally, subject to proposed Rule 10.8130(d), under the proposed rule change, the Exchange would retain jurisdiction to file a complaint against a Participant, Participant Firm or a covered person for two years after such Participant's, Participant Firm's or covered person's status is terminated. This differs from current Article 12, Rule 7(b), which provides that jurisdiction is retained if a written notice of the commencement of an inquiry into such matters is given by the Exchange to the former Participant or Associated Person within one year of receipt by the Exchange of written notice of the termination of such person's status as Participant or person associated with a Participant. The Exchange believes that the period under the proposed

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<sup>21</sup> The rules are available at <https://nysechicago.wolterskluwer.cloud/rules>.

rule is appropriate because it will harmonize the Exchange's rule with NYSE Arca's rule.

Proposed Rule 10.8200 (Investigations) would set forth the following rules. Proposed Rule 10.8210 (Provision of Information and Testimony and Inspection and Copying of Books) would set forth procedures for the provision of information and testimony and inspection and copying of books by the Exchange.

Proposed Rule 10.8210(a) would require Participant, Participant Firm or a covered person to provide information and testimony and permit the inspection of books, records, and accounts for the purpose of an investigation, complaint, examination, or proceeding authorized by the Exchange's rules. As noted above, under proposed Rule 10.8130, the Exchange would retain jurisdiction over a Participant, Participant Firm or a covered person to file a complaint or otherwise initiate a proceeding for two years after such Participant's, Participant Firm's or covered person's status is terminated; as such, the Exchange can continue to obtain information and testimony during such period and thereafter if a complaint or proceeding is timely filed. The Exchange's current Article 6, Rule 9(a) similarly provides that a Participant or partner, officer, director or other person associated with a Participant or other person or entity subject to the jurisdiction of the Exchange that fails to submit requested documents or information to the Exchange is subject to formal disciplinary action.

Under current Article 6, Rules 9(b), no Participant, or partner, officer, director or other person associated with a Participant or other person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests

such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange pursuant to Article 6, Rule 9(c). The requirements of current Article 6, Rule 9(b) shall apply regardless of whether the Exchange has itself initiated a formal investigation or disciplinary proceeding. Proposed Rule 10.8210(b) provides Exchange staff may exercise the authority set forth in 10.8210(a) for the purpose of an investigation, complaint, examination, or proceeding conducted by another domestic or foreign self-regulatory organization, association, securities or contract market, or regulator of such markets with which the Exchange has entered into an agreement providing for the exchange of information and other forms of material assistance solely for market surveillance, investigative, enforcement, or other regulatory purposes. The Exchange believes that adopting the proposed rule is appropriate because it will harmonize the Exchange's rules with its affiliate's rules with respect to jurisdiction and obtaining books and records from Participants, Participant Firms and persons associated with Participants and Participant Firms. The Exchange accordingly proposes to delete the text of current Article 6, Rules 9(a) and (b).

Finally, proposed Rule 10.8210(a) would provide that, in performing the functions of investigation, complaint, examination, or proceeding authorized by Exchange rules, the CRO and Regulatory Staff would function independently of the commercial interests of the Exchange and the commercial interests of Participants and Participant Firms. The proposed rule would further provide that no member of the Board or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding, to proposed Rule 10.8210(a). The proposed language is based on NYSE Arca Rule 10.8210(a) with no substantive changes. The Exchange does not have a comparable rule and believes that adopting the proposed rule is appropriate because it will harmonize the Exchange's rule with

NYSE Arca's rule in the important area of regulatory independence.<sup>22</sup>

Proposed Rule 10.8210(b)(2) would authorize Exchange staff to enter into regulatory cooperation agreements with a domestic federal agency or subdivision thereof, a foreign regulator, or a domestic or foreign SRO. Under current Article 6, Rule 9(c), the Exchange may enter into agreements with domestic and foreign SROs, but it does not cover domestic agencies and foreign regulators. As such, the Exchange would delete the text of current Article 6, Rule 9(c). The remainder of Article 6, Rule 9, consisting of interpretations and policies in Commentaries .01 and .02, would be deleted as well.

The remainder of proposed Rule 10.8210 would set forth certain procedures for investigations. Proposed Rule 10.8210(c) would require Participants, Participant Firms and covered person to comply with information requests under the Rule.

Proposed Rule 10.8210(d) would provide that a notice under this Rule would be deemed received by the Participant, Participant Firm or covered person (including a currently or formerly registered person) to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the Participant or Participant Firm, or the last known residential address of the covered person as reflected in the Central Registration Depository ("CRD"). With respect to a person who is currently associated with a Participant or Participant Firm in an unregistered capacity, a notice under this Rule would be deemed received by the person by mailing or otherwise transmitting the notice to the last known business address of the Participant or Participant Firm as reflected in CRD. With respect to a person subject to the Exchange's jurisdiction who was formerly associated with a Participant or Participant Firm in an

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<sup>22</sup> As noted below, the last sentence of proposed Rule 10.8210(a) will also be added to proposed Rule 10.9110(a).

unregistered capacity, a notice under the proposed Rule would be deemed received by the person upon personal service, as set forth in Rule 10.9134(a)(1).

If the Adjudicator or Exchange staff responsible for mailing or otherwise transmitting the notice to the Participant, Participant Firm or covered person had actual knowledge that the address in CRD is out of date or inaccurate, then a copy of the notice would be mailed or otherwise transmitted to: (1) the last known business address of the Participant or Participant Firm or the last known residential address of the covered person as reflected in CRD; and (2) any other more current address of the Participant, Participant Firm or covered person known to the Adjudicator or Exchange staff responsible for mailing or otherwise transmitting the notice. If the Adjudicator or Exchange staff responsible for mailing or otherwise transmitting the notice to the Participant, Participant Firm or covered person knew that the such person or entity was represented by counsel regarding the investigation, complaint, examination, or proceeding that is the subject of the notice, then the notice would be served upon counsel by mailing or otherwise transmitting the notice to the counsel in lieu of such person or entity, and any notice served upon counsel would be deemed received by the person or entity.

Current Article 12, Rule 1(c) governs service of charges, orders, notices or any instrument on Respondents and provides that these may be served upon a Participant, Associated Person thereof or any other person or organization subject to the jurisdiction of the Exchange (defined as the “Respondent”) either personally or by leaving same at his or its place of business during office hours or by deposit in the United States post office, postage prepaid via registered or certified mail with return receipt requested, addressed to the Respondent at the last business address given by the Respondent to the Exchange. The changes to proposed Rule 10.8210(d) would harmonize service of process across affiliated exchanges.

Proposed Rule 10.8210(e) would provide that in carrying out its responsibilities under this Rule, the Exchange may, as appropriate, establish programs for the submission of information to the Exchange on a regular basis through a direct or indirect electronic interface between the Exchange and Participants and Participant Firms.

Proposed Rule 10.8210(f) would permit a witness to inspect the official transcript of the witness's own testimony, and permit a person who has submitted documentary evidence or testimony in an Exchange investigation to obtain a copy of the person's documentary evidence or the transcript of the person's testimony under certain circumstances.

Finally, proposed Rule 10.8210(g) would require any Participant, Participant Firm or covered person who in response to a request pursuant to this Rule provided the requested information on a portable media device to ensure that such information was encrypted. The Exchange's current rules do not contain comparable provisions.

Commentary .01 to proposed Rule 10.8210 would require Participants, Participant Firms or covered persons to provide Exchange staff and adjudicators with requested books, records and accounts. In specifying the books, records and accounts ““of such Participant or covered person,”” proposed paragraph (a) of the rule refers to books, records and accounts that the broker-dealer or its covered persons makes or keeps relating to its operation as a broker-dealer or relating to the person's association with the Participant or Participant Firm. This includes but is not limited to records relating to an Exchange investigation of outside business activities, private securities transactions or possible violations of just and equitable principles of trade, as well as other Exchange rules and the federal securities laws. It does not ordinarily include books and records that are in the possession, custody or control of a Participant, Participant Firm or covered person, but whose bona fide ownership is held by an independent third party and the records are

unrelated to the business of the Participant, Participant Firm or covered person. The rule would require, however, that a Participant, Participant Firm or covered person must make available its books, records or accounts when these books, records or accounts are in the possession of another person or entity, such as a professional service provider, but the a Participant, Participant Firm or covered person controls or has a right to demand them. The Exchange's current rules do not contain comparable provisions. The Exchange believes that the additional specificity would provide better notice to persons subject to its jurisdiction.

Proposed Rule 10.8211 (Automated Submission of Trading Data Requested by the Exchange) would set forth the procedures for electronic blue sheets. Because FINRA now performs surveillance functions based on the information gathered as a result of these rules, the Exchange believes that its procedures for electronic blue sheets should be harmonized with FINRA and across affiliated exchanges that have adopted the FINRA rule. Proposed Rule 10.8211 is substantially the same as NYSE Arca Rule 10.8211 except for references reflecting the Exchange's membership.

Proposed Rule 10.8300 (Sanctions) would set forth the following rules.

Proposed Rule 10.8310 (Sanctions for Violation of the Rules) would set forth the range of sanctions that could be imposed in connection with disciplinary actions under the proposed rule change. Such sanctions would include censure, fine, suspension, revocation, bar, expulsion, or any other fitting sanction. These sanctions are substantially the same as the permitted sanctions set forth in current Article 12, Rule 7(a), which are expulsion; suspension; limitation of activities, functions and operations; fine; censure; being suspended or barred from being associated with a Participant; or any other fitting sanction. Although there is some difference between the text of the current and proposed rules, the Exchange believes that in practice the

range of sanctions is the same due to the inclusion in both rules of the general category “any other fitting sanction.”

Proposed Rule 10.8310 would also permit the Exchange to impose a temporary or permanent cease and desist order against a Participant, Participant Firm or covered person. Under proposed Rule 10.8310, each party to a proceeding resulting in a sanction is deemed to have assented to the imposition of the sanction unless such party files a written application for review or relief pursuant to the Rule 10.9000 Series.

Proposed Rule 10.8311 (Effect of a Suspension, Revocation, Cancellation, Bar or Other Disqualification) would provide in subsection (a) that if a person is subject to a suspension, revocation, or cancellation of registration, bar from association with a Participant or Participant Firm or other disqualification, a Participant or Participant Firm shall not allow such person to be associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity. The proposed rule further provides that a Participant or Participant Firm shall not pay or credit to any person subject to a sanction or disqualification, during the period of the sanction or disqualification or any period thereafter, any salary, commission, profit, or any other remuneration that the person might accrue during the period of the sanction or disqualification. However, a Participant or Participant Firm may make payments or credits to a person subject to a sanction that are consistent with the scope of activities permitted under the sanction where the sanction solely limits a covered person from conducting specified activities (such as a suspension from acting in a principal capacity) or a disqualified person has been approved (or is otherwise permitted pursuant to Exchange rules and the federal securities laws) to associate with a Participant or Participant Firm.

Proposed Rule 10.8311(b) would provide that, notwithstanding proposed paragraph (a), a

Participant or Participant Firm may pay to a person that is subject to a sanction or disqualification described in Rule 10.8311(a), any remuneration pursuant to an insurance or medical plan, indemnity agreement relating to legal fees, or as required by an arbitration award or court judgment. Proposed Commentary 01 of the Rule clarified that, notwithstanding the Rule, a Participant or Participant Firm may pay or credit to a person that is the subject of a sanction or disqualification, salary, commission, profit or any other remuneration that the Participant or Participant Firm can evidence accrued to the person prior to the effective date of such sanction or disqualification; provided, however, the Participant or Participant Firm may not pay any salary, commission, profit or any other remuneration that accrued to the person that relates to or results from the activity giving rise to the sanction or disqualification, and any such payment or credit must comply with applicable federal securities laws.

The Exchange does not currently have similar rule that broadly describes the effect of a suspension, revocation, cancellation, bar or other disqualification.

Proposed Rule 10.8313 (Release of Disciplinary Complaints, Decisions and Other Information) would provide, in part, that the Exchange would publish all final disciplinary decisions issued under the proposed Rule 10.9000 Series, other than minor rule violations, on its website. The Exchange does not have a comparable rule.

Proposed Rule 10.8320 (Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay) would govern payment of fines and other monetary sanctions or costs and provide for a summary action for failure to pay by a Participant, Participant Firm or covered person.

Proposed Rule 10.8320(a) would provide that all fines and other monetary sanctions shall be paid to the Treasurer of the Exchange.

Proposed Rule 10.8320(b) and (c) would permit the Exchange, after seven days' notice in writing, to summarily suspend or expel from membership a Participant or Participant Firm or revoke the registration of a covered person for failure to pay a fine or other monetary sanction imposed pursuant to proposed Rule 10.8310 or a cost imposed pursuant to proposed Rule 10.8330 when such fine, monetary sanction, or cost becomes finally due and payable. As noted above, under current Article 7, Rule 12, a Participant or Participant Firm can be suspended for failing to pay a fine within 60 days, after written notice, until payment is made. If payment is not made within six months after such suspension, the Participant's status as a Participant may be terminated by the CEO on at least 10 days' written notice mailed to the Participant or Participant Firm at the address last registered with the Exchange. As NYSE Arca explained in connection with its Rule 10.8320, FINRA's rules do not set forth a notice period but, as a matter of practice, FINRA typically provides a respondent at least 30 days to pay a fine after the conclusion of a proceeding. As NYSE Arca reasoned, a 30-day period, along with the seven days' notice provided under Rule 10.8320, provides respondents with an adequate amount of time to pay a fine and avoid any further sanction by the Exchange.<sup>23</sup> The Exchange proposes to follow the same reasoning for its proposed Rule 10.8320.

For clarity regarding the transition, proposed Rule 8320(d) would provide that the Exchange may exercise the authority set forth in Rules 8320(b) and (c) with respect to non-payment of a fine, monetary sanction, or cost assessed in a disciplinary action initiated under Article 12 for which a decision was issued on or after the transition date.

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<sup>23</sup> See NYSE Arca Notice, 84 FR at 16360. NYSE and NYSE American put forth similar arguments. See Securities Exchange Act Release Nos. 68678 (January 16, 2013), 78 FR 5213, 5222 (January 24, 2013) (SR-NYSE-2013-02) (Notice); 2016 Notice, 81 FR at 11321.

Proposed Rule 10.8330 (Costs of Proceedings) would provide that a disciplined Participant, Participant Firm or covered person may be assessed the costs of a proceeding, which are determined by the Adjudicator. The Exchange believes that Adjudicators should have the discretion to assess costs as they deem appropriate. The Exchange does not have a comparable rule.<sup>24</sup>

### **Proposed Rule 10.9000 Series**

The proposed Rule 10.9000 Series would set forth the Code of Procedure.

### **Proposed Rules 10.9001 through 10.9120**

Proposed Rule 10.9001 (Effective Date of Rule 10.9000 Series) would set forth the effective date of the Rule 10.9000 Series, noting the transitional provisions described above. The text of proposed Rule 10.9001 would include similar introductory text as that proposed for Rules 10.8001. While the transition would be structured in substantially the same manner as NYSE Arca's transition, the Exchange's proposed text would differ from NYSE Arca Rule 10.9001 due to differences in terminology and cross-references. As noted above, Article 12 would apply only to an investigation or proceeding instituted under Article 12, Rule 1 prior to the effective date of the proposed disciplinary rules and would continue to apply until such proceeding is final. Article 12 would also continue to apply to any Participant, Participant Firm or covered person over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry under Article 12, Rule 7(b) prior to the effective date of the

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<sup>24</sup> Rule 13.4 requires a Participant or Associated Person who does not prevail in a lawsuit or other legal proceeding against the Exchange or any of its Directors, officers, committee members, employees or agents, and related to the business of the Exchange, to pay the Exchange all reasonable expenses, including attorneys' fees, incurred in the defense of such proceeding, but only where such expenses exceed \$50,000. This provision is by its terms inapplicable to, among other things, disciplinary proceedings.

proposed disciplinary rules.

Proposed Rule 10.9100 (Application and Purpose) would set forth the following rules.

Proposed Rule 10.9110 (Application) would state the types of proceedings to which the proposed Rule 10.9000 Series would apply (each of which is described below) and the rights, duties, and obligations of Participants, Participant Firms or covered persons, and would set forth the defined terms and cross-references. The proposed rule would also provide that, in performing the functions under the Rule 10.9000 Series, the CRO and Regulatory Staff shall function independently of the commercial interests of the Exchange and the commercial interests of the Participants and Participant Firms. The Exchange does not have a comparable rule.

Proposed Rule 10.9120 (Definitions) would set forth definitions applicable to the Rule 10.9000 Series. The definitions are substantially the same as the definitions set forth in NYSE Arca Rule 10.9120, except that (1) references would reflect the Exchange's membership, and (2) the Exchange would not define "Floor-Based Panelist" in proposed subsection (q) because the Exchange does not have a trading floor. The Exchange would therefore designate paragraph (q) as "Reserved." In order to maintain the same sequence as NYSE Arca Rule 10.9120, paragraphs (b), (i) and (n) of the proposed rule would also be marked "Reserved."

#### **Proposed Rules 10.9130 through 10.9138**

Proposed Rule 10.9130 (Service; Filing of Papers) would govern the service of a complaint or other procedural documents under the Rules.

Proposed Rule 10.9131 (Service of Complaint) would set forth the requirements for serving a complaint or document initiating a proceeding. Proposed Rule 10.9132 (Service of Orders, Notices, and Decisions by Adjudicator) would cover the service of orders, notices, and decisions by an Adjudicator. Proposed Rule 10.9133 (Service of Papers Other Than Complaints,

Orders, Notices, or Decisions) would govern the service of papers other than complaints, orders, notices, or decisions. Proposed Rule 10.9134 (Methods of, Procedures for Service) would describe the methods of service and the procedures for service. Proposed Rule 10.9135 (Filing of Papers with Adjudicator: Procedure) would set forth the procedure for filing papers with an Adjudicator. Proposed Rule 10.9136 (Filing of Papers: Form) would govern the form of papers filed in connection with any proceeding under the proposed Rule 10.9200 and 10.9300 Series. Proposed Rule 10.9137 (Filing of Papers: Signature Requirement and Effect) would state the requirements for and the effect of a signature in connection with the filing of papers. Finally, proposed Rule 10.9138 (Computation of Time) would establish the computation of time.

With respect to service of process, under proposed Rule 10.9134, papers served on a natural person could be served at the natural person's residential address, as reflected in CRD, if applicable. When a Party or other person responsible for serving such person had actual knowledge that the natural person's CRD address was out of date, duplicate copies would be required to be served on the natural person at the natural person's last known residential address and the business address in CRD of the entity with which the natural person is employed or affiliated. Papers could also be served at the business address of the entity with which the natural person is employed or affiliated, as reflected in CRD, or at a business address, such as a branch office, at which the natural person is employed or at which the natural person is physically present during a normal business day. The Hearing Officer could waive the requirement of serving documents (other than complaints) at the addresses listed in CRD if there were evidence that these addresses were no longer valid and there was a more current address available. If a natural person were represented by counsel or a representative, papers served on the natural person, excluding a complaint or a document initiating a proceeding, would be

required to be served on the counsel or representative.

Similarly, under proposed Rule 10.9134, papers served on an entity would be required to be made by service on an officer, a partner of a partnership, a managing or general agent, a contact employee as set forth on Form BD, or any other agent authorized by appointment or by law to accept service. Such papers would be required to be served at the entity's business address as reflected in CRD, if applicable; provided, however, that when the Party or other person responsible for serving such entity had actual knowledge that an entity's CRD address was out of date, duplicate copies would be required to be served at the entity's last known address. If an entity were represented by counsel or a representative, papers served on such entity, excluding a complaint or document initiating a proceeding, would be required to be served on such counsel or representative.

By comparison, current Article 12, Rule 1(c), which governs service of charges, orders, notices or any instrument on Respondents, is less detailed. As noted, it provides that these may be served upon the Respondent either personally or by leaving same at his or its place of business during office hours or by deposit in the United States post office, postage prepaid via registered or certified mail with return receipt requested, addressed to the Respondent at the last business address given by the Respondent to the Exchange. The Exchange believes that the more detailed procedures for service of process in proposed Rules 10.9130 through 10.9138 would increase the likelihood of successful service of process while providing appropriate due process protections to its Participants, Participant Firms and persons associated with Participants and Participant Firms.

#### **Proposed Rules 10.9140 through 10.9148**

Proposed Rule 10.9140 (Proceedings) would contain various rules relating to the conduct

of disciplinary proceedings.

Proposed Rule 10.9141 (Appearance and Practice; Notice of Appearance) would govern appearances in a proceeding, notices of appearance, and representation. Proposed Rule 10.9141 would permit a Respondent to represent himself or herself, or be represented by an attorney at law admitted to practice before the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States. The proposed rule also permits a partnership to be represented by a partner and a corporation, trust, or association to be represented by an officer of such entity. Proposed Rule 10.9141 requires an attorney or representative to file a notice of appearance. Current Article 12, Rule 4(g) is more general; it permits a Respondent to be represented by counsel but do not require a notice of appearance.

Proposed Rule 10.9142 (Withdrawal by Attorney or Representative) would require an attorney or representative to file a motion to withdraw. The Exchange currently does not have a comparable rule.

Subsection (a) of proposed Rule 10.9143 (Ex Parte Communications) would prohibit certain ex parte communications with an Adjudicator or Exchange employee. The Exchange does not have a comparable rule.

Under proposed Rule 10.9143(b), an Adjudicator participating in a decision with respect to a proceeding, or an Exchange employee participating or advising in the decision of an Adjudicator, who received, made, or knowingly caused to be made a communication prohibited by the rule would be required to place in the record of the proceeding (1) all such written communications, (2) memoranda stating the substance of all such oral communications, and (3) all written responses and memoranda stating the substance of all oral responses to all such

communications.

Under proposed Rule 10.9143(c), upon receipt of a prohibited communication made or knowingly caused to be made by any Party, any counsel or representative to a Party, or any Interested Staff, the Exchange or an Adjudicator may order the Party responsible for the communication, or the Party who may benefit from the ex parte communication made, to show cause why the Party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by reason of such ex parte communication. All participants in a proceeding could respond to any allegations or contentions contained in a prohibited ex parte communication placed in the record, and such responses would be placed in the record.

Under proposed Rule 10.9143(d), in a disciplinary proceeding governed by the Rule 10.9200 Series and the Rule 10.9300 Series, the prohibitions of the rule would apply beginning with the authorization of a complaint as provided in Rule 10.9211, unless the person responsible for the communication had knowledge that the complaint would be authorized, in which case the prohibitions would apply beginning at the time of his or her acquisition of such knowledge.

Under proposed Rule 10.9143(e), there would be a waiver of the ex parte prohibition in the case of an offer of settlement; letter of acceptance, waiver, and consent; or minor rule violation letter.

Proposed Rule 10.9144 (Separation of Functions) would establish the separation of functions for Interested Staff and Adjudicators and provide for waivers. The Exchange currently does not have a comparable rule.

Proposed Rule 10.9145 (Rules of Evidence; Official Notice) would provide that formal rules of evidence would not apply in any proceeding brought under the proposed Rule 10.9000

Series. The proposed rule would also provide that in a proceeding governed by the Rule 10.9000 Series, an Adjudicator may take official notice of such matters as might be judicially noticed by a court, or of other matters within the specialized knowledge of the Exchange as an expert body, and that before an Adjudicator proposes to take official notice of a matter, it shall permit a Party the opportunity to oppose or otherwise comment upon the proposal to take official notice.

Current Article 12, Rule 4(d) also provides that formal rules of evidence do not apply. The Exchange's rules do not currently contain a comparable provision to proposed Rule 10.9145(b) governing official notice.

Proposed Rule 10.9146 (Motions) would govern motions a Party may make and requirements for responses and formatting. A Party would be permitted to make written and oral motions, although an Adjudicator could require that a motion be in writing. An opposition to a written motion generally would have to be filed within 14 days, but the moving party would have no right to reply, unless an Adjudicator so permits, in which case such reply generally would be due within five days. Proposed Rule 10.9146 also would permit a Party, a person who is the owner, subject, or creator of a Document subject to production under proposed Rule 10.8210 or any other rule which may be introduced as evidence in a disciplinary proceeding, or a witness who testifies at a hearing in a disciplinary proceeding, to move for a protective order. Article 12, Rule 4 governing hearing procedure does not contain the same level of detail. The Exchange believes that the more detailed provisions of the proposed rule would provide additional specificity and clarity regarding motions to all Parties to a proceeding. Proposed Rule 10.9146 is substantially the same as NYSE Arca Rule 10.9146.

Proposed Rule 10.9147 (Rulings On Procedural Matters) would provide that Adjudicators may rule on procedural matters. The Exchange does not have a comparable rule. Current Article

12, Rule 4 provides that a Hearing Officer is appointed for the purpose of conducting a hearing and describes the conduct of a hearing but does not contain an explicit statement regarding the Hearing Officer's full authority to rule on a procedural motion and any other procedural or administrative matter arising during the course of a proceeding.

Finally, proposed Rule 10.9148 (Interlocutory Review) would generally prohibit interlocutory review, except as provided in proposed Rule 10.9280 for contemptuous conduct. The Exchange currently does not have a comparable rule. Current Article 12, Rule 4(h) provides that motion to disqualify a Hearing Officer is not subject to interlocutory review.

#### **Proposed Rules 10.9150 through 10.9222**

Proposed Rule 10.9150 would provide that a representative can be excluded by an Adjudicator for unethical or improper conduct. The proposed Rule is identical to NYSE Arca Rule 10.9150. The Exchange currently does not have a comparable rule.

#### **Proposed Rule 10.9160 (Recusal or Disqualification)**

Proposed Rule 10.9160 would provide that no person may act as an Adjudicator if he or she has a conflict of interest or bias, or circumstances exist where his or her fairness could reasonably be questioned. In such case, the person must recuse himself or herself, or may be disqualified. The proposed rule would cover the recusal or disqualification of an Adjudicator, the Chair of the Board, or a Director. Disqualification of a Director or the Chair of the Board would be governed by proposed Rule 10.9160(a). Disqualification of a Panelist would be governed by Rule 10.9234 while disqualification of a Hearing Officer would be governed by Rule 10.9233.<sup>25</sup> The Exchange currently does not have a strictly comparable rule. Article 12, Rule 4(h) requires a Hearing Officer to function impartially and independently of the staff

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<sup>25</sup> See proposed Rules 10.9160(e) & (f).

members who prepared and prosecuted the charges and provides for a process for a respondent to make a motion for disqualification of the Hearing Officer based upon bias or conflict of interest. Unlike proposed Rule 10.9160, the Exchange's current rule does not explicitly require recusal in the event of a conflict of interest or bias, or other circumstance where a Hearing Officer's fairness might reasonably be questioned. The Exchange's current Article 12, Rule 4(h) is also limited to Hearing Officers and there is no comparable recusal or disqualification procedure described in Article 12, Rule 5, governing reviews of penalties and decisions. The Exchange believes that the broader text of the proposed rule, applying the same prohibition against bias and a procedure for disqualification at all levels of review, would help to increase the fairness of and consistency in its proceedings.

Proposed Rules 10.9160(b), (c), and (d) are designated as "Reserved" to maintain consistency with NYSE Arca's rule numbering.

#### **Proposed Rules 10.9200 through 10.9217**

Proposed Rule 10.9200 (Disciplinary Proceedings) would cover disciplinary proceedings. Proposed Rule 10.9211 (Authorization of Complaint) would permit Enforcement to request the authorization from the CRO to issue a complaint against any Participant, Participant Firm and covered persons of a Participant or Participant Firm, thereby commencing a disciplinary proceeding. Under Article 12, Rule 1(b)(1), if in the CRO's judgment it appears from the written investigative report that any Participant, Participant Firm or Associated Person is violating or has violated any provision of the Bylaws, Exchange rules or of the federal securities laws or the regulations thereunder, the CRO directs staff to prepare and present written charges against the Respondent.

Proposed Rule 10.9212 (Complaint Issuance – Requirements, Service, Amendment,

Withdrawal, and Docketing) would set forth the requirements of the complaint, amendments to the complaint, withdrawal of the complaint, and service of the complaint. The proposed rule also requires the Office of Hearing Officers to promptly record each complaint filed with it in the Exchange's disciplinary proceeding docket, and record in the disciplinary proceeding docket each event, filing, and change in the status of a disciplinary proceeding. Current Article 12, Rule 1(b) does not contain a comparable detail. Further, under the proposed rule, the form of the complaint would be more prescribed than under current Article 12, Rule 1(b). For example, current Article 12, Rule 1(b) does not provide for withdrawal of a complaint.

Proposed Rule 10.9213 (Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel) would provide for the appointment of a Hearing Officer and Panelists by the Chief Hearing Officer. As defined in proposed Rule 10.9120(r), "Hearing Officer" means a FINRA employee who is an attorney and who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 10.9200 Series regarding disciplinary proceedings, the Rule 10.9550 Series regarding expedited proceedings, and the Rule 10.9800 Series regarding temporary cease and desist proceedings brought against Participants, Participant Firms and covered persons. Under current Article 12, Rule 4(a), the CEO appoints a hearing officer to hear the matter. Although Article 12, Rule 4(e) describes the vetting process for Hearing Officers under the current rules, they are appointed by the CEO that includes an assessment of professional competence and reputation, experience in the securities industry, familiarity with the subject matter involved, and the absence of bias and any actual or perceived conflict of interest, among other things, there is no requirement that the Hearing Officer be an attorney. The Exchange's current process also does not provide for the appointment of panelists

to adjudicate a disciplinary matter. The Exchange believes that the participation of professional Hearing Officers, which is a long-standing practice of other SROs, would add legal and administrative expertise to the disciplinary process, and would enhance the dispassionate application of the rules, promote fairness in the disciplinary process, and help ensure that complex or contentious cases are managed effectively.<sup>26</sup> The use of Panelists would help to ensure that market expertise and judgment would continue to be brought to bear on the disciplinary process.<sup>27</sup>

Proposed Rule 10.9214 (Consolidation or Severance of Disciplinary Proceedings) would permit the Chief Hearing Officer to sever or consolidate two or more disciplinary proceedings under certain circumstances and permit a Party to move for such action under certain circumstances. The Exchange currently does not have a comparable rule.

Proposed Rule 10.9215 (Answer to Complaint) would set forth requirements for answering a complaint, including form, service, notice, content, affirmative defenses, motions for a more definite statement, amendments and extensions of time to answer amended complaints, default, and timing. A written answer to charges under current Article 12, Rule 4(b) is due 30 days after service of the Complaint, while under the proposed rule it would be due 25 days after service. The proposed rule also allows for an extension of time for good cause shown, while the current rule provides that the time to answer can be extended by such further time as the Hearing Officer may grant. Both the current and proposed rules treat charges as admitted if no answer is filed, but the proposed rule would require that the Respondent receive a second notice concerning the consequences of failing to answer.

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<sup>26</sup> See Securities Exchange Act Release No. 38545 (April 24, 1997), 62 FR 25226, 25249-50 (May 8, 1997) (SR-NASD-97-28).

<sup>27</sup> See id. & discussion of proposed Rule 10.9232, infra.

### Minor Rule Fines and Process

As noted above, the Exchange has filed a separate notice and comment filing to adopt proposed Rules 9216(b) and 9217 and move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217.<sup>28</sup> The rules relating to minor rule violations described herein would not be operative until approval of the Exchange's companion rule filing.

### Proposed Rule 10.9216(a)

Subsection (a) of proposed Rule 10.9216 (Acceptance, Waiver, and Consent; Procedure for Imposition of Fines for Minor Violation(s) of Rules) would establish the acceptance, waiver, and consent ("AWC") procedures by which a Respondent, prior to the issuance of a complaint, could execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such Respondent's right to a hearing, appeal, and certain other procedures.<sup>29</sup>

The CRO would be authorized to accept or reject an AWC. If the AWC were accepted by the CRO, it would be deemed final and constitute the complaint, answer and decision in the matter 10 days after the AWC is sent to each Exchange Director and each member of the CFR, unless review by the Board is requested pursuant to proposed Rule 10.9310(a)(1)(B)(i).<sup>30</sup> If the

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<sup>28</sup> See SR-NYSECHX-2022-08.

<sup>29</sup> Proposed Rule 10.9270 would address settlement procedures after the issuance of a complaint.

<sup>30</sup> In 2020, NYSE Arca shortened the time period before an AWC under NYSE Arca Rule 10.9216 and an uncontested offer of settlement under NYSE Arca Rule 10.9270(f) become final as well as the corresponding time period to request review of these settlements under NYSE Arca Rule 10.9310 from 25 days to 10 days. See Securities Exchange Act Release No. 90678 (December 15, 2020), 85 FR 83136 (December 21, 2020) (SR- SR-NYSEARCA-2020-111) (Notice). The Exchange's proposes to omit certain transition language added to the NYSE Arca Rules 10.9216(a)(4), 10.9270(f)(3), and 10.9310(a)(1)(B)(i) relating to the applicability of the legacy 25 day time period in its

AWC were rejected by the CRO, the Exchange would be permitted to take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter were rejected, the Participant, Participant Firm or covered person would not be prejudiced by the execution of the AWC and such document could not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding. Under proposed Rule 10.9310(a)(1)(B)(ii) discussed below, any Party may require a review by the Exchange Board of any rejection by the CRO of an AWC letter under Rule 10.9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within 25 days after notification pursuant to Rule 10.9216(a)(3) or Rule 10.9270(h).

The Exchange notes that the AWC process is substantially similar to the Exchange's current process for settlements prior to a hearing on the merits under Article 12, Rule 1(d). The Exchange believes that the proposed process provides appropriate controls to assure consistency and protect against aberrant settlements. Specifically, the CRO would be reviewing all proposed AWCs. The Exchange believes that when both Parties to a proceeding agree to a settlement, a review by the CRO would be sufficient and it is not necessary to bring such matters to an Adjudicator. The Exchange believes that the CRO can provide objectivity and an appropriate check and balance to the settlement process, particularly in light of the call for review process set forth in proposed Rule 10.9310.

Proposed Rule 10.9216(b)

As set forth in the companion notice and comment filing to adopt proposed Rules 9216(b)

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proposed version of these rules.

and 9217,<sup>31</sup> subsection (b) of proposed Rule 10.9216 (Acceptance, Waiver, and Consent; Procedure for Imposition of Fines for Minor Violation(s) of Rules) would set forth the procedure for the imposition of fine for minor rule violations under the Exchange’s new disciplinary rules based on NYSE Arca Rule 10.9216(b).

Proposed Rule 10.9216(b)(1) would provide that, notwithstanding proposed Rule 10.9211, the Exchange may, subject to the requirements set forth in paragraphs (b)(2) through (b)(4), impose a fine in accordance with the fine amounts and fine levels set forth in proposed Rule 10.9217 and/or a censure on any Participant, Participant Firm or covered person with respect to any rule listed in Rule 10.9217. If Enforcement has reason to believe a violation has occurred and if the Participant, Participant Firm or covered person does not dispute the violation, Enforcement may prepare and request that the Participant, Participant Firm or covered person execute a minor rule violation letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such Participant’s, Participant Firm’s or covered 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 (“Board”), the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter would describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed would be a date to be determined by Regulatory Staff.

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<sup>31</sup> See SR-NYSECHX-2022-08.

Proposed Rule 10.9216(b)(2)(A)(i) would provide that if a Participant, Participant Firm or covered person submits an executed minor rule violation letter, the submission of such a letter by the Participant, Participant Firm or covered person also waives any right to claim bias or prejudgment of the CRO, the Board, Counsel to the Board, or any Director, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation letter or other consideration of the minor rule violation letter, including acceptance or rejection of such minor rule violation letter.

Proposed Rule 10.9216(b)(2)(A)(ii) would provide that if a Participant, Participant Firm or covered person submits an executed minor rule violation letter, by the submission such Participant, Participant Firm or covered person also waives any right to claim that a person violated the ex parte prohibitions of proposed Rule 10.9143 or the separation of functions prohibitions of proposed Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation letter or other consideration of the minor rule violation letter, including acceptance or rejection of such minor rule violation letter.<sup>32</sup>

Proposed Rule 10.9216(b)(2)(B) would provide that if a minor rule violation letter is rejected, the Participant, Participant Firm or covered person would be bound by the waivers made under proposed paragraphs (b)(1) and (b)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the minor rule violation letter was executed and submitted and ending upon the rejection of the minor rule violation letter.

Proposed Rule 10.9216(b)(3) would provide that if the Participant, Participant Firm or

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<sup>32</sup> Rule 10.9143 (Ex Parte Communications) would prohibit certain ex parte communications. Proposed 10.9144 (Separation of Functions) would establish separation of functions and provide for waivers.

covered person executes the minor rule violation letter, it would be submitted to the CRO. The CRO, on behalf of the SRO Board, may accept or reject such letter.

Proposed Rule 10.9216(b)(4) would provide that if the letter is accepted by the CRO, it would be deemed final and that any fine imposed pursuant to the proposed Rule and not contested would not be publicly reported, except as may be required by Rule 19d-1 under the Act, and as may be required by any other regulatory authority.

Proposed Rule 10.9216(b)(4) would further provide that if the letter is rejected by the CRO, the Exchange may take any other appropriate disciplinary action with respect to the alleged violation or violations. Subsection (b)(4) would also provide that if the letter is rejected, the Participant, Participant Firm or covered person would not be prejudiced by the execution of the minor rule violation letter under proposed paragraph (b)(1) and that 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.

As noted above, proposed Rule 10.9216(b) is substantially the same as NYSE Arca Rule 10.9216(b).

#### Proposed Rule 10.9217

As set forth in the companion notice and comment filing to adopt proposed Rules 9216(b) and 9217,<sup>33</sup> the Exchange also proposes to adopt Rule 10.9217 based on NYSE Arca Rule 10.9217, which would be titled “Violations Appropriate for Disposition Under Rule 10.9216(b)”.

Proposed Rule 10.9217(a) would provide that any Participant, Participant Firm or covered person may be subject to a fine, not to exceed \$5,000,<sup>34</sup> under Rule 10.9216(b) with

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<sup>33</sup> See SR-NYSECHX-2022-08.

<sup>34</sup> See note 10, supra.

respect to any rules listed below and that the fine amounts and fine levels set forth below would apply to the fines imposed.

Proposed Rule 10.9217(b) would provide that Regulatory Staff designated by the Exchange would have the authority to impose a fine pursuant to the proposed Rule.

Proposed Rule 10.9217(c) would provide that any person or organization found in violation of a minor rule would not be required to report such violation on SEC Form BD or Form U-4 if 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. Subsection (c) would further provide that 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.

Proposed Rule 10.9217(d) would provide that nothing in the proposed Rule would require the Exchange to impose a fine for a violation of any rule under this Minor Rule Plan and that if the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed under the proposed Rule 10.9000 Series rather than under proposed Rule 10.9217.

The next section would be titled “List of Rule Violations and Fines Applicable Thereto” and would provide that any Participant, Participant Firm or covered person may be subject to a fine under proposed Rule 10.9216(b) with respect to any rules listed below.

Proposed Rule 10.9217(e) would be titled “Exchange Rules and Policies subject to a Minor Rule Violation” and would set forth the list of rules under which a Participant, Participant Firm or covered person may be subject to a fine under a minor rule violation letter as described in proposed Rule 10.9216(b). The Exchange would retain the list of rules currently set forth in

Article 12, Rule 8(h) under the existing headings for “Reporting and Record Retention Violations” and “Minor Trading Rule Violations” with the following additions and changes.

First, the Exchange would add subsection (b) of Article 6, Rule 2 (Registration and Approval of Participant Personnel) to proposed Rule 10.9217(e)(13).

Article 6, Rule 2 currently sets forth certain employee registration, approval and other exchange requirements. Specifically, Article 6, Rule 2(a) governs registration of representatives, as defined in Article 6, Rule 14(b)(1), with the Exchange and is currently eligible for a minor rule fine under Article 12, Rule 8(h). Article 6, Rule 2(b) provides for the registration of principals, as defined in Article 6, Rule 14(a)(1). The Exchange proposes that the registration requirements of principals set forth in Article 6, Rule 2(b) be eligible for a minor rule fine. The proposed change would be consistent with the practice on the Exchange’s affiliates whose comparable rule requiring the registration of principals is eligible for a minor rule fine.<sup>35</sup>

Second, the Exchange would add subsections (a) and (b) of Article 6, Rule 5 (Supervision of Representatives and Branch and Resident Offices) to proposed Rule 10.9217(e)(14). As discussed below, the Exchange’s current minor rule incorrectly references Article 6, Rule 5(b) for violations relating to written supervisory procedures. The correct reference should be to Article 6, Rule 5(c), which the Exchange proposes to retain as proposed Rule 10.9217(e)(15).

Article 6, Rule 5(a) (Adherence to Law) provides that no Participant shall engage in conduct in violation of the Act, as amended, rules or regulations thereunder, the Bylaws or the Rules of the Exchange, or any written interpretation thereof and that every Participant is

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<sup>35</sup> See, e.g., NYSE National Rules 2.2(c) (Obligations of ETP Holders and the Exchange) and 10.9217(f). The entirety of NYSE National Rule 2.2 is eligible for minor rule treatment; registration of principals under NYSE Nationals’ rules is governed by subsection (c).

responsible for reasonably supervising its associated persons to prevent such violations. The requirement to reasonably supervise individuals to ensure compliance with applicable laws, rules and regulations, is currently eligible for minor rule fines in the rules of the Exchange's affiliate NYSE Arca.<sup>36</sup>

Article 6, Rule 5(b) (Designation of persons with supervisory authority) provides that each Participant Firm must designate a principal executive officer, general partner or managing partner to hold overall authority and responsibility for the firm's internal supervision and compliance with securities laws and regulations. This designated supervisor may formally delegate his or her supervisory duties and authority to other persons within the firm. The Rule further provides that Participants must maintain, for a period of not less than six years (the first two years in an easily accessible place), records of the names of all persons who are designated as supervisory personnel and the dates for which those designations are effective. In the absence of such designation by a Participant Firm, the Firm's General Partner(s), President, Chief Executive Officer or other principal executive officer shall be deemed to be responsible for a Firm's internal supervision and compliance function. In addition, each Participant Firm shall designate and specifically identify to the Exchange on Schedule A of Form BD one or more principals to serve as a Chief Compliance Officer. The requirement in Article 6, Rule 5(b) to designate and specifically identify persons with supervisory responsibility is currently eligible for minor rule fines in the rules of the Exchange's affiliate NYSE Arca.<sup>37</sup> The Exchange accordingly proposes to permit minor rule fines for violations of Article 6, Rule 5(b).

As noted, Article 12, Rule 8(h)(1)(N) of the Exchange's current minor rule plan makes

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<sup>36</sup> See NYSE Arca Rule 11.18(a) (Supervision) and 10.9217(g)(8).

<sup>37</sup> See NYSE Arca Rule 11.18(b)(2) & (4) (Supervision) and 10.9217(g)(8).

failure to establish, maintain and enforce written supervisory procedures under Article 6, Rule 5(b) eligible for a minor rule fine. However, as described above Article 6, Rule 5(b) relates to the designation of persons with supervisory authority and not written supervisory procedures, which is governed by Article 6, Rule 5(c). In 2011, Article 12, Rule 8 was amended to include, among other things, new reporting and recordkeeping provisions, which included “written supervisory procedures (Article 6, Rule 5(b)).”<sup>38</sup> At the time, Article 6, Rule 5(b) was titled “Written supervisory procedures” and contained the text of current subsection (c). In 2013, the Exchange filed to amend Article 6, Rule 5. As part of that filing, subsection (a), which was titled “Designation of persons with supervisory authority,” became new subsection (b), and old subsection (b), which was titled “Written supervisory procedures,” became current subsection (c).<sup>39</sup> The Exchange did not, however, update Article 12, Rule 8 to reflect that Article 6, Rule 5(b) had become Article 6, Rule 5(c). The Exchange proposes to make that correction in the text of proposed Rule 10.9217(e)(15). The Exchange notes that the requirement to establish, maintain and enforce written procedures is also currently eligible for minor rule fines in the rules of the Exchange’s affiliate NYSE Arca.<sup>40</sup>

Finally, the Exchange proposes a new subsection (f) titled “Recommended Fine Schedule” that would reproduce the current Recommended Fine Schedule from the Fee Schedule with the following changes and corrections. The Recommended Fine Schedule in the Fee

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<sup>38</sup> See Securities Exchange Act Release No. 64370 (April 29, 2011), 76 FR 25727, 25727 (May 5, 2011) (SR-CHX-2011-07) (Notice); Securities Exchange Act Release 64686 (June 16, 2011), 76 FR 36596 (June 22, 2011) (SR-CHX-2011-07) (Order). See generally note 10, *supra*.

<sup>39</sup> See Securities Exchange Act Release No. 70597 (October 2, 2013), 78 FR 62728, 62732 (October 22, 2013) (SR-CHX-2013-14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change).

<sup>40</sup> See NYSE Arca Rule 11.18(c) (Supervision) and 10.9217(g)(8).

Schedule would be deleted:

- The Exchange would add a new sub-heading titled “Reporting and Record Retention Violations”<sup>41</sup> that would set forth the corresponding fines for first, second and third and subsequent violations for the rules set forth under the heading “Reporting and Record Retention Violations” in proposed Rule 10.9217(e).
- The first 12 entries as well as entries 16 through 23 would be reproduced without change from the current Recommended Fine Schedule in the Fee Schedule.
- Item 13 would be “Registration and Approval of Participant Personnel (Article 6, Rule 2(a) & (b))”. The proposed first, second and third level fines for violations of Article 6, Rule 2(b) of \$250 for the first violation, \$750 for the second violation and \$1,500 for the third and subsequent violations would be the same as those in the Exchange’s current Recommended Fine Schedule in the Fee Schedule for violations of Article 6, Rule 2(a).
- Items 14 and 15 -- “Failure to Comply with Supervision Requirements (Article 6, Rule 5(a) & (b))” and “Written Supervisory Procedures (Article 6, Rule 5(c)),” respectively -- would be added to proposed Rule 10.9271(f) consistent with the changes to proposed Rule 10.9217(e)(14) and (15) described above. The proposed first, second and third level fines for violations of Article 6, Rule 5(a) and (b) in proposed Rule 10.9217(e)(14) and Article 6, Rule 5(c) in proposed Rule 10.9217(e)(15) would be \$500 for the first violation, \$1,000 for the second

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<sup>41</sup> Immediately before the new sub-heading, the Exchange would include the following text based on NYSE Arca Rule 10.9217: “These fines are intended to apply to minor violations. For more serious violations, other disciplinary action may be sought.”

violation and \$2,500 for the third and subsequent violations. These fine levels would be the same as the current fines in the Recommended Fine Schedule in the Fee Schedule for violations of Article 6, Rule 5(b).

- Finally, item 24 would be “Consolidated Audit Compliance Rule (Rule 6.6800 Series).” The corresponding fine “Up to \$2,500.00” would be transposed from current Article 12, Rule 8 to new footnote \*\* following “Rule 6.6800 Series.”<sup>42</sup> The Exchange would also add the current text from Article 12, Rule 8(a) providing that “For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6.6800 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” to new footnote \*\*.
- The Exchange would add a new second sub-heading titled “Minor Trading Rule Violations” that would set forth the corresponding fines for first, second and third and subsequent violations for the 11 rules set forth under the heading “Minor Trading Rule Violations” in proposed Rule 10.9217(e), with the following changes and corrections:
  - The entry for “Failure to clear the Matching System (Article 20, Rule 7)” and corresponding fines would not be included. This rule was deleted from Article 12, Rule 8 8(h)(2)(F) in 2019 as part of the transition of trading on the Exchange to the Pillar trading platform but the Exchange

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<sup>42</sup> In 2020, the Exchange added the Consolidated Audit Trail (“CAT”) industry member compliance rules to the list of minor rule violations in Article 12, Rule 8 and the corresponding fine up to \$2,500. At the time, the Exchange inadvertently did not amend the Recommended Fine Schedule in the Fee Schedule. See Securities Exchange Act Release No. 89410 (July 28, 2020), 85 FR 46741 (August 3, 2020) (SR-CHX-2020-21).

inadvertently failed to update the Recommended Fine Schedule in the Fee Schedule.<sup>43</sup>

- The Exchange would include “Short Sales (Rule 7.16)” as item 10. Rule 7.16 was added to Article 12, Rule 8 in 2019 as part of the transition of trading on the Exchange to the Pillar trading platform but the Exchange inadvertently failed to update the Recommended Fine Schedule in the Fee Schedule.<sup>44</sup> The proposed first, second and third level fines for violations of Rule 7.16 of \$500 for the first violation, \$1,000 for the second violation and \$2,500 for the third and subsequent violations are the same as those in NYSE Arca Rule 10.9217(i)(1)1. for violations of NYSE Arca Rule 7.16-E.<sup>45</sup>
- Finally, the Exchange would include “Failure to comply with Authorized Trader requirements (Rule 7.30)” as item 11. Rule 7.30 was also added to Article 12, Rule 8 as part of the transition to Pillar in 2019 but the Exchange inadvertently failed to update the Recommended Fine Schedule in the Fee Schedule.<sup>46</sup> The proposed first, second and third level fines for violations of Rule 7.30 of \$1,000 for the first violation, \$2,500 for the second violation and \$3,500 for the third and subsequent violations are the same as those in NYSE Arca Rule 10.9217(i)(1)5. for violations of NYSE

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<sup>43</sup> See Securities Exchange Act Release No. 87264 (October 9, 2019), 84 FR 55345, 55349 (October 16, 2019) (SR-CHX-2019-08).

<sup>44</sup> See id.

<sup>45</sup> See NYSE Arca Rule 7.16-E (Short Sales) & 10.9217(i)(1)1.

<sup>46</sup> See Securities Exchange Act Release No. 87264 (October 9, 2019), 84 FR 55345, 55349 (October 16, 2019) (SR-CHX-2019-08).

Arca Rule 7.30-E.<sup>47</sup>

As noted, proposed subsection (a) of proposed Rule 10.9217 is substantially the same as NYSE Arca Rule 10.9217(a) except for changes reflecting the Exchange's membership. The Exchange proposes that a fine thereunder would not exceed \$5,000 (the amount reflected in current Article 12, Rule 8).<sup>48</sup>

Proposed subsections (b), (c) and (d) are also substantially the same as NYSE Arca Rule 10.9217(b), (c) and (d) with the only changes reflecting the Exchange's membership.

Unlike current Article 12, Rule 8(e) described above, proposed Rule 10.9216(b) and Rule 10.9217 would not permit a Respondent to contest a minor rule violation letter. Rather, as proposed, if the Respondent rejects the minor rule violation letter, then a complaint must be filed under proposed Rule 10.9211, and the minor rule violation letter may not be introduced into evidence.<sup>49</sup> The Exchange believes the proposed rule is appropriate because it will harmonize the Exchange's minor rule violation process with its affiliates' rules.

**Proposed Rule 10.9220 (Request for Hearing; Extensions of Time, Postponements, Adjournments)**

Proposed Rule 10.9220 would set forth the following rules.

Proposed Rules 10.9221 (Request for Hearing) and 10.9222 (Extensions of Time, Postponements, and Adjournments) would describe the process for a Respondent to request a hearing; the notice of a hearing; timing considerations; and the authority of a Hearing Officer, Hearing Panel or Extended Hearing Panel to order a hearing. Proposed Rule 10.9221 provides that a Hearing Officer generally must provide at least 28 days' notice of the hearing. Current

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<sup>47</sup> See NYSE Arca Rule 7.30-E (Authorized Traders) & 10.9217(i)(1)5.

<sup>48</sup> See note 10, *supra*.

<sup>49</sup> See proposed Rule 10.9216(b)(4).

Article 12, Rule 4 governing hearing procedures does not provide for a respondent to request a hearing. Rather, Article 12, Rule 4(d) provides that within 30 days of the filing of a respondent's answer, the Hearing Officer will schedule the time and place at which the Hearing shall be held. Similarly, current Article 12, Rule 4 also does not provide for extensions of time, postponements, and adjournments like proposed Rule 10.9222.

### **Proposed Rules 10.9230 through 10.9235**

Proposed Rule 10.9231 (Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer) would govern appointment of a Hearing Panel or Extended Hearing Panel, and would also govern appointment of a replacement Hearing Officer and the designation of an observer to a Hearing Panel or an Extended Hearing Panel. As proposed, under proposed Rule 10.9231(a) the Exchange would rely on FINRA's Chief Hearing Officer to appoint a Hearing Panel or an Extended Hearing Panel to conduct disciplinary proceedings and issue a decision. The Chief Hearing Officer and the Hearing Officers would all be FINRA employees. Under proposed Rule 10.9231(b), a Hearing Panel would be composed of a Hearing Officer and two Panelists, except as provided in paragraph (e) and in proposed Rule 10.9234(a), (c), (d), or (e). The Hearing Officer would serve as the chair of the Hearing Panel. The Chief Hearing Officer would appoint Panelists pursuant to the criteria in proposed Rule 10.9232.<sup>50</sup> The proposed procedure would differ from the current procedure under Article 12, Rule 4(e) where the Exchange CEO appoints a Hearing Officer to conduct a

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<sup>50</sup> NYSE Arca Rule 10.9231(b)(1) incorrectly states that the Hearing Officer would appoint the Panelists pursuant to the criteria of Rule 10.9232. The rules adopted by the Exchange's other affiliates contain the same error. See NYSE Rule 9231(b)(1); NYSE American Rule 9231(b)(1); NYSE National Rule 10.9231(b)(1). The Exchange understands that its affiliates will submit separate rule filing to conform their version of proposed Rule 10.9231(b)(1).

hearing but the rule does not provide for the appointment of panelist.

Proposed Rule 10.9231(c) describes Extended Hearing Panels. As proposed, upon consideration of the complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material, the Chief Hearing Officer may determine that a matter shall be designated an Extended Hearing, and that such matter shall be considered by an Extended Hearing Panel. The Extended Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in proposed Rule 10.9234(a), (c), (d), or (e). The Hearing Officer would serve as the chair of the Extended Hearing Panel. The Chief Hearing Officer would have discretion to compensate any or all Panelists of an Extended Hearing Panel at the rate then in effect for FINRA arbitrators. The Chief Hearing Officer shall select as a Panelist a person who meets the criteria set forth in Rule 10.9232.

Proposed Rule 10.9231(d) provides for the appointment of an observer. As proposed, a person who is qualified to serve as a Panelist may be designated by the Chief Hearing Officer to serve as an observer to a Hearing Panel or an Extended Hearing Panel. If the Chief Hearing Officer designates more than two people to serve as observers to a Hearing Panel or an Extended Hearing Panel, the Chief Hearing Officer would obtain the consent of the Parties. An observer may attend any hearing of a disciplinary proceeding and observe the proceeding, but may not vote or participate in any other manner in the hearing or the deliberations of the Hearing Panel or the Extended Hearing Panel, or participate in the administration of the disciplinary proceeding.

Proposed Rule 10.9231(e) provides for the appointment of a replacement Hearing Officer. As proposed, in the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. To ensure fairness to the parties and expedite

completion of the proceeding when a replacement Hearing Officer is appointed after the hearing has commenced, the proposed Rule provides that a replacement Hearing Officer would have the discretion to (1) allow the Hearing Panelists to resolve the issues in the proceeding and issue a decision without the participation of the replacement Hearing Officer in the decision. The replacement Hearing Officer may advise the Hearing Panelists regarding legal issues, and shall exercise the powers of the Hearing Officer under Rule 10.9235(a), including preparing and signing the decision on behalf of the Hearing Panel, in accordance with Rule 10.9268; or (2) certify familiarity with the record and participate in the resolution of the issues in the case and in the issuance of the decision. In exercising this power, the replacement Hearing Officer may recall any witness before the Hearing Panel.

Proposed Rule 10.9231(c)-(e) would be substantially the same as NYSE Arca Rule 10.9231 except that the proposed rule would not provide for the selection of a Floor-Based Panelist because the Exchange does not have a trading floor.

Proposed Rule 10.9232 (Criteria for Selection of Panelists and Replacement Panelists) would set forth the criteria for the selection of Panelists and Replacement Panelists. Proposed Rule 10.9232 would be substantially the same as NYSE Arca Rule 10.9232. As is the case under the NYSE Arca Rule, Panelists would be required to be persons of integrity and judgment and, other than the Hearing Officer, would be a member of the Exchange hearing board. Moreover, at least one Panelist would be engaged in securities activities differing from that of the Respondent or, if retired, was so engaged in differing activities at the time of retirement. Proposed Rule 10.9232 would also provide that the Exchange Board would from time to time appoint a hearing board to be composed of such number of permit holders of the Exchange that are not members of the Exchange Board and registered employees and nonregistered employees of Participants and

Participant Firms. In order to have the largest number of potential Panelists available, the proposed Rule would further provide that former Participants and registered and non-registered employees of Participants and Participant Firms who have retired from the securities industry may be appointed to the hearing board. The Exchange believes that there are well-qualified persons, in particular retirees, who would be valuable members of the hearing board. The members of the hearing board would also be appointed annually and would serve at the pleasure of the Exchange Board. As reflected in Article 12, Rule 4, Exchange hearings are currently conducted by a Hearing Officer appointed by the CEO acting alone.

Finally, proposed Rule 10.9232 would include Panelist selection criteria, which would be expertise, absence of any conflict of interest or bias or any appearance thereof, availability, and the frequency with which a person has served as a Panelist in the last two years, favoring the selection of a person as a Panelist who has never served or who has served infrequently as a Panelist during the period. Article 12, Rule 4 contains similar provisions with respect to Hearing Officers appointed by the CEO.

Proposed Rules 10.9233 (Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers) and 10.9234 (Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Panelists) would establish the processes for recusal and disqualification of Hearing Officers or Panelists.

Under proposed Rule 10.9233(a), if at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Hearing Officer would notify the Chief Hearing Officer and the Chief Hearing Officer would issue and serve on the Parties a notice stating that the Hearing Officer has withdrawn from the matter. In the event that a Hearing Officer withdraws, is

incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer would appoint a replacement Hearing Officer. In such a case, the replacement Hearing Officer would proceed according to proposed Rule 10.9231(e).

Proposed Rule 10.9233(b) governs motions for disqualification. Under the proposed Rule, a Party may move for the disqualification of a Hearing Officer. Such a motion must be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Hearing Officer's fairness might reasonably be questioned, and must be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts. Under the proposed Rule, such motions shall be filed not later than 15 days after the later of (1) when the Party learned of the facts believed to constitute the disqualification; or (2) when the Party was notified of the assignment of the Hearing Officer.

Finally, proposed Rule 10.9233(c) describes the disposition of a disqualification motion. Under the proposed Rule, a motion for disqualification of a Hearing Officer shall be decided by the Chief Hearing Officer who shall promptly investigate whether disqualification is required and issue a written ruling on the motion. In the event of a disqualification of the Hearing Officer, the Chief Hearing Officer shall appoint a replacement Hearing Officer.

Proposed Rule 10.9234 sets forth similar procedures for the recusal of panelists on a Hearing Panel and Extended Hearing Panel. Under proposed Rule 10.9234(a), if at any time a Panelist of a Hearing Panel or an Extended Hearing Panel determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Panelist must notify the Hearing Officer and the Hearing Officer would issue and serve on the Parties a notice stating that the Panelist has withdrawn from the matter. In the event

that a Panelist withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer may, in the exercise of discretion, determine whether to appoint a replacement Panelist. In the event that both Panelists withdraw, are incapacitated, or otherwise are unable to continue service after being appointed, the proposed Rule permits the Chief Hearing Officer to appoint two replacement Panelists.

Proposed Rule 10.9234(b) provides that a Party may file a motion to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel. Such a motion must be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts. As proposed, such motions shall be filed not later than 15 days after the later of (1) when the Party learned of the facts believed to constitute the disqualification; or (2) when the Party was notified of the appointment of the Panelist. As proposed, the Chief Hearing Officer may order the disqualification of a Panelist of a Hearing Panel or an Extended Hearing Panel if the Chief Hearing Officer determines that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall state the facts constituting the grounds for disqualification.

Under proposed Rule 10.9234(c), if a Party files a motion to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel, the Hearing Officer shall promptly investigate whether disqualification is required and shall issue a written ruling on the motion. In the event a Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist.

Under subsection (d) of proposed Rule 10.9234, if a Party files a motion to disqualify

both Panelists of a Hearing Panel or an Extended Hearing Panel, the Hearing Officer shall promptly investigate whether disqualification is required and issue a written ruling on the motion. In the event one Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist. In the event both Panelists are disqualified, the Chief Hearing Officer will promptly appoint two persons as replacement Panelists.

Under proposed Rule 10.9234(e), if a Party files a motion to disqualify both Panelists of a Hearing Panel or an Extended Hearing Panel and the Hearing Officer, the Chief Hearing Officer shall promptly investigate whether disqualification is required and issue a written ruling on the motion. Under the proposed Rule, in the event a Panelist is disqualified, the Chief Hearing Officer may, in the exercise of discretion, appoint a replacement Panelist. In the event both Panelists are disqualified, the Chief Hearing Officer shall promptly appoint two persons as replacement Panelists. In the event a Hearing Officer and a Panelist are disqualified, the Chief Hearing Officer shall promptly appoint a replacement Hearing Officer. In the event both Panelists and the Hearing Officer are disqualified, the Chief Hearing Officer shall promptly appoint a replacement Hearing Officer and two persons as replacement Panelists.

Finally, proposed subsection (f) would provide that if a Chief Hearing Officer appoints a replacement Panelist by operation of the proposed Rule, the Chief Hearing Officer would do so using the criteria set forth in Rule 10.9232.

Current Article 12, Rule 4(h) does not address recusal of a Hearing Officer but does permit a party to move for disqualification of the Hearing Officer within 15 days of the appointment of the Hearing Officer based upon bias or conflict of interest. The proposed Rule is broader and permits recusal as well as motions for disqualification. Moreover, the proposed Rule permits motions for disqualification not later than 15 days after the later of (1) when the

Party learned of the facts believed to constitute the disqualification, or (2) when the Party was notified of the assignment of the Hearing Officer or the appointment of the Panelist, respectively. The Exchange's current rule permits motions to disqualify based upon bias or conflict of interest within 15 days of the appointment of the Hearing Officer.

Proposed Rule 10.9235 (Hearing Officer Authority) would set forth the Hearing Officer's duties and authority in detail. The Exchange does not have a comparable rule.

**Proposed Rules 10.9240 through 10.9242**

Proposed Rule 10.9240 would set forth the following rules.

Proposed Rules 10.9241 (Pre-hearing Conference) and 10.9242 (Pre-hearing Submission) would govern the substantive and procedural requirements for pre-hearing conferences and pre-hearing submissions. Proposed Rule 10.9242 would also prohibit former Regulatory Staff, within a period of one year immediately following termination of employment with the Exchange or FINRA, from providing expert testimony on behalf of any other person in any proceeding under the Rule 10.9000 Series. Nothing in the proposed Rule would prohibit former Regulatory Staff from testifying as a witness on behalf of the Exchange or FINRA. As noted above, current Article 12, Rule 4 gives the Hearing Officer general authority in procedural matters, but there are no specific provisions in the current Rules relating to pre-hearing conferences and submissions.

**Proposed Rules 10.9250 through 10.9253**

Proposed Rule 10.9250 (Discovery) through 10.9253 would address discovery, including the requirements and limitations relating to the inspection and copying of documents in the possession of Exchange staff, requests for information and limitations on such requests, and the production of witness statements and any harmless error relating to the production of such

witness statements.

Proposed Rule 10.9251 (Inspection and Copying of Documents in Possession of Staff) would require Enforcement to make available to a Respondent any documents prepared or obtained in connection with the investigation that led to the proceedings, except that certain privileged or other internal documents, such as examination or inspection reports or documents that would reveal an examination, investigation, or enforcement technique or confidential source, or documents that are prohibited from disclosure under federal law, are not required to be made available. A Hearing Officer may require that a withheld document list be prepared. Proposed Rule 10.9251 also sets forth procedures for inspection and copying of produced documents. In addition, if a Document required to be made available to a Respondent pursuant to the proposed Rule was not made available by Enforcement, no rehearing or amended decision of a proceeding already heard or decided would be required unless the Respondent establishes that the failure to make the Document available was not harmless error. The Hearing Officer, or, upon review under proposed Rule 10.9310, the Exchange Board, would determine whether the failure to make the document available was not harmless error, applying applicable Exchange, FINRA, SEC, and federal judicial precedent. The proposed Rule would not establish any preference for Exchange versus other precedent in this respect; rather the Adjudicators could determine in their discretion what precedent to apply. The Exchange's current rules do not include a comparable provision.

Under proposed Rule 10.9252 (Requests for Information), a Respondent could request that the Exchange invoke proposed Rule 10.8210 to compel the production of Documents or testimony at the hearing if the Respondent can show that certain standards are met, e.g., that the information sought is relevant, material, and non-cumulative. Under proposed Rule 10.9253 (Production of Witness Statements), a Respondent could file a motion to obtain certain witness

statements. Current Article 12, Rule 4(c)(2) permits any party to request production of all or some of the documents that its adversary intends to introduce as evidence either in support of or to counter the charges but does not specify that such production can be compelled. Rather, under Article 12, Rule 4(c)(2), a party responding to a request to produce all or some of the documents that are intended to be introduced as evidence at the hearing will be precluded from introducing at the hearing any documents that were not produced in response to the request, unless there is good cause shown for failing to produce the document(s) 30 days prior to the hearing and the failure to permit the introduction of such evidence would result in undue hardship to the party requesting to introduce such document.

**Proposed Rules 10.9260 through 10.9269**

Proposed Rules 10.9260 (Hearing and Decision) through 10.9269 would govern hearings and decisions.

Proposed Rule 10.9261 (Evidence and Procedure in Hearing) would generally require the Parties to submit copies of documentary evidence and the names of the witnesses each Party intends to present at the hearing no later than 10 days before the hearing. Current Article 12, Rule 4(c) (1) requires the parties to exchange a list of witnesses that they each plan to call to testify at the hearing no less than 30 days prior to the hearing. The proposed Rule would also provide that if a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the Party's representative. The Exchange's current rule does not include such an explicit provision. Finally, under the proposed rule, a Party, for good cause shown, may seek to submit any additional evidence at the hearing as the Hearing Officer, in his or her discretion, determines may be relevant and necessary for a complete record. The Exchange's current rules do not contain a comparable provision. Under Article 12, Rule 4(d), the Market Regulation

Department and the Respondent can introduce additional witnesses and evidence solely in rebuttal to the respondent's evidence.<sup>51</sup>

Proposed Rule 10.9262 (Testimony) would require persons subject to the Exchange's jurisdiction to testify under oath or affirmation at a hearing. The Exchange's current rules do not contain comparable provisions.

Proposed Rule 10.9263 (Evidence: Admissibility) would authorize the Hearing Officer to exclude irrelevant, immaterial, or unduly repetitious or prejudicial evidence and permit a Party to object to the admission of evidence. Under the proposed Rule, objections to the admission or exclusion of evidence would be made on the record and would succinctly state the grounds relied upon; excluded material would be deemed a supplemental document and would be attached to the record and retained under proposed Rule 10.9267. The Exchange's current rules do not contain a comparable provision.

Proposed Rule 10.9264 (Motion for Summary Disposition) would allow Parties to file a motion for summary disposition under certain circumstances and would describe the procedures for filing and ruling on such motion. Under current Article 12, Rule 4, the Hearing Officer

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<sup>51</sup> In 2020, NYSE Arca filed to harmonize Rules 10.9261 and 10.9830 with certain changes by FINRA that temporarily granted the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID-19 pandemic. See Securities Exchange Act Release No. 90088 (October 5, 2020), 85 FR 64186 (October 9, 2020) (SR-NYSEArca-2020-85). The expiration of the temporary amendments to NYSE Arca Rules 10.9261 and 10.9830 have been extended to July 31, 2022. See Securities Exchange Act Release No. 94663 (April 11, 2022), 87 FR 22587 (April 15, 2022) (SR-NYSEArca-2022-18). NYSE, NYSE American and NYSE National made similar filings. The amended NYSE Arca rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof. See 87 FR at 22588, n.5 The Exchange does not propose to incorporate these temporary amendments to NYSE Arca Rule 10.9261 and 10.9830 into the proposed rule text and will evaluate the need for such temporary relief once the current rule filing is operative.

regulates the hearing, but the Rule does not specifically provide for motions for summary disposition.

Proposed Rule 10.9265 (Record of Hearing) would require that the hearing be recorded by a court reporter, that a transcript be prepared and made available for purchase, and that a Party or a witness be permitted to seek a correction of the transcript from the Hearing Officer. Current Article 12, Rule 4(d) provides generally that the Exchange must make a transcript of the hearing.

Proposed Rule 10.9266 (Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs) would authorize the Hearing Officer to require a post-hearing brief or proposed findings of fact and conclusions of law and would outline the form and timing for such submissions. There is no comparable current rule, although the Hearing Officer generally regulates the conduct of a hearing under Article 12, Rule 4.

Proposed Rule 10.9267 (Record; Supplemental Documents Attached to Record; Retention) would detail the required contents of the hearing record and the treatment of any supplemental documents attached to the record. The Exchange's current rules do not contain a similar provision.

Proposed Rule 10.9268 (Decision of Hearing Panel or Extended Hearing Panel) would set forth the timing and the contents of a decision of the Hearing Panel or Extended Hearing Panel and the procedures for a dissenting opinion, service of the decision, and any requests for review. Under proposed Rule 10.9268, the decision would be issued within 60 days after the final date allowed for filing proposed findings of fact, conclusions of law, and post-hearing briefs, or by a date established at the discretion of the Chief Hearing Officer. Under current Article 12, Rule 4(f), a decision must be issued within 90 days after the conclusion of the

hearing. The Exchange believes that the shorter period of time is appropriate to allow the Hearing Panel or Extended Hearing Panel adequate time to reach its decision and agree on the text of the decision and would not prejudice any Party.<sup>52</sup>

The Exchange proposes to include text providing that a disciplinary decision concerning an affiliate of the Exchange as such term is defined in Rule 12b-2 under the Act would not be subject to review under proposed Rule 10.9310 but instead would be treated as a final disciplinary action subject to SEC review. The Exchange does not believe that an appeal by an affiliate to the Exchange Board is appropriate, but rather such affiliate should be permitted to appeal directly to the SEC. The proposed text is identical to NYSE Arca Rule 10.9268(e)(2).

The proposed Rule would further provide that, unless otherwise provided in the majority decision issued under proposed Rule 10.9268(a), a sanction (other than a bar or an expulsion) specified in a decision constituting final disciplinary action of the Exchange for purposes of Act Rule 19d-1(c)(1) would become effective on a date to be determined by the Exchange, and a bar or an expulsion specified in a decision would become effective immediately upon the decision becoming the final disciplinary action of the Exchange for purposes of Act Rule 19d-1(c)(1).

Finally, proposed Rule 10.9269 (Default Decisions) would establish the process for the issuance and review of default decisions by a Hearing Officer when a Respondent fails to timely answer a complaint or fails to appear at a pre-hearing conference or hearing where due notice has been provided. A Party may, for good cause shown, file a motion to set aside a default decision. Under Article 12, Rule 4(b), if a Respondent fails to file an answer within the required timeframe, the allegations of the charging document are deemed admitted and the Hearing

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<sup>52</sup> Under the proposed rule, a dissenting opinion must be served within 65 days after such final date. The Exchange does not have a comparable current rule.

Officer will hold a hearing to determine the appropriate sanctions. Under Article 12, Rule 5(a), a party can request review by the Judiciary Committee of such default decision. Proposed Rule 10.9269 would provide a robust process for the issuance and content of default decisions.

**Proposed Rule 10.9270 (Settlement Procedure)**

Proposed Rule 10.9270 would provide for a settlement procedure for a Respondent who has been notified that a proceeding has been instituted against him or her. The proposed settlement procedure is similar to the settlement procedures in current Article 12, Rule 1(d), except that the Exchange's rule does not distinguish between contested and uncontested settlements.

Under proposed Rule 10.9270(a), a Respondent notified of the institution of a disciplinary proceeding could make a written offer of settlement at any time, but the proposal would not stay the proceeding unless otherwise decided by the Hearing Officer. If a Respondent proposes an offer of settlement after the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Panel or, if applicable, the Extended Hearing Panel. Current Article 12, Rule 1(d) does not explicitly provide that a proceeding is not stayed.

Under proposed Rule 10.9270(b), a Respondent making an offer of settlement would also be required to do so in conformity with the provisions of the proposed Rule and would be prohibited from making a frivolous settlement offer or one that was inconsistent with the seriousness of the violations. Current Article 12, Rule 1(d) does not contain a similar prohibition.

Proposed Rule 10.9270(c) would provide that an offer of settlement shall be in writing and signed by the person making the offer, and, if the person is represented by counsel or a

representative, signed also by the counsel or representative. Under the proposed Rule, the offer of settlement should contain in reasonable detail the required content of the proposal, which would include, among other things, a statement consenting to findings of fact and violations, a description of the proposed sanction and the effective date of any sanction(s) imposed, or a statement that the effective date of the sanction(s) will be a date to be determined by Regulatory Staff. Current Article 12, Rule 1(d) is not as detailed but specifies that the settlement agreement must admit jurisdiction and contain a proposed penalty that must be reasonable and consistent with the seriousness of the alleged violations.

Proposed Rule 10.9270(d) would provide that submission of a settlement offer waives a Respondent's right to a hearing, to claim bias or ex parte communication violations, any right to claim that a person or body violated the ex parte prohibitions of proposed Rule 10.9143 or the separation of functions prohibitions of proposed Rule 10.9144, and the right to review by the Board, the Commission, or the courts. Under current Article 12, Rule 1(d), settlement agreements must include a waiver by the respondent of all rights of appeal to the Executive Committee, Board, the Commission and United States Court of Appeals or to otherwise challenge or contest the validity of the decision if the offer of settlement is accepted.

Proposed Rule 10.9270(e) would address contested settlement offers. Under the proposed rule, if a Respondent made an offer of settlement and Enforcement opposed it, the offer of settlement would be contested and thereby deemed rejected, and thus the proceeding would continue to completion under the proposed Rule 10.9200 Series. The contested offer of settlement would not be transmitted to the Office of Hearing Officers, CRO, or Hearing Panel or Extended Hearing Panel, and would not constitute a part of the record in any proceeding against the Respondent making the offer. Current Article 12, Rule 1(d) does not contain a comparable

provision. The Exchange believes that its proposed rule would encourage Respondents to make reasonable offers of settlement that would be acceptable to Enforcement.

Proposed Rule 10.9270(f) and (h) would address uncontested settlement offers. Under the proposed rule, if a hearing on the merits had not begun, the CRO could accept the settlement offer; if a hearing on the merits had begun, the Hearing Panel or Extended Hearing Panel could accept the settlement offer.<sup>53</sup> If they did not, the offer would be deemed withdrawn and the matter would proceed under the proposed Rule 10.9200 Series and the settlement offer would not be part of the record. Under current Article 12, Rule 1(d), where an offer of settlement is rejected by the CRO, the offer of settlement shall be deemed withdrawn and it will not be given consideration in the determination of the issues involved in the disciplinary proceeding.

As described below, if the offer of settlement were accepted by the CRO, Hearing Panel or Extended Hearing Panel, it would become final 10 days after being sent, together with an order of acceptance, to each Director and each member of the CFR, unless review by the Exchange Board is required pursuant to proposed Rule 10.9310(a)(1)(A) or (B). The Exchange anticipates that the required acceptance by the CRO, Hearing Panel, or Extended Hearing Panel would help ensure objectivity and consistency among offers of settlement that are issued. The proposed rule change would also allow an offer of settlement to be called for review by the Exchange Board. The Exchange believes that this review mechanism provides an additional, appropriate check and balance to the proposed settlement process.

Proposed Rule 10.9270(g) would provide that the proceeding under the proposed rule would conclude as of the date the order of acceptance is final, and the order of acceptance would

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<sup>53</sup> The CRO, Hearing Panel, or Extended Hearing Panel, as applicable, would consider Exchange precedent or such other precedent as it deemed appropriate in determining whether to accept the settlement offer.

constitute final disciplinary action of the Exchange. The sanction would take effect as set forth in the order.

Proposed Rule 10.9270(i) would address disciplinary proceedings with multiple Respondents and permit settlement offers to be accepted or rejected as to any one or all of such Respondents. Current Article 12, Rule 1(d) does not contain similar authorizations.

Proposed Rule 10.9270(j) would provide that a Respondent may not be prejudiced by a rejected offer of settlement nor may it be introduced into evidence. Current Article 12, Rule 1(d) contains a substantially similar provision.

#### **Proposed Rule 10.9280 (Contemptuous Conduct)**

Proposed Rule 10.9280 would set forth sanctions for contemptuous conduct by a Party or attorney or other representative, which may include exclusion from a hearing or conference, and would set forth a process for reviewing such exclusions. The proposed Rule would also provide for adjournments in the event an exclusion is upheld to allow for the retention of new counsel or selection of a new representative, and would set forth the criteria for determining whether to grant an adjournment and the length of an adjournment.

The Chief Hearing Officer would review exclusions. The Exchange believes that Respondents and their attorneys and representatives would have adequate procedural protections with a review by the Chief Hearing Officer. The Exchange's current rules do not have similar procedures addressing contemptuous conduct.

#### **Proposed Rule 10.9290 (Expedited Disciplinary Proceedings)**

Under proposed Rule 10.9290, for any disciplinary proceeding, the subject matter of which also is subject to a temporary cease and desist proceeding initiated pursuant to proposed Rule 10.9810 or a temporary cease and desist order, hearings would be required to be held and

decisions rendered at the earliest possible time. The proposed Rule is identical to NYSE Arca Rule 10.9290. The Exchange does not currently have a similar rule.

Proposed Rule 10.9291 (Permanent Cease and Desist Orders) would govern the content, scope, form and delivery requirements of permanent cease and desist orders. Under proposed Rule 10.9291(a), when a decision issued under proposed Rule 10.9268 or proposed Rule 10.9269 or an order of acceptance issued under proposed Rule 10.9270 imposes a permanent cease and desist order, the decision shall: order a Respondent (and any successor of a Respondent, where the Respondent is a Participant or Participant Firm) to cease and desist permanently from violating a specific rule or statutory provision; set forth the violation; and describe in reasonable detail the act or acts the Respondent (and any successor of a Respondent, where the Respondent is a Participant or Participant Firm) shall take or refrain from taking. The proposed Rule would also require Respondents that are a Participant or Participant Firm to deliver a copy of a permanent cease and desist order, within one business day of receiving it, to its covered persons. With the exception of conforming changes reflecting the Exchange's membership, the text of the proposed Rule is substantially same as NYSE Arca Rule 10.9291. The Exchange currently does not have a similar rule.

#### **Proposed Rules 10.9300 through 10.9310**

The Exchange's appellate and call for review processes would be set forth in the Rule 10.9300 Series (Review of Disciplinary Proceeding by Exchange Board) and would be substantially the same as the current NYSE Arca process.

Proposed Rule 10.9310 (Review by Exchange Board of Directors) would provide for one review at the Board of Directors level, and discontinue the current practice under Article 12, Rule 5 whereby a decision by the Judiciary Committee is the final decision of the Exchange

under subsection (a) except where the Board in its discretion determines to review a Judiciary Committee decision, as provided for in subsection (b). Under proposed Rule 10.9310(b), upon review, and with the advice of the CFR, the Board may, by the affirmative vote of a majority of the Board then in office, sustain any determination or penalty imposed, (including the terms of any permanent cease and desist order), or both, modify or reverse any such determination, and increase, decrease or eliminate any such penalty, or impose any penalty permitted under the Exchange's rules, as it deems appropriate. Unless the Board otherwise specifically directs, the determination and penalty, if any, of the Board after review shall be final and conclusive subject to the provisions for review of the Act. The Exchange believes that the proposed appellate review process would be fair and efficient and harmonize the Exchange's appellate process with the process of the Exchange's affiliates who have adopted similar disciplinary rules.

Under proposed Rule 10.9310(a)(1)(A), any Party, any Director, and any member of the CFR could require a review by the Exchange Board of any determination or penalty, or both, imposed by a Hearing Panel or Extended Hearing Panel under the proposed Rule 10.9200 Series, except that none of the aforementioned persons could request a review by the Exchange Board of a decision concerning an affiliate of the Exchange as that term is defined in Rule 12b-2 under the Act. Under current Article 12, Rule 5, there is no similar call for review process; only a Respondent or the Exchange may request review and that review is conducted by the Judiciary Committee, subject to the exceptions in Article 12, Rule 5(b).

Moreover, under proposed Rule 10.9310(a)(1)(A), a request for review would be made by filing with the Secretary a written request stating the basis and reasons for such review, within 25 days after notice of the determination and/or penalty was served upon the Respondent. However, any request for review of an offer of settlement determined to be uncontested after a

hearing on the merits has begun under proposed Rule 10.9270(f) that has been accepted by a Hearing Panel or Extended Hearing Panel would be governed by Rule 10.9310(a)(1)(B)(i). The Secretary of the Exchange would give notice of any such request for review to the Parties.

Under proposed Rule 10.9310(a)(1)(B)(i), any Director and any member of the CFR could require a review by the Board of any determination or penalty, or both, imposed in connection with an AWC under Rule 10.9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), except for a determination or penalty concerning an Exchange affiliate as defined in Rule 12b-2 under the Act. Under the proposed rule, a request for review shall be made by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within 10 days after a letter of acceptance, waiver, and consent or an offer of settlement has been sent to each Director and each member of the CFR pursuant to proposed Rule 10.9216(a)(4) or Rule 10.9270(f)(3). The Secretary would give notice of any such request for review to the Parties.

Under proposed Rule 10.9310(a)(1)(B)(ii), any Party could require a review by the Exchange Board of any rejection by the CRO of a letter of acceptance, waiver, and consent under Rule 10.9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), except that no Party may request Board review of a rejection of an AWC or an offer of settlement concerning an Exchange affiliate as defined in Rule 12b-2 under the Act. As proposed, a request for review shall be made by filing with the Secretary a written request stating the basis and reasons for such review within 25 days after notification pursuant to proposed Rule 10.9216(a)(3) or Rule 10.9270(h) that a letter of acceptance, waiver, and consent, or an uncontested offer of settlement or an order of acceptance

is not accepted by the CRO. The Secretary would provide notice of any such request for review to the Parties.

Under current Article 12, Rule 5(a), the parties have 15 days from the date of service of notice of a decision, while under Article 12, Rule 5(b) the Board has no time period in which to request discretionary review of a Judiciary Committee decision. The proposed rule would apply a longer period to requests to review of contested determinations.

Under proposed Rule 10.9310(a)(2), the Secretary would direct the Office of Hearing Officers to complete and transmit a record of the disciplinary proceeding in accordance with Rule 10.9267. Within 21 days after the Secretary gives notice of a request for review to the Parties, or at such later time as the Secretary could designate, the Office of Hearing Officers would assemble and prepare an index to the record, transmit the record and the index to the Secretary, and serve copies of the index upon all Parties. The Hearing Officer who participated in the disciplinary proceeding, or the Chief Hearing Officer, would certify that the record transmitted to the Secretary was complete. Under Article 12, Rule 5(a), unless the Judiciary Committee decides to open the record for the introduction of evidence to hear argument, its review must be based on the factual record as certified to the Judiciary Committee by the Secretary and Board review of matters as provided in Article 12, Rule 5(b) must be upon the record as certified to the Board by the Secretary.

Under proposed Rule 10.9310(b), review by the Exchange Board would be based on oral arguments and written briefs and limited to consideration of the record before the Hearing Panel or Extended Hearing Panel. Under current Article 12, Rule 5, the Judiciary Committee has the discretion but is not required to hear oral argument. Moreover, the Judiciary Committee is not bound by the factual record as certified by the Secretary but can open the record for the

introduction of evidence to hear argument.

Proposed Rule 10.9310(b) further provides that, upon review, and with the advice of the CFR, the Board, by the affirmative vote of a majority of the Exchange Board then in office, could sustain any determination or penalty imposed, (including the terms of any permanent cease and desist order), or both, could modify or reverse any such determination, and could increase, decrease or eliminate any such penalty, or impose any penalty permitted under the Exchange's rules, as it deems appropriate. Unless the Board otherwise specifically directs, its determination and penalty, if any, after review shall be final and conclusive subject to the provisions for review of the Act.

As noted above, the Exchange would discontinue the current practice under Article 12, Rule 5 whereby a decision by the Judiciary Committee is a final decision of the Exchange except where the Board determines to review the Judiciary Committee's decision on a discretionary basis. As proposed, under Rule 10.9310(b), the Board's determination, with the advice of the CFR, if any, would be final and conclusive subject to the provisions for review of the Act unless the Board specifically directs otherwise. In addition, NYSE Arca Rule 10.9310(b) permits the CFR to appoint an Appeals Panel to conduct a review and make a recommendation to the CFR. NYSE Arca retained appeals panels from its legacy disciplinary rules. The Exchange does not currently have a similar process and does not propose to follow NYSE Arca on this point. Proposed Rule 10.9310(b) accordingly omits a comparable provision.

Under proposed Rule 10.9310(c), notwithstanding the foregoing, if either Party upon review applied to the Exchange Board for leave to adduce additional evidence, and showed to the satisfaction of the Exchange Board that the additional evidence was material and that there were reasonable grounds for failure to adduce it before the Hearing Panel or Extended Hearing Panel,

the Exchange Board could remand the case for further proceedings, in whatever manner and on whatever conditions the Exchange Board considered appropriate. Article 12, Rule 5 does not contain a remand provision.

Under proposed Rule 10.9310(d), notwithstanding any other provisions of the proposed Rule 10.9000 Series, the CEO could not require a review by the Exchange Board under this rule and would be recused from deliberations and actions of the Exchange Board with respect to such matters. Current Article 12, Rule 5 does not have a comparable provision.

### **Proposed Rules 10.9500 through 10.9527**

The proposed Rule 10.9500 Series (Other Proceedings) would relate to other proceedings under the Exchange Rules.

The proposed Rule 10.9520 Series would set forth procedures for a covered person to become or remain associated with a Participant or Participant Firm notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Act, and for a Participant, Participant Firm or covered person to obtain relief from the eligibility or qualification requirements of the Exchange's Rules, which the proposed rule refers to as "eligibility proceedings." The proposed rules are substantially similar to the NYSE Arca Rule 10.9520 Series.

Proposed Rule 10.9521 (Purpose and Definitions) would add certain definitions relating to eligibility proceedings that are not currently part of the Exchange's definitions, including "Application," "disqualified Participant," "disqualified Participant Firm," "disqualified person," "sponsoring Participant," and "sponsoring Participant Firm."

Proposed Rule 10.9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) would govern the initiation of an eligibility proceeding by the Exchange and the

obligation for a Participant or Participant Firm to file an application or, for matters set forth in proposed Rule 10.9522(e)(1), a written request for relief if the Participant or Participant Firm determines prior to receiving a notice under Rule 10.9522(a) that (1) it has become a disqualified Participant or Participant Firm; (2) a person associated with such Participant or Participant Firm or whose association is proposed by an applicant for membership under Exchange rules has become a disqualified person; or (3) the Participant or Participant Firm or applicant for membership under Exchange rules wishes to sponsor the association of a covered person who is a disqualified person. The proposed rule also contains provisions governing withdrawal of an application or written request for relief as well as the application of the prohibitions against ex parte communications set forth in Rule 10.9143 to the Rule 10.9520 Series.

Finally, the proposed rule describes the matters that may be approved by the Department of Member Regulation (“Member Regulation”) without the filing of an application and after filing an application, and the rights of a disqualified Participant or Participant Firm, Sponsoring Participant or Participant Firm, Disqualified Person, and Member Regulation where Member Regulation does not approve a written request for relief from the eligibility requirements pursuant to proposed Rule 10.9522(e)(1) or an application pursuant to proposed Rule 10.9522(e)(2).

Proposed Rule 10.9523 (Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to Exchange Act Rule 19h-1) would generally allow Member Regulation to recommend a supervisory plan to which a disqualified Participant or Participant Firm, or sponsoring Participant or Participant Firm and/or disqualified person, as the case may be, could consent and by doing so, waive the right to hearing or appeal if the plan is accepted and the right to claim bias or prejudgment, prohibited ex parte communications or the

separation of functions prohibitions.

Specifically, under subsection (a), which would apply to all disqualifications except those arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Act or arising under Section 3(a)(39)(E) of the Act, a disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person (the “Disqualified Person”), would execute a letter consenting to the imposition of the supervisory plan. By submitting such a letter, the Disqualified Person waive the right to a hearing before a Hearing Panel and any right of appeal to the Exchange Board, the Commission, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted; any right to claim bias or prejudgment by Member Regulation, the CRO, the Board, or any member of the Board, in connection with such person's or body's participation in discussions regarding the terms and conditions of Member Regulation's recommendation or the supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and any right to claim that a person violated the ex parte prohibitions of proposed Rule 10.9143 or the separation of functions prohibitions of proposed Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the recommendation or supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan.

If a recommendation or supervisory plan is rejected, the Disqualified Person would be bound by the waivers made under proposed paragraph (a)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and would have the right to proceed under the

proposed rule and proposed Rule 10.9524, as applicable. Under subsection (a), if a Disqualified Person executes a letter consenting to the supervisory plan, such letter would be submitted to the CRO by Member Regulation with a proposed Notice under Act Rule 19h-1, where required. The CRO may accept or reject Member Regulation's recommendation and the supervisory plan. If accepted, the recommendation and supervisory plan would be deemed final and, where required, the proposed Notice under Rule 19h-1 of the Act would be filed by the Exchange. If rejected by the CRO, the Exchange would be able to take any other appropriate action with respect to the Disqualified Person. The Disqualified Person would not be prejudiced by the execution of the letter consenting to the supervisory plan, and the letter could not be introduced into evidence in any proceeding.

Under subsection (b), which would apply to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Act or arising under Section 3(a)(39)(E) of the Act, in approving an application under proposed Rule 10.9522(e)(2)(F), Member Regulation would be authorized to accept the membership or continued membership of a Disqualified Person or the association or continuing association of a Disqualified Person pursuant to a supervisory plan where the Disqualified Person would consent to the imposition of the supervisory plan. The Disqualified Person would execute a letter consenting to the imposition of the supervisory plan and Member Regulation would prepare a proposed Notice under Rule 19h-1 of the Act where required to be filed by the Exchange.

By submitting an executed letter consenting to a supervisory plan, a Disqualified Person would waive the right of appeal to the Board, the Commission, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted; any right to claim bias or prejudgment by Member Regulation or the CRO in connection with such person's

or body's participation in discussions regarding the terms and conditions of Member Regulation's recommended supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and any right to claim that a person violated the ex parte prohibitions of proposed Rule 10.9143 or the separation of functions prohibitions of proposed Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such supervisory plan. If the supervisory plan is rejected, the Disqualified Person would be bound by the waivers made under proposed paragraph (b)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and would have the right to proceed under proposed Rule 10.9524 (Exchange Board Consideration), which would allow a request for review by the applicant to the Exchange Board. Proposed Rule 10.9527 would provide that a filing of an application for review would not stay the effectiveness of final action by the Exchange unless the Commission otherwise ordered. To maintain consistency with NYSE Arca's rule numbering, proposed Rules 10.9525 and 10.9526 would be designated "Reserved."

**Proposed Rules 10.9550 through 10.9559**

Proposed Rules 10.9550 through 10.9559 would govern expedited proceedings.

Under proposed Rule 10.9551 (Failure to Comply with Public Communication Standards Pursuant to FINRA Rule 2210 as Incorporated by Reference in Rule 11.2210), Regulatory Staff could issue a written notice requiring a Participant or Participant Firm to file communications with FINRA's Advertising Regulation Department at least 10 days prior to use if the staff determined that the Participant or Participant Firm had departed from the standards of proposed

Rule 11.2210 (Communications with the Public).<sup>54</sup> The notice would state the specific grounds and include the factual basis for the action as well as the effective date. The Participant or Participant Firm could file a written request for a hearing with the Office of Hearing Officers pursuant to proposed Rule 10.9559. A Participant or Participant Firm would be required to set forth with specificity any and all defenses to the action in its request for a hearing. Pursuant to proposed Rules 10.8310(a) and 10.9559(n), a Hearing Officer or, if applicable, Hearing Panel, could approve, modify or withdraw any and all sanctions or limitations imposed by the staff's notice, and impose any other fitting sanction. A Participant or Participant Firm subject to a pre-use filing requirement also could file a written request for modification or termination of the requirement. FINRA Rule 2210 proposed to be incorporated by reference in proposed Rule 11.2210 references the procedures in FINRA Rules 9551 and 9559, which are substantially the same as proposed Rules 10.9551 and 10.9559.

Under proposed Rule 10.9552 (Failure to Provide Information or Keep Information Current) would establish procedures in the event that a Participant, Participant Firm or covered person failed to provide any information, report, material, data, or testimony requested or required to be filed under the Exchange's rules, or failed to keep its membership application or supporting documents current. In the event of the foregoing, under proposed Rule 10.9552, the Participant, Participant Firm or covered person could be suspended if corrective action were not taken within 21 days after service of notice. A Participant, Participant Firm or covered person served with a notice could request a hearing within the 21-day period. A Participant, Participant

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<sup>54</sup> The Exchange has filed a separate filing to adopt a new Rule 11.2210 governing communications with the public that would incorporate FINRA Rule 2210 by reference and rename and amend Article 8, Rule 13 governing advertising, promotion and telemarketing. See note 17 [sic], supra. Accordingly, proposed Rule 10.9551 would not be operative until approval of the Exchange's companion rule filing.

Firm or covered person subject to a suspension could file a written request for termination of the suspension on the ground of full compliance. A Participant, Participant Firm or covered person suspended under the proposed rule that failed to request termination of the suspension within three months of issuance of the original notice of suspension would automatically be expelled or barred.<sup>55</sup> Proposed Rule 10.9552 is substantially the same as its NYSE Arca counterpart except for references reflecting the Exchange's membership. Under the Exchange's current rules, there is no procedure that relates to failure to keep a membership application or supporting documents current. Under current Article 6, Rule 9(a), a Participant or partner, officer, director or other person associated with a Participant or other person or entity subject to the jurisdiction of the Exchange that fails to submit requested documents or information to the Exchange is subject to formal disciplinary action. The Exchange's current rules do not authorize an expedited proceeding against persons who fail to submit documents or information.

Proposed Rule 10.9554 (Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution)<sup>56</sup> would contain similar procedures and consequences as proposed Rule 10.9552 relating to a failure to comply with an arbitration award or related settlement or an Exchange order of restitution or Exchange settlement agreement providing for restitution. Under proposed Rule 10.9554, if a Participant,

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<sup>55</sup> The Exchange believes that the provision for automatic expulsion or bar after three months is consistent with Section 6 of the Act because the Respondent would have ample notice and opportunity to be heard under proposed Rule 10.9552, the proposed rule is substantially the same as NYSE Arca's and FINRA's counterpart rules, and the Commission has upheld at least one bar under a prior version of FINRA's rule. *See, e.g.*, Dennis A. Pearson, Jr., Securities Exchange Act Rel. Nos. 54913 (December 11, 2006) (dismissing application for review by associated person barred under NASD Rule 9552(h)) and 55597A (April 6, 2007) (denying motion for reconsideration).

<sup>56</sup> Proposed Rule 10.9553 would be designated "Reserved" to maintain consistency with NYSE Arca's rule numbering.

Participant Firm or covered person fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under the Exchange’s rules, or an Exchange order of restitution or Exchange settlement agreement providing for restitution, Regulatory Staff could provide written notice to such Participant, Participant Firm or covered person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any Participant or Participant Firm. Proposed Rule 10.9554 is substantially the same as NYSE Arca Rule 10.9554 except for references reflecting the Exchange’s membership. The Exchange lacks a comparable rule setting forth a uniform notice period and specific procedures to be followed in the event of suspension or cancellation.

Current Article 14, Rule 1(e) simply provides that any Participant, or covered person who fails to honor an arbitration award can be subject to disciplinary proceedings in accordance with Article 12. To add clarity to the Exchange’s rules, the Exchange would delete the phrase “in accordance with Article 12” following “disciplinary proceedings” in Article 14, Rule 1(e).

Proposed Rule 10.9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services) would govern the failure to meet the eligibility or qualification standards or prerequisites for access to services offered by the Exchange. Under proposed Rule 10.9555, if a Participant, Participant Firm or covered person did not meet the eligibility or qualification standards set forth in the Exchange’s rules, Exchange staff could provide written notice to such Participant, Participant Firm or covered person that the failure to become eligible or qualified will result in a suspension or cancellation of membership or a suspension or bar from associating with any Participant or Participant Firm. Similarly, if a Participant, Participant Firm or covered person did not meet the prerequisites for access to

services offered by the Exchange or a Participant or Participant Firm thereof or could not be permitted to continue to have access to services offered by the Exchange or a Participant or Participant Firm thereof with safety to investors, creditors, Participant, Participant Firms or the Exchange, Exchange staff could provide written notice to such Participant, Participant Firm or covered person limiting or prohibiting access to services offered by the Exchange or a Participant or Participant Firm thereof. The limitation, prohibition, suspension, cancellation, or bar referenced in the notice would become effective 14 days after service of the notice except that the effective date for a notice of a limitation or prohibition on access to services offered by the Exchange or a Participant, or Participant Firm thereof with respect to services to which the Participant, Participant Firm or covered person does not have access would be upon service of the notice.

Proposed Rule 10.9556 (Failure to Comply with Temporary and Permanent Cease and Desist Orders) would provide procedures and set forth consequences for a failure to comply with temporary and permanent cease and desist orders issued under the Rule 10.9200, 10.9300 or 10.9800 Series. The Exchange does not currently have rules governing cease and desist orders or that sets forth procedures and consequences for a failure to comply with a cease and desist order. The proposed rule is the substantially the same as NYSE Arca Rule 10.9556 except for references reflecting the Exchange's membership.

Proposed Rule 10.9557 (Procedures for Regulating Activities Under Article 7, Rules 3 or 8 Regarding a Participant or Participant Firm Experiencing Financial or Operational Difficulties) would allow the Exchange to issue a notice directing a Participant or Participant Firm comply with the provisions of Article 7, Rule 3 (Net Capital and Aggregate Indebtedness) or Article 7, Rule 8 (Operational Capability) or otherwise directing it to restrict its business activities. Article

7, Rule 3 establishes minimum net capital requirements and Article 7, Rule 8 governs the operational capability of Participants and Participant Firms. Article 7, Rule 3 and Rule 8 provide that the Exchange can take certain actions when it appears that a Participant Firm is unable or unwilling to comply with the requirements set forth in those rules. Proposed Rule 10.9557 would govern the process to be followed when the Exchange determines to take the prescribed actions under Article 7, Rules 3 and 8. Except for these rule references and references to reflect the Exchange's membership, the proposed rule is otherwise substantially the same as NYSE Arca Rule 10.9557.

The requirements and/or restrictions imposed by a notice issued and served under the proposed Rule would be immediately effective, except that a timely request for a hearing would stay the effective date for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under proposed Rule 10.9559(o)(4)(A) (whichever period is less), unless the Exchange's CRO (or such other senior officer as the CRO may designate) determines that such a stay cannot be permitted with safety to investors, creditors or other Participants or Participant Firms. Such a determination by the Exchange's CRO (or such other senior officer as the CRO may designate) would not be appealable and an extension of the stay period would not be permitted. Under the proposed Rule, where a timely request for a hearing stays the action for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 10.9559(o)(4)(A) (whichever period is less), the notice would not be deemed to have taken effect during that entire period. Any requirements and/or restrictions imposed by an effective notice would remain in effect unless Exchange staff removes or reduces the requirements and/or restrictions pursuant to a letter of withdrawal of the notice issued as set forth in proposed Rule 10.9557(g)(2).

Proposed Rule 10.9558 (Summary Proceedings for Actions Authorized by Section 6(d)(3) of the Exchange Act) would allow the Exchange's CRO to provide written authorization to Exchange staff to issue a written notice for a summary proceeding for an action authorized by Section 6(d)(3) of the Act. The list of proceedings in the proposed Rule would track the types of proceedings currently provided for in Article 13, Rule 2(a), which governs summary proceedings in accordance with Section 6(d)(3) of the Act. The Exchange does not have a rule comparable to NYSE Arca Rule 11.2(a)-(f), hence the Exchange will not include a subsection (4) to proposed Rule 10.9558(a).

The notice issued under the proposed Rule would be immediately effective; a Participant, Participant Firm or covered person would have seven days to request a hearing. As noted, emergency proceedings are currently authorized under Article 13, Rule 2(a)(1), under which the Exchange has authority to, in part, (i) suspend a Participant or Participant Firm or Associated Person that is expelled or suspended by another SRO or an Associated Person that is barred or suspended from being associated with a member of an SRO; (ii) suspend a Participant, Participant Firm, or any other covered person who is in financial or operating difficulty; or (iii) limit or prohibit any person with respect to access to Exchange services in certain circumstances. Article 13, Rule 2(b) provides that any person subject to an action under Article 13, Rule 2(a) has five days after notification of the action to file a written notice of appeal with the secretary of the Exchange. The Exchange would retain the seven day period in NYSE Arca Rule 10.9558 in order to harmonize with its affiliates. The Exchange believes that the seven day period to request a hearing is not unreasonable given the summary nature of the action. The proposed rule is substantially the same as its NYSE Arca counterpart except for references reflecting the Exchange's membership and the reference to NYSE Arca Rule 11.2(a)-(f), which has no

counterpart on the Exchange.

Proposed Rule 10.9559 (Hearing Procedures for Expedited Proceedings Under the Rule 10.9550 Series) would set forth uniform hearing procedures for all expedited proceedings under the proposed Rule 10.9550 Series. Currently, emergency suspensions under Article 13, Rule 2 utilize the Article 15 rules, which are used for hearings and appeals from certain decisions made by the Exchange pursuant to the Rules. The proposed rule is substantially the same as its NYSE Arca counterpart except for references reflecting the Exchange's membership.

Proposed Rule 10.9560 (Expedited Suspension Proceeding) would set forth procedures for issuing suspension orders, immediately prohibiting a Participant, Participant Firm or covered person from conducting continued disruptive quoting and trading activity on the Exchange and would also provide the Exchange the authority to order a Participant, Participant Firm or covered person to cease and desist from providing access to the Exchange to a client that is conducting disruptive quoting and trading activity. The proposed Rule is substantially the same as NYSE Arca Rule 10.9560 except for changes reflecting the Exchange's membership.

Proposed Rule 10.9560(a)(1) provides that, with the prior written authorization of the CRO or such other senior officers as the CRO may designate, Enforcement may initiate an expedited suspension proceeding with respect to alleged violations of Rule 11.21 (Disruptive Quoting and Trading Activity Prohibited).<sup>57</sup> Proposed Rule 10.9560(a) would also set forth the requirements for notice and service ((a)(2)), and the content of such notice ((a)(3)) pursuant to the Rule.

Proposed Rule 10.9560(b) would govern the appointment of a Hearing Panel as well as

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<sup>57</sup> As discussed below, the Exchange proposes to adopt a new Rule 11.21 prohibiting disruptive quoting and trading activity.

potential disqualification or recusal of Hearing Officers or Panelists. The proposed provision is consistent with proposed Rule 10.9231(b) and (c), which govern the appointment of a Hearing Panel or Extended Hearing Panel to conduct disciplinary proceedings, and proposed Rules 10.9233 (Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers) and 10.9234 (Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Panelists), which would establish the processes for recusal and disqualification of Hearing Officers or Panelists. Proposed Rule 10.9233 provides for a Hearing Officer to be recused in the event he or she has a conflict of interest or bias or other circumstances exist where his or her fairness might reasonably be questioned. In addition to recusal initiated by such a Hearing Officer, a party to the proceeding would be permitted to file a motion to disqualify a Hearing Officer. This is similar to the requirements under proposed Rule 10.9234 for Panelists. However, due to the compressed schedule pursuant to which the process would operate under Rule 10.9560, the proposed rule would require such motion to be filed no later than 5 days after the announcement of the Hearing Panel and the Exchange's brief in opposition to such motion would be required to be filed no later than 5 days after service thereof.

Under proposed Rule 10.9560(c)(1), the hearing would be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Hearing Officer with the consent of the Parties for good cause shown. In the event of a recusal or disqualification of a Hearing Officer or Panelist, the hearing shall be held not later than five days after a replacement Hearing Officer or Panelist is appointed. Under proposed Rule 10.9560(c)(2), a notice of date, time, and place of the hearing shall be served on the Parties not later than seven days before the hearing, unless otherwise ordered by the Hearing Officer. Under the proposed Rule, service shall be made by personal service or overnight commercial courier

and the notice shall be effective upon service.

Proposed Rule 10.9560(c) would also govern how the hearing is conducted, including the authority of Hearing Officers ((c)(3)), witnesses ((c)(4)), additional information that may be required by the Hearing Panel ((c)(5)), the requirement that a transcript of the proceeding be created and details related to such transcript ((c)(6)), and details regarding the creation and maintenance of the record of the proceeding ((c)(7)). Proposed Rule 10.9560(c)(8) would also provide that if a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings.

Finally, as proposed, if Enforcement fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

Under proposed Rule 10.9560(d)(1), the Hearing Panel would be required to issue a written decision stating whether a suspension order would be imposed. The Hearing Panel would be required to issue the decision not later than 10 days after receipt of the hearing transcript, unless otherwise extended by the Hearing Officer with the consent of the Parties for good cause shown. The proposed Rule would state that a suspension order shall be imposed if the Hearing Panel finds by a preponderance of the evidence that the alleged violation specified in the notice has occurred and that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

Proposed Rule 10.9560(d)(2) would also describe the content, scope and form of a suspension order. As proposed, under proposed Rule 10.9560(d)(2)(A), a suspension order shall be limited to ordering a Respondent to cease and desist from violating Rule 11.21, and/or to ordering a Respondent to cease and desist from providing access to the Exchange to a client of

Respondent that is causing violations of Rule 11.21. Under proposed Rule 10.9560(d)(2)(B), a suspension order shall also set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order. The order shall describe in reasonable detail the act or acts the Respondent is to take or refrain from taking, and suspend such Respondent unless and until such action is taken or refrained from ((d)(2)(C)). Finally, the order shall include the date and hour of its issuance ((d)(2)(D)). As proposed, under proposed paragraph (d)(3), a suspension order would remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to proposed paragraph (e), as described below. Finally, paragraph (d)(4) would require service of the Hearing Panel's decision and any suspension order by personal service or overnight commercial courier.

Proposed Rule 10.9560(e) would provide that at any time after the Respondent is served with a suspension order, a Party could apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. The filing of an application to have a suspension order modified, set aside, limited, or revoked under the proposed Rule would not stay the effectiveness of the suspension order.

For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Hearing Panel can modify the order to lift the suspension portion of the order while keeping in place the cease and desist portion of the order. With its broad modification powers, the Hearing Panel also maintains the discretion to impose conditions upon the removal of a suspension – for example, the Hearing Panel could modify an order to lift the suspension portion of the order in the event a Respondent complies with the cease and desist portion of the order but additionally order that the suspension will be re-imposed if Respondent

violates the cease and desist provisions of the modified order in the future. The Hearing Panel generally would be required to respond to the request in writing within 10 days after receipt of the request. An application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order.

Proposed Rule 10.9560(f) would describe the call for review process by the Exchange Board. Specifically, the proposed Rule would provide that if there is no pending application to the Hearing Panel to have a suspension order modified, set aside, limited, or revoked, the Board, in accordance with proposed Rule 10.9310 (Review by Exchange Board), may call for review the Hearing Panel decision on whether to issue a suspension order. Further, the proposed Rule would provide that a call for review by the Exchange Board shall not stay the effectiveness of a suspension order.

Finally, proposed Rule 10.9560(g) would generally provide that sanctions issued under proposed Rule 10.9560 would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under the Rule reviewed by the Commission would be governed by Section 19 of the Act. The filing of an application for review would not stay the effectiveness of a suspension order unless the Commission otherwise ordered.

#### **Proposed Rule 10.9600 Series (Procedures for Exemptions)**

The Exchange proposes to adopt a new Rule 10.9600 Series, which would provide procedures for exemptions.

Under proposed Rule 10.9610 (Application), a Participant or Participant Firm could seek exemptive relief as permitted under proposed Rule 10.8211 (Automated Submission of Trading

Data Requested by the Exchange) or proposed Rule 11.2210 (Communications with the Public)<sup>58</sup> by filing a written application with the appropriate department or staff of the Exchange and provide a copy of the application to the CRO.<sup>59</sup>

Under proposed Rule 10.9620 (Decision), after considering the application, the Exchange staff would be required to issue a written decision setting forth its findings and conclusions. The decision would be served on the Applicant<sup>60</sup> pursuant to proposed Rules 10.9132 and 10.9134. After the decision is served on the Applicant, the application and decision may be publicly available. Under proposed Rule 10.9630 (Appeal), an Applicant that wished to appeal the decision would be required to file a written notice of appeal with the Exchange's CRO within 15 days after service of the decision.

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<sup>58</sup> As previously noted, the Exchange has filed a separate filing to adopt a new Rule 11.2210 governing communications with the public that would incorporate FINRA Rule 2210 by reference and rename and amend Article 8, Rule 13 governing advertising, promotion and telemarketing. See note 17, supra. Accordingly, proposed Rule 10.9610 would not be operative with respect to proposed Rule 11.2210 until approval of the Exchange's companion rule filing.

<sup>59</sup> Exchange rules providing for exemptive relief would be the two proposed rules governing communications with the public and the submission of automated trading data. The Exchange does not have a rule analogous to NYSE Arca Rule 2.5. Except for references to Exchange rules specifying exemptions and references to reflect the Exchange's membership, the proposed rule is otherwise substantially the same as NYSE Arca Rule 10.9610.

<sup>60</sup> Under proposed Rule 10.9610(c), a Participant or Participant Firm that files an application under Rule 10.9610 would be referred to as an "Applicant" thereafter in the proposed Rule 10.9600 Series.

Under proposed Rule 10.9630(e), the CRO would affirm, modify, or reverse the decision issued under proposed Rule 10.9620 and issue a written decision setting forth his or her findings and conclusions and serve the decision on the Applicant. The decision would be served pursuant to proposed Rules 10.9132 and 10.9134, would be effective upon service, and would constitute final action of the Exchange. The Exchange does not have a comparable rule.

**Proposed Rule 10.9700 Series**

To maintain consistency with NYSE Arca's rule numbering conventions, the Rule 10.9700 Series would be marked "Reserved."

**Proposed Rule 10.9800 Series (Temporary Cease and Desist Orders)**

The Exchange proposes a new Rule 10.9800 Series to set forth procedures for issuing temporary cease and desist orders. The Exchange does not currently have a comparable rule. Except for cross-references to Exchange rules and references reflecting the Exchange's membership, the proposed Rule 10.9800 Series is substantially the same as the NYSE Arca Rule 10.9800 Series.

Under proposed Rule 10.9810 (Initiation of Proceeding), with the prior written authorization of the Exchange's CRO or such other senior officers as the CRO may designate, Enforcement may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Act and Rule 10b-5 thereunder; Exchange Act Rules 15g-1 through 15g-9; Article 9, Rule 2 (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act); and Article 9, Rules 9, 10 11 and 12, which prohibit a variety of manipulative activity, by serving a notice (as described in proposed Rule 10.9810(b)) on a Participant, Participant Firm or covered person or upon counsel or other person authorized to represent others under Rule 10.9141, and

filing a copy thereof with the Office of Hearing Officers. The notice issued under the proposed Rule would be effective when service is complete. Proposed Rule 10.9810(c) would provide that if the parties agree to the terms of the proposed temporary cease and desist order, the Hearing Officer shall have the authority to approve and issue the order. Finally, proposed Rule 10.9810(d) would provide that if Enforcement has not issued a complaint under Rule 10.9211 relating to the subject matter of the temporary cease and desist proceeding and alleging violations of the rule or statutory provision specified in the notice described in proposed paragraph (b), Enforcement shall serve and file such a complaint with the notice initiating the temporary cease and desist proceeding. Service of the complaint can be made in accordance with the service provisions in proposed Rule 10.9810(a). The proposed rule is substantially the same as its NYSE Arca counterpart except for references reflecting the Exchange's membership and the underlying rule references.<sup>61</sup> The Exchange does not have a comparable rule.

Proposed Rule 10.9820 (Appointment of Hearing Officer and Hearing Panel) would govern the appointment of a Hearing Officer and Panelists.

Under proposed Rule 10.9830 (Hearing), the hearing would be held not later than 15 days after service of the notice and filing initiating the temporary cease and desist proceeding, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. Proposed Rule 10.9830 would govern how the hearing was conducted.

Under proposed Rule 10.9840 (Issuance of Temporary Cease and Desist Order by Hearing Panel), the Hearing Panel would be authorized to issue a written decision stating whether a temporary cease and desist order would be imposed. The Hearing Panel would be

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<sup>61</sup> NYSE Arca Rule 10.9810 references Section 10(b) of the Act and Rule 10b-5 thereunder and Exchange Act Rules 15g-1 through 15g-9. Article 9, Rule 2 is the Exchange's equivalent to NYSE Arca Rules 9.2010-E and 9.2020-E.

required to issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown.

Under proposed Rule 10.9850 (Review by Hearing Panel), at any time after the Office of Hearing Officers served the Respondent with a temporary cease and desist order, a Party could apply to the Hearing Panel to have the order modified, set aside, limited, or suspended. The Hearing Panel generally would be required to respond to the request in writing within ten days after receipt of the request unless extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. Proposed Rule 10.9860 (Violation of Temporary Cease and Desist Orders) would authorize the initiation of a suspension or cancellation of a Respondent's association or membership or any fitting sanction under proposed Rule 10.9556 if the Respondent violated a temporary cease and desist order.

Finally, proposed Rule 10.9870 (Application to SEC for Review) would provide that temporary cease and desist orders issued under the proposed Rule 10.9800 Series would constitute final and immediately effective disciplinary sanctions imposed by the Exchange, and that the right to have any action under this rule series reviewed by the Commission would be governed by Section 19 of the Act. The filing of an application for review would not stay the effectiveness of the temporary cease and desist order, unless the Commission otherwise ordered.

**Proposed Rule 11.21 (Disruptive Quoting and Trading Activity Prohibited)**

The Exchange proposes new Rule 11.21 based on NYSE Arca Rule 11.21, NYSE American Rule 5220 – Equities, and NYSE Rule 5220, which in turn are modeled on Commentary .03 to FINRA Rule 5210, that defines and prohibits two types of disruptive quoting and trading activity on the Exchange. The Exchange proposes to include this rule under Rule 11

because it is a business conduct trading practices rule.

Proposed Rule 11.21(a) would prohibit Participant, Participant Firms and covered persons from engaging in or facilitating disruptive quoting and trading activity on the Exchange, as described in proposed Rule 11.21(b)(1) and (2), including acting in concert with other persons to effect such activity. The Exchange believes that it is necessary to extend the prohibition to situations when persons are acting in concert to avoid a potential loophole where disruptive quoting and trading activity is simply split between several brokers or customers. The Exchange also believes that, with respect to persons acting in concert perpetrating an abusive scheme, it is important that the Exchange have authority to act against the parties perpetrating the abusive scheme, whether it is one person or multiple persons.

Proposed Rule 11.21(c) would provide that, unless otherwise indicated, the descriptions of disruptive quoting and trading activity do not require the facts to occur in a specific order in order for the Rule to apply. For instance, with respect to the pattern defined in proposed Rule 11.21(b)(1)(A)-(D), it is of no consequence whether a party first enters Displayed Orders and then Contra-side Orders or vice-versa. However, as proposed, it is required for supply and demand to change following the entry of the Displayed Orders.

The Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the rule are consistent with the activities that have been identified and described in the client access cases described in the NYSE American notice and with the rules of other SROs.<sup>62</sup>

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<sup>62</sup> See, e.g., BZX Rule 12.15; NASDAQ General 9, Section 53. See also Securities Exchange Release No. 80804 (May 30, 2017), 82 FR 25887, 25888-25890 (June 5, 2017) (SR-NYSEMKT-2017-25) (Notice of filing discussing matters involving Biremis Corp. and Hold Brothers On-Line Investment Services, Inc.).

### **Proposed Article 2, Rule 4 (CFR)**

The Exchange proposes to create a CFR as a sub-committee of the ROC.<sup>63</sup> As proposed, the CFR would replace the Judiciary Committee as the Exchange’s appellate body reviewing disciplinary decisions on behalf of the Board. The Judiciary Committee would retain the responsibility for reviewing disciplinary decisions under the legacy disciplinary rules. To effectuate this change, “initiated pursuant to Article 12, Rule 1” would be added to the first sentence of Article 2, Rule 3 governing the Judiciary Committee.

As proposed, upon the effective date of the proposed disciplinary rules, the CFR would be responsible for reviewing disciplinary decisions and acting in an advisory capacity to the Board with respect to disciplinary matters. The current Judiciary Committee is limited to reviewing disciplinary decisions and does not act in an advisory capacity to the Board. The Exchange proposes that the CFR, like the current NYSE Arca CFR, would also advise the Board with respect to disciplinary matters. Unlike the NYSE Arca CFR, the Exchange does not propose that the CFR would review determinations to limit or prohibit the continued listing of an issuer’s securities on the Exchange or act in an advisory capacity to the Board with respect to the listing and delisting of securities because the Exchange is not a listing market.<sup>64</sup> Further, the Exchange does not propose to permit the CFR to appoint a CFR Appeals Panel as on NYSE Arca.<sup>65</sup> As noted above, NYSE Arca retained appeals panels from its legacy disciplinary rules

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<sup>63</sup> The composition and responsibilities of the ROC are described in the Second Amended and Restated CHX Bylaws (“Exchange Bylaws”), available here [https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE\\_Chicago\\_Second\\_Amended\\_and\\_Restated\\_Bylaws.pdf](https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_Chicago_Second_Amended_and_Restated_Bylaws.pdf). The ROC consists of at least three members, each of whom shall be a Public Director of the Exchange.

<sup>64</sup> See NYSE Arca Rule 3.3(a)(2)(A).

<sup>65</sup> See, e.g., NYSE Arca Rule 3.3(a)(2)(B).

and the Exchange does not a similar current process.

Similar to NYSE Arca, the Exchange’s proposed CFR would be composed of Non-Affiliated Director(s) and the Public Directors of the Exchange. As per the Exchange Bylaws, “Non-Affiliated Directors” are individuals nominated by the trading permit holders who are permitted to trade on the Exchange’s facilities for the trading of equities that are securities as covered by the Act.<sup>66</sup> “Public Directors” are persons from the public and will not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates.<sup>67</sup> The Exchange believes that member participation on the proposed CFR would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including the disciplinary process, consistent with Section 6(b)(3) of the Act.<sup>68</sup>

By establishing the CFR, the Exchange would make its appellate process consistent with that of NYSE Arca and its other affiliates, all of which have established a CFR as a subcommittee of the respective affiliate’s ROC.<sup>69</sup> Like its affiliates, proposed Article 2, Rule 4 would provide that, subject to the proposed Rule 10.9000 Series, decisions of the proposed CFR would be subject to Board review. As proposed, the decision of the Board would constitute the final action of the Exchange, unless such Board remands the proceedings.

Current Article 2, Rule 4 (Committee Quorum) would become new Article 2, Rule 5.

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<sup>66</sup> See Exchange Bylaws, Art. II, Sec. 2(a).

<sup>67</sup> See id.

<sup>68</sup> 15 U.S.C. 78f(b)(3).

<sup>69</sup> See, e.g., NYSE Arca Rule 3.3(a)(2)(A). See generally Thirteenth Amended and Restated Operating Agreement of the NYSE, Section 2.03(h)(iii); Twelfth Amended and Restated Operating Agreement of NYSE American, Section 2.03(h)(iii); and Sixth Amended and Re-States Bylaws of NYSE National, Section 5.8.

## 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>70</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>71</sup> in particular, in that 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule furthers the objectives of Section 6(b)(7) of the Act,<sup>72</sup> in particular, in that it provides fair procedures for the disciplining of members<sup>73</sup> and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(3) of the Act,<sup>74</sup> in particular, in that it supports the fair representation of members in the administration of the Exchange's affairs.

The proposed changes will provide greater harmonization among SROs resulting in less burdensome and more efficient regulatory compliance for common members of the Exchange,

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<sup>70</sup> 15 U.S.C. 78f(b).

<sup>71</sup> 15 U.S.C. 78f(b)(5).

<sup>72</sup> 15 U.S.C. 78f(b)(7).

<sup>73</sup> The Exchange's equivalent to the term "member" in this context is "Participant" and "Participant Firm."

<sup>74</sup> 15 U.S.C. 78f(b)(3).

the Exchange's affiliates, and FINRA. As previously noted, the proposed rule text is substantially the same as the NYSE Arca disciplinary rules, which were in turn modeled on the FINRA rules. The proposed rule change will enhance the Exchange's ability to have a direct and meaningful impact on the end-to-end quality of its regulatory program, from detection and investigation of potential violations through the efficient initiation and completion of disciplinary measures where appropriate. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. In this regard, the Exchange believes that amending Article 7, Rule 12 so that failure to pay any fine, sanction or cost levied in connection with a disciplinary action would be governed by proposed Rule 10.8320 would further harmonize the Exchange's rules with its affiliates that have adopted the substantially similar version of proposed Rule 10.8320. Similarly, the Exchange believes that adopting a new jurisdiction rule based on the Exchange's current jurisdiction rule Article 12, Rule 7 that incorporates substantially similar provisions based on NYSE Arca's jurisdiction Rule 2.0 would also further harmonize the Exchange's disciplinary rules with its affiliates.

The Exchange believes that the proposed processes for settling disciplinary matters both before and after the issuance of a complaint are fair and reasonable. While such proposed rules differ from certain aspects of the Exchange's current settlement processes, the Exchange believes that the proposed rule change, like the settlement process adopted by NYSE Arca, provides adequate procedural protections to all Parties and promotes efficiency.

Similarly, the Exchange believes that adopting its affiliates' appellate procedures would be fair and efficient and create consistency with its affiliates' practices. The proposed rule

change would provide individual directors with the opportunity to call a case for review.

Currently, in addition to the parties, only the Board may order review of a decision. Adopting the appellate rules of the Exchange's affiliates would also apply a uniform period to all requests for review of a disciplinary determination or penalty.

Subject to a separate notice and comment filing, the Exchange would retain its list of minor rule violations with certain technical and conforming amendments, while adopting its affiliates' and FINRA's process for imposing minor rule violation fines.<sup>75</sup> In addition, as set forth in the Exchange's companion filing and herein, the Exchange believes that adding certain rules to its list of eligible minor rule violations based on the rules of its affiliate 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.

Specifically, the proposed additions are 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 its rules governing general registration and supervision requirements in situations where a more formal disciplinary action may not be warranted or appropriate. As provided for in proposed Rule 10.9217(d), nothing in proposed Rule 10.9217 would require the Exchange to impose a minor rule fine for a violation of any eligible rule and that if the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed with formal disciplinary action rather than under proposed Rule 10.9217.

The Exchange also believes that adding rules based on the rules of its affiliate to its list of

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<sup>75</sup> See NYSE Arca Rule 10.9216(b), NYSE Rule 9216(b), & NYSE American Rule 9216(b). See also generally FINRA Rule 9216(b). See generally SR-NYSECHX-2022-08.

eligible minor rule violations 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 eligible for minor rule treatment on the Exchange's affiliate, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct. As noted above, Article 6, Rule 2(b), 5(a) and 5(b) are substantially similar to NYSE National and NYSE Arca rules of similar purpose, which are each separately eligible for a minor rule fine under the respective market's version of proposed Rule 10.9217.<sup>76</sup>

Further, the Exchange believes that the proposed additions to its list of rules eligible for minor rule fines based on the rules of its affiliate are consistent with Section 6(b)(6) of the Act,<sup>77</sup> which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of 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 pursuant to the Exchange's rules and would increase the amounts of fines in order for the Exchange to better deter violative activity and to harmonize its rules with that of its affiliates.

The Exchange believes that moving the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and removing it from the Fee Schedule would add clarity and transparency to the Exchange's rules by reflecting the recommended fines for minor rule violations in the same place in the Exchange's rules. Similarly, updating the Recommended Fine Schedule to delete obsolete rules and add

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<sup>76</sup> See text accompanying notes 35-37, *supra*.

<sup>77</sup> 15 U.S.C. 78f(b)(6).

recommended fines for rules that were added to the list of minor rules but inadvertently omitted from the Recommended Fine Schedule would also add clarity and transparency to the Exchange's rules. The Exchange believes that adding such clarifying language 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.

Further, the Exchange believes that adding recommended fines for Rule 7.16 and Rule 7.30 that were inadvertently omitted from the current Recommended Fine Schedule based on the fines for the same rules set forth in the rules of its affiliate 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 eligible for minor rule treatment on the Exchange's affiliate, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct. As noted above, the proposed first, second and third level fines for violations of Rule 7.16 are the same as those in NYSE Arca Rule 10.9217(i)(1)1. for violations of NYSE Arca Rule 7.16-E, and the proposed first, second and third level fines for violations of Rule 7.30 are the same as those in NYSE Arca Rule 10.9217(i)(1)5. for violations of NYSE Arca Rule 7.30-E.<sup>78</sup>

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>79</sup> Proposed Rules 10.9216(b) and 10.9217 would not preclude a Participant, Participant Firm or covered person from contesting an alleged violation

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<sup>78</sup> See text accompanying notes 44-47, supra.

<sup>79</sup> 15 U.S.C. 78f(b)(7) & 78f(d).

and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

In addition, the Exchange believes that its proposed transition plan would allow for a more orderly and less burdensome transition for the Exchange's permit holders. The proposed delayed implementation of the new rule set would provide a clear demarcation between matters that would proceed under the new rules and those that would be completed under the legacy rules.

The Exchange believes adopting a new Article 2, Rule 4 to establish a CFR as a sub-committee of the ROC, complies with Section 6(b)(7) of the Act,<sup>80</sup> which requires that the rules of a national securities exchange provide a fair procedure for the disciplining of members and persons associated with members. The members of the Exchange's ROC are all Public Directors of the Exchange Board, thereby ensuring that the ROC is comprised of independent members. In addition, the Exchange believes that participation on the proposed CFR by Non-Affiliated Directors would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Act.<sup>81</sup> In addition, the Exchange believes that having the CFR serve in the advisory capacity is consistent with and facilitates a governance and regulatory structure that furthers the objectives of Section 6(b)(5) of the Act.<sup>82</sup>

The Exchange believes that proposed Rule 11.21 (Disruptive Quoting and Trading Activity Prohibited), which is modeled on NYSE American Rule 5220 – Equities, NYSE Rule

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<sup>80</sup> 15 U.S.C. 78f(b)(7).

<sup>81</sup> 15 U.S.C. 78f(b)(3).

<sup>82</sup> 15 U.S.C. 78f(b)(5).

5220, and NYSE Arca Rule 11.21, which in turn are modeled on Commentary .03 to FINRA Rule 5210, would remove impediments to and perfect the mechanism of a free and open market and a national market system by harmonizing the Exchange's rules with those of other SROs, including its affiliated exchanges.

In addition, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest by providing the Exchange with authority to prohibit specified disruptive quoting and trading activity on the Exchange. More specifically, the Exchange believes that the proposed rule is consistent with the public interest and the protection of investors and otherwise furthers the purposes of the Act because the proposal strengthens the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other member organization and their customers. The Exchange notes that if this type of conduct is allowed to continue on the Exchange, the Exchange's reputation could be harmed because it may appear to the public that the Exchange is not acting to address the behavior. The proposed expedited process would enable the Exchange to address the behavior with greater speed. For the same reasons, the Exchange believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,<sup>83</sup> which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules.

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

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<sup>83</sup> 15 U.S.C. 78f(b)(1) & (b)(6).

competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues, but is rather designed to (i) provide greater harmonization among Exchange, NYSE Arca, NYSE, NYSE American, and FINRA rules of similar purpose for investigations and disciplinary matters; and (ii) enhance the quality of the Exchange's regulatory program, from detection of violations through disciplinary actions, resulting in less burdensome and more efficient regulatory compliance and facilitating performance of regulatory functions. In addition, the proposed rule change will provide the Exchange with necessary means to enforce against violations of manipulative quoting and trading activity in an expedited manner, while providing Participants, Participant Firms and covered person with the necessary due process. The Exchange believes that it is important for all exchanges to be able to take similar action to enforce its rules against manipulative conduct thereby leaving no exchange prey to such conduct.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>84</sup> and Rule 19b-4(f)(6) thereunder.<sup>85</sup>

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<sup>84</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>85</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSECHX-2022-10 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSECHX-2022-10. 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

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business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-NYSECHX-2022-10 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>86</sup>

J. Matthew DeLesDernier  
Assistant Secretary

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<sup>86</sup> 17 CFR 200.30-3(a)(12).