

Required fields are shown with yellow backgrounds and asterisks.

Filing by **NASDAQ BX, Inc.**  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

Proposal to align its existing investigatory and disciplinary processes and related rules with the investigatory and disciplinary processes and related rules of Nasdaq PHLX LLC

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * <input type="text" value="Erik"/>	Last Name * <input type="text" value="Wittman"/>
Title * <input type="text" value="Senior Associate General Counsel"/>	
E-mail * <input type="text" value="erik.wittman@nasdaq.com"/>	
Telephone * <input type="text" value="(202) 912-3070"/>	Fax <input type="text"/>

**Signature**

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title \*)

Date <input type="text" value="08/27/2018"/>	Executive Vice President and General Counsel
By <input type="text" value="Edward S. Knight"/>	<input type="text"/>
(Name *)	

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) Nasdaq BX, Inc. (“BX” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to align its existing investigatory and disciplinary processes and related rules with the investigatory and disciplinary processes and related rules of Nasdaq PHLX LLC (“Phlx”).<sup>3</sup>

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>4</sup>

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. The text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”)

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange proposes that the amendments discussed herein shall not become effective unless and until the Commission grants Nasdaq ISE, Nasdaq GEMX, and Nasdaq MRX their July 16, 2018, request, submitted pursuant to Section 36 of the Act, for an exemption from the rule filing requirements of Section 19(b) of the Act. These rule filings and the exemptive relief will permit Nasdaq ISE, Nasdaq GEMX, and Nasdaq MRX to incorporate by reference the BX Rule 8000 and 9000 Series and their associated investigatory, disciplinary, and adjudicatory processes.

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

on September 19, 2017. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

David Strandberg  
Associate Vice President  
Nasdaq, Inc.  
(301) 978-8073

Erik Wittman  
Senior Associate General Counsel  
Nasdaq, Inc.  
(202) 912-3070

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

a. Purpose

BX proposes to amend certain of its rules to align its existing investigatory and disciplinary processes and related rules with the investigatory and disciplinary processes and related rules of Phlx. BX notes that Phlx amended its rules recently to adopt an investigatory and disciplinary process identical in all material respects to the investigatory and disciplinary processes of Nasdaq, Inc. and BX.<sup>5</sup> The amendment also vested the Phlx Regulation Department with the same authority proposed herein. The Exchange therefore proposes the below changes to the 8000 and 9000 Series of the BX

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<sup>5</sup> See Securities Exchange Act Release No. 82143 (November 22, 2017), 82 FR 56672 (November 29, 2017) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Investigatory and Disciplinary Processes Substantially Similar to Nasdaq BX, Inc. and The Nasdaq Stock Market LLC for Phlx, which, among other things, similarly enabled Phlx to retain discretion to perform these functions).

Rules in order to conform its rules to those of Phlx 8000 and 9000 Series rules in all respects.<sup>6</sup>

#### Definition of Exchange Regulation

The Exchange proposes to revise the definition of BX Current Rule 9120(w) (“Exchange’s Regulation Department”) to expressly include the Exchange’s Enforcement Department. The Exchange’s Enforcement Department is specifically charged with pursuing disciplinary action against members, persons associated with a member, and persons subject to the Exchange’s jurisdiction, in addition to FINRA’s departments of Enforcement and Market Regulation.

Similarly, the Exchange proposes to add references to the “Exchange’s Regulation Department” in BX Current Rule 9120(aa) (definition of the term “Party”). The Exchange also proposes to add a definition for the term “Party” as used in the BX Rule 9400 series,<sup>7</sup> and to add references to “FINRA” in BX Current Rule 9120(aa)(4) to

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<sup>6</sup> The Exchange notes that the Financial Industry Regulatory Authority (“FINRA”) amended its rules recently to reflect an internal reorganization of FINRA’s Enforcement Operations. See Securities Exchange Act Release No. 83781 (August 6, 2018), 83 FR 39802 (August 10, 2018). In July 2017, FINRA announced its plan to consolidate its existing enforcement functions into a unified Department of Enforcement. FINRA’s recent rule change makes technical and other non-substantive changes to FINRA Rules 9000 Series Code of Procedure (the “Code”) to reflect the single Department of Enforcement. The rule change removed references to the Market Regulation department, its head and employees from the Code where those references reflect the previously separate Market Regulation enforcement function. In light of FINRA’s reorganization, the Exchange is likewise removing references to the Market Regulation department, its head and employees from the Code, and re-lettering the remainder of those sections where such re-lettering is necessary (i.e. Rule 9120). Phlx will also submit a similar rule filing to remove those references in due course.

<sup>7</sup> The Exchange notes that, like Phlx, it is likewise including the Department of Enforcement and the Department of Market Regulation as potential parties to a matter under the Rule 9400 Series. The Exchange believes that including these departments in Rule 9400 Series is appropriate because they may be involved in

clarify that FINRA falls under the definition of “Party” as used in the BX Rule 9550 series. In addition, the Exchange is adding references to the Exchange’s Regulation Department throughout the BX Rule 8000 and 9000 series.<sup>8</sup> These amendments will conform the text of BX 8000 and 9000 rules to those of Phlx.<sup>9</sup>

### Role of FINRA

The Exchange proposes to add rule text to certain rules to clarify that FINRA may act on behalf of the Exchange. Today, FINRA is empowered to act on behalf of the Exchange.<sup>10</sup> The revisions to these rules will therefore clarify FINRA’s authority as it currently exists today.<sup>11</sup>

### Jurisdiction

The Exchange proposes to replace the current rule text related to jurisdiction of

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the initiation of such a matter for BX currently. The Exchange is also adding FINRA to other parts of Rule 9400 where it is appropriate to show that FINRA may be the entity that initiated an action under the rule.

<sup>8</sup> See BX Current Rules 9120, 9212, 9213, 9215, 9216, 9251, 9253, 9264, 9269, 9270, 9311, 9400, 9810, 9820, 9830, and 9840.

<sup>9</sup> The Exchange is also amending Current BX Rule 9120(aa)(2), to align that rule text with FINRA’s recent rule change. The term “Party” when used in the Rule 9520 Series, now means FINRA’s Department of Enforcement, rather than Member Regulation. See Securities Exchange Act Release No. 83781 (August 6, 2018), 83 FR 39802 (August 10, 2018).

<sup>10</sup> See BX Current Rule 8001 (“The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions described in these rules on behalf of the Exchange. Exchange rules that refer to the Exchange’s Regulation Department, Exchange Regulation staff, Exchange staff, and Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.”).

<sup>11</sup> See BX Current Rules 9400, 9522, 9552, 9553, 9554, 9555, 9556, 9557, and 9558. The Exchange notes that FINRA currently performs the functions described in these rules. The proposed changes further clarify that in the rule text.

BX to initiate disciplinary actions with Phlx's jurisdiction rule text. Current BX Rules 1012(h)<sup>12</sup> and 1031(f)<sup>13</sup> permit a disciplinary action to be brought within two years after the effective date of resignation, cancellation, or revocation of a member or associated person. The current BX provisions are more limited than Phlx's jurisdictional language. Phlx Rule 9110(d) does not contain a time limit on when a matter may be brought against a member or associated person following its termination or deregistration, so long as the

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<sup>12</sup> A resigned Exchange member or an Exchange member that has had its membership canceled or revoked shall continue to be subject to the filing of a complaint under the Rules of the Exchange based upon conduct that commenced prior to the effective date of the Exchange member's resignation from the Exchange or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within two years after the effective date of resignation, cancellation, or revocation.

<sup>13</sup> A person whose association with an Exchange member has been terminated and who is no longer associated with any member of the Exchange or a person whose registration has been revoked or canceled shall continue to be subject to the filing of a complaint under the Rules of the Exchange based upon conduct which commenced prior to the termination, revocation, or cancellation or upon such person's failure, while subject to the Exchange's jurisdiction as provided herein, to provide information requested by the Exchange pursuant to the Rules of the Exchange, but any such complaint shall be filed within: (A) two years after the effective date of termination of registration pursuant to subsection (c); provided, however, that any amendment to a notice of termination filed pursuant to paragraph (c)(2) that is filed within two years of the original notice that discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the two-year period under this subsection; (B) two years after the effective date of revocation or cancellation of registration pursuant to the Rules of the Exchange; or (C) in the case of an unregistered person, within two years after the date upon which such person ceased to be associated with the Exchange member.

A person whose association with a member has been terminated and is no longer associated with any Exchange member shall continue to be subject to a proceeding to suspend, consistent with Section 12.2 of the Exchange By-Laws, his or her ability to associate with a member based on such person's failure to comply with an arbitration award or a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the Rules of the Exchange, provided that such proceeding is instituted within two years after the date of entry of such award or settlement.

Exchange serves written notice within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member or associated person.<sup>14</sup> Phlx Rule 9110(d) also makes clear that a member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its

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<sup>14</sup> Any member or any partner, officer, director or person employed by or associated with any member (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities Exchange Act of 1934 (Exchange Act), the rules and regulations thereunder, the By-Laws and Rules of the Exchange or any interpretation thereof, and the Rules, Regulations, resolutions and stated policies of the Board of Directors or any Committee of the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a member organization, or any other fitting sanction in accordance with the provisions of these disciplinary Rules.

An individual member, or a partner, officer, director or person employed by or associated with a member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by employees under his supervision or by the member with which he is associated, as though such violations were his own. A member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or employees or by a member or other person who is associated with such member, as though such violation were its own.

Any member, or any partner, officer, director, or person employed by or associated with a member organization, and any member organization shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such person's permit or the termination of the employment by or the association with a member organization of such member or partner, officer, director or person, or following the deregistration of a member organization from the Exchange; provided, that the Exchange serves written notice to such former member, partner, officer, director, employee, associated person or member organization within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member, or as a partner, officer, director or person employed by or associated with a member organization, or prior to the deregistration of such member organization.



officers, directors, or employees or by a member or other person who is associated with such member, as though such violation were its own. While today, BX may bring an action against officers, directors, or employees or by a member or other person who is associated with such member,<sup>15</sup> the proposed rule makes this clear. The substantive amendment with respect to jurisdiction is with the timeframe for bringing a disciplinary action against a member or associated person. The proposed rule expands the timeframe.

The amendment to expand jurisdiction will not apply retroactively and any complaints not filed within the existing two year time-period will be time-barred. The new jurisdiction rule will only apply to the applicable individuals or entities who terminate or deregister with the Exchange on or after September 1, 2018.

The Exchange also proposes to eliminate the rule text contained within BX Current Rules 1012(h) and 1031(f) and reserve those sections.

#### Interested Staff Definition

The definition of Interested Staff is being conformed to Phlx's definition and includes references to Exchange and FINRA employees as those terms are proposed to be defined.<sup>16</sup> The proposed BX definition better defines who falls within the category of Interested Staff without substantively amending the definition. At this time, BX's

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<sup>15</sup> The term "Associated Person" means any partner, officer, director, or branch manager of an Exchange member or Applicant (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such Exchange member or Applicant, or any employee of such Exchange member or Applicant, except that any person associated with an Exchange member or Applicant whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of the Equity Rules. See BX Rule 1011(b).

<sup>16</sup> As noted in n.6 above, the Exchange is, however, omitting references to FINRA's Department of Market Regulation in light of FINRA's recent rule filing that similarly omitted references to its Department of Market Regulation.

proposal mirrors the Phlx definition, except insofar as BX's proposal omits references to FINRA's Department of Market Regulation for the reasons set forth in footnote 6 above.<sup>17</sup> The Exchange also notes that it is removing the words "a district director or" from BX Current Rules 9120(t)(1)(D), 9120(t)(2)(D), and 9120(t)(3)(D) because there is no such position at the Exchange. The use of those words in the current definition refers to the individual to whom a FINRA employee may report. Those words are therefore being preserved as they relate to FINRA in Proposed BX New Rules 9120(r)(1)(H), 9120(r)(2)(E), 9120(4)(3)(E), and 9120(4)(r)(F).

#### Other Non-Substantive and Technical Amendments

The Exchange proposes to add a sentence within Current BX Rule 9270(e)(2), similar to Phlx, to add more specificity to this rule and make clear that the Office of Disciplinary Affairs may accept an offer of settlement and order of acceptance or refer them to the Exchange Review Council. The Exchange notes that today the Office of Disciplinary Affairs may accept an offer of settlement and order of acceptance or refer them to the Exchange Review Council, so this language is intended to clarify the current practice under the rule.

The Exchange also proposes to make certain technical amendments throughout these rules to: (i) amend "NASD" to the updated name "FINRA"<sup>18</sup>; (ii) replace

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<sup>17</sup> The Exchange notes that it is adopting a more comprehensive definition of "Interested Staff" under BX Current Rule 9120(t) to align it with the definition used by Phlx. Specifically, the Exchange is adopting new text that accounts for the role of the Exchange's Regulation Department, including the involvement of employees thereof. Thus, the proposed new definition will include all individuals that should be considered as "Interested Staff" for purposes of the BX Rule 9000 Series.

<sup>18</sup> See BX Current Rule 8110 and 9120(f).

“Association” with “FINRA”<sup>19</sup>; (iii) update certain incorrect cross-references to both FINRA and Nasdaq rule citations<sup>20</sup>; (iv) add rule text in certain rules to conform the rule text of BX to Phlx<sup>21</sup>; (v) include the phrase “or person” in various places throughout the rule to make it clear that inclusion of the person associated with a member is applicable<sup>22</sup>; and correct typographical errors.<sup>23</sup>

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>24</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>25</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In addition, the Exchange believes that the proposed rule changes further the objectives of Section 6(b)(7) of the Act,<sup>26</sup> in particular, in that these changes provide for fair procedures for the disciplining of members 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

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<sup>19</sup> See BX Current Rules 9558(a), 9558(a)(2), and 9610(a).

<sup>20</sup> See BX Current Rules 9231(c) and 9331(a)(2).

<sup>21</sup> See BX Current Rules IM-8310-3, 9211(a)(1)-(2), 9270(e)(2), 9522(e)(2)(A).

<sup>22</sup> See BX Current Rules 9552(b), 9553(b), 9554(b), 9555(b), and 9556(e).

<sup>23</sup> See BX Current Rules 9523(a)(4) and 9554(a).

<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 15 U.S.C. 78f(b)(7).

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 changes are consistent with Section 6(b)(6) of the Act,<sup>27</sup> which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or 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.

The Exchange believes that the proposed changes are consistent with these requirements because the changes further harmonize BX's investigative and adjudicatory processes with similar processes used by Phlx. The new processes are well-established as fair and designed to protect investors and the public interest. Because the Exchange is conforming the BX rule text to the Phlx rule text to eliminate any differences (except for those noted herein), the Exchange believes that the proposed changes should facilitate prompt, appropriate, and effective discipline of members and their associated persons consistent with the Act. The Exchange believes that adding references to the Exchange's Regulation Department within the 8000 and 9000 BX Series rules as described in this proposal clarifies the involvement that the Exchange's Regulation Department plays in the investigation and enforcement of BX's disciplinary rules. In addition, the Exchange believes that adding references to FINRA within the 8000 and 9000 BX Series rules as

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<sup>27</sup> 15 U.S.C. 78f(b)(6).

described in this proposal brings greater transparency to its rules and clarifies the process as it exists today. Today, FINRA is empowered to act on behalf of the Exchange.<sup>28</sup>

The Exchange believes that harmonizing the rule text of the investigative and adjudicatory processes with those of Phlx will reduce the burden on members and their associated persons as they only will need to be familiar with a single rule set going forward. Because the substance of the rules would remain unchanged, the Exchange believes that the proposed change would continue to provide fair procedures for the suspending and disciplining of members and associated persons, 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.

The Exchange's proposal to replace the current rule text related to jurisdiction of BX to initiate disciplinary actions with Phlx's jurisdiction rule text will permit the Exchange to initiate a disciplinary action beyond two years after the effective date of resignation, cancellation, or revocation of a member. This provision would not apply retroactively, but would permit the Exchange to bring actions after the effective date of termination or registration, so long as the Exchange serves written notice within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member or associated person. The Exchange believes that this provision will provide the Exchange with the same latitude as Phlx to

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<sup>28</sup> See BX Current Rule 8001.

bring actions against its members and associated persons for violations of its rule. The Exchange believes that it is consistent with the Act to provide the Exchange with the ability to initiate violations for members and their associated persons for violations which took place while these members and associated persons were members of the Exchange. The rule change will better protect investors and the public interest by allowing actions to proceed that may otherwise have been time barred under the old rule.

The Exchange's proposal to amend the definition of Interested Staff will conform BX's definition to Phlx's definition, except insofar as BX's proposal omits references to FINRA's Department of Market Regulation for the reasons set forth in footnote 6 above. The Exchange believes that it is consistent with the Act because the definition better defines who falls within the category of Interested Staff without substantively amending the definition.

Finally, making technical amendments in BX Rules 8110, IM-8310-3, 9120, 9211, 9231, 9270, 9331, 9522, 9523, 9552, 9553, 9554, 9555, 9556, 9558, and 9610 removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having incorrect or incomplete material in the Exchange's rulebook.

The Exchange believes that its proposal furthers the objectives of Section 6(b)(7) of the Act,<sup>29</sup> in that it is designed to provide a fair procedure for the disciplining of members 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

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<sup>29</sup> 15 U.S.C. 78f(b)(7).

respect to access to services offered by the exchange or a member thereof. Specifically, the Exchange believes that the proposed investigatory and disciplinary process is consistent with Section 6(b)(7) of the Act<sup>30</sup> because it is based on the existing processes used by Phlx.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended to more clearly align the text of Phlx's and the Exchange's rules. Specifically and as described in detail above, the Exchange believes that this change will bring efficiency and consistency to the investigative and adjudicatory processes, thereby reducing the burden on members and their associated persons who are also members of Phlx.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)<sup>31</sup> of the Act and Rule 19b-4(f)(6) thereunder<sup>32</sup> in that it effects a change

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<sup>30</sup> Id.

<sup>31</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>32</sup> 17 CFR 240.19b-4(f)(6).

that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that, because the proposed rule change does not change the investigative and adjudicatory processes that are well-established as fair and designed to protect investors and the public interest, and because the proposed changes are based on the current rules of Phlx which vests its regulation department with certain investigation and enforcement authority, the proposed rule change does not affect the protection of investors or the public interest. In addition, because substantially similar authority is vested with the Phlx Regulation Department, the Exchange does not believe that the changes will be impactful to competition whatsoever but will reduce the burden on members and persons associated with members. The Exchange also believes that the proposed changes to the Exchange's rules are non-controversial. The proposed New Rule 8000 and 9000 Series are materially unchanged from the related Phlx rules. The Phlx rules have already been deemed to be consistent with the Act, and thus adoption of the materially identical rules proposed herein does not affect the protection of investors or the public interest, nor does it raise new or novel issues. To the extent the proposed rules differ from Phlx, the differences are technical and conforming in nature to reflect the unique attributes of the Exchange, or result from the Exchange's proposed elimination of references to FINRA's Department of Market Regulation, which Phlx will likewise remove from its rules in due course. As such, the proposed rule change should



have minimal impact on market participants and should be considered non-controversial. Accordingly, the Exchange believes that the proposed rule change does not affect the protection of investors or the public interest, and does not impose any significant burden on competition.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4. 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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that it may amend its disciplinary rules immediately to conform to Phlx’s disciplinary process. The Exchange believes that the immediate effectiveness is reasonable because members will be unaffected by the amendments with the exception of the jurisdiction. The amendment to expand jurisdiction will not apply retroactively and any complaints not filed within the existing two year time-period will be time-barred. The new jurisdiction rule will only apply to the applicable individuals or entities who terminate or deregister with the

Exchange on September 1, 2018 or thereafter. The remaining changes to the rules amend the text, but not the investigatory or disciplinary processes themselves.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change are similar to the 8000 and 9000 Series of Phlx Rules.<sup>33</sup>

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.

5. Text of the proposed rule change.

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<sup>33</sup> To the extent the proposed rules differ from Phlx, the differences are technical and conforming in nature to reflect the unique attributes of the Exchange. For example, Phlx uses the terms “member” and “member organization” which are comparable to the terms BX uses, such as “member” and “associated person.” The proposed rules also eliminate references to FINRA’s Department of Market Regulation. The Exchange notes that while FINRA recently “consolidate[d] its existing enforcement functions into a unified Department of Enforcement”, see Securities Exchange Act Release No. 83781 (August 6, 2018), 83 FR 39802 (August 10, 2018), it did not eliminate the Market Regulation Department completely. See, e.g., FINRA Rule 2360(b)(23)(B).

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-BX-2018-042)

August \_\_, 2018

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Align its Existing Investigatory and Disciplinary Processes and Related Rules with the Investigatory and Disciplinary Processes and Related Rules of Nasdaq PHLX LLC

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 27, 2018, Nasdaq BX, Inc. (“BX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to a proposal to align its existing investigatory and disciplinary processes and related rules with the investigatory and disciplinary processes and related rules of Nasdaq PHLX LLC (“Phlx”).<sup>3</sup>

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Exchange proposes that the amendments discussed herein shall not become effective unless and until the Commission grants Nasdaq ISE, Nasdaq GEMX, and Nasdaq MRX their July 16, 2018, request, submitted pursuant to Section 36 of the Act, for an exemption from the rule filing requirements of Section 19(b) of the Act. These rule filings and the exemptive relief will permit Nasdaq ISE, Nasdaq GEMX, and Nasdaq MRX to incorporate by reference the BX Rule 8000 and 9000 Series and their associated investigatory, disciplinary, and adjudicatory processes.

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>4</sup>

The text of the proposed rule change is available on the Exchange's Website at <http://nasdaqbx.cchwallstreet.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these 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 aspects of such statements.

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

1. Purpose

BX proposes to amend certain of its rules to align its existing investigatory and disciplinary processes and related rules with the investigatory and disciplinary processes and related rules of Phlx. BX notes that Phlx amended its rules recently to adopt an investigatory and disciplinary process identical in all material respects to the investigatory and disciplinary processes of Nasdaq, Inc. and BX.<sup>5</sup> The amendment also

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<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>5</sup> See Securities Exchange Act Release No. 82143 (November 22, 2017), 82 FR 56672 (November 29, 2017) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Investigatory and Disciplinary Processes Substantially Similar to Nasdaq BX, Inc. and The Nasdaq Stock Market LLC for Phlx, which, among other things, similarly enabled Phlx to retain discretion to perform these functions).

vested the Phlx Regulation Department with the same authority proposed herein. The Exchange therefore proposes the below changes to the 8000 and 9000 Series of the BX Rules in order to conform its rules to those of Phlx 8000 and 9000 Series rules in all respects.<sup>6</sup>

#### Definition of Exchange Regulation

The Exchange proposes to revise the definition of BX Current Rule 9120(w) (“Exchange’s Regulation Department”) to expressly include the Exchange’s Enforcement Department. The Exchange’s Enforcement Department is specifically charged with pursuing disciplinary action against members, persons associated with a member, and persons subject to the Exchange’s jurisdiction, in addition to FINRA’s departments of Enforcement and Market Regulation.

Similarly, the Exchange proposes to add references to the “Exchange’s Regulation Department” in BX Current Rule 9120(aa) (definition of the term “Party”). The Exchange also proposes to add a definition for the term “Party” as used in the BX

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<sup>6</sup> The Exchange notes that the Financial Industry Regulatory Authority (“FINRA”) amended its rules recently to reflect an internal reorganization of FINRA’s Enforcement Operations. See Securities Exchange Act Release No. 83781 (August 6, 2018), 83 FR 39802 (August 10, 2018). In July 2017, FINRA announced its plan to consolidate its existing enforcement functions into a unified Department of Enforcement. FINRA’s recent rule change makes technical and other non-substantive changes to FINRA Rules 9000 Series Code of Procedure (the “Code”) to reflect the single Department of Enforcement. The rule change removed references to the Market Regulation department, its head and employees from the Code where those references reflect the previously separate Market Regulation enforcement function. In light of FINRA’s reorganization, the Exchange is likewise removing references to the Market Regulation department, its head and employees from the Code, and re-lettering the remainder of those sections where such re-lettering is necessary (i.e. Rule 9120). Phlx will also submit a similar rule filing to remove those references in due course.

Rule 9400 series,<sup>7</sup> and to add references to “FINRA” in BX Current Rule 9120(aa)(4) to clarify that FINRA falls under the definition of “Party” as used in the BX Rule 9550 series. In addition, the Exchange is adding references to the Exchange’s Regulation Department throughout the BX Rule 8000 and 9000 series.<sup>8</sup> These amendments will conform the text of BX 8000 and 9000 rules to those of Phlx.<sup>9</sup>

#### Role of FINRA

The Exchange proposes to add rule text to certain rules to clarify that FINRA may act on behalf of the Exchange. Today, FINRA is empowered to act on behalf of the Exchange.<sup>10</sup> The revisions to these rules will therefore clarify FINRA’s authority as it

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<sup>7</sup> The Exchange notes that, like Phlx, it is likewise including the Department of Enforcement and the Department of Market Regulation as potential parties to a matter under the Rule 9400 Series. The Exchange believes that including these departments in Rule 9400 Series is appropriate because they may be involved in the initiation of such a matter for BX currently. The Exchange is also adding FINRA to other parts of Rule 9400 where it is appropriate to show that FINRA may be the entity that initiated an action under the rule.

<sup>8</sup> See BX Current Rules 9120, 9212, 9213, 9215, 9216, 9251, 9253, 9264, 9269, 9270, 9311, 9400, 9810, 9820, 9830, and 9840.

<sup>9</sup> The Exchange is also amending Current BX Rule 9120(aa)(2), to align that rule text with FINRA’s recent rule change. The term “Party” when used in the Rule 9520 Series, now means FINRA’s Department of Enforcement, rather than Member Regulation. See Securities Exchange Act Release No. 83781 (August 6, 2018), 83 FR 39802 (August 10, 2018).

<sup>10</sup> See BX Current Rule 8001 (“The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions described in these rules on behalf of the Exchange. Exchange rules that refer to the Exchange’s Regulation Department, Exchange Regulation staff, Exchange staff, and Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.”).

currently exists today.<sup>11</sup>

### Jurisdiction

The Exchange proposes to replace the current rule text related to jurisdiction of BX to initiate disciplinary actions with Phlx's jurisdiction rule text. Current BX Rules 1012(h)<sup>12</sup> and 1031(f)<sup>13</sup> permit a disciplinary action to be brought within two years after

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<sup>11</sup> See BX Current Rules 9400, 9522, 9552, 9553, 9554, 9555, 9556, 9557, and 9558. The Exchange notes that FINRA currently performs the functions described in these rules. The proposed changes further clarify that in the rule text.

<sup>12</sup> A resigned Exchange member or an Exchange member that has had its membership canceled or revoked shall continue to be subject to the filing of a complaint under the Rules of the Exchange based upon conduct that commenced prior to the effective date of the Exchange member's resignation from the Exchange or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within two years after the effective date of resignation, cancellation, or revocation.

<sup>13</sup> A person whose association with an Exchange member has been terminated and who is no longer associated with any member of the Exchange or a person whose registration has been revoked or canceled shall continue to be subject to the filing of a complaint under the Rules of the Exchange based upon conduct which commenced prior to the termination, revocation, or cancellation or upon such person's failure, while subject to the Exchange's jurisdiction as provided herein, to provide information requested by the Exchange pursuant to the Rules of the Exchange, but any such complaint shall be filed within: (A) two years after the effective date of termination of registration pursuant to subsection (c); provided, however, that any amendment to a notice of termination filed pursuant to paragraph (c)(2) that is filed within two years of the original notice that discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the two-year period under this subsection; (B) two years after the effective date of revocation or cancellation of registration pursuant to the Rules of the Exchange; or (C) in the case of an unregistered person, within two years after the date upon which such person ceased to be associated with the Exchange member.

A person whose association with a member has been terminated and is no longer associated with any Exchange member shall continue to be subject to a proceeding to suspend, consistent with Section 12.2 of the Exchange By-Laws, his or her ability to associate with a member based on such person's failure to comply with an arbitration award or a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition

the effective date of resignation, cancellation, or revocation of a member or associated person. The current BX provisions are more limited than Phlx's jurisdictional language. Phlx Rule 9110(d) does not contain a time limit on when a matter may be brought against a member or associated person following its termination or deregistration, so long as the Exchange serves written notice within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member or associated person.<sup>14</sup> Phlx Rule 9110(d) also makes clear that a member may be charged

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pursuant to the Rules of the Exchange, provided that such proceeding is instituted within two years after the date of entry of such award or settlement.

<sup>14</sup> Any member or any partner, officer, director or person employed by or associated with any member (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities Exchange Act of 1934 (Exchange Act), the rules and regulations thereunder, the By-Laws and Rules of the Exchange or any interpretation thereof, and the Rules, Regulations, resolutions and stated policies of the Board of Directors or any Committee of the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a member organization, or any other fitting sanction in accordance with the provisions of these disciplinary Rules.

An individual member, or a partner, officer, director or person employed by or associated with a member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by employees under his supervision or by the member with which he is associated, as though such violations were his own. A member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or employees or by a member or other person who is associated with such member, as though such violation were its own.

Any member, or any partner, officer, director, or person employed by or associated with a member organization, and any member organization shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such person's permit or the termination of the employment by or the association with a member organization of such member or partner, officer, director or person, or following the deregistration of a member organization from



with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or employees or by a member or other person who is associated with such member, as though such violation were its own. While today, BX may bring an action against officers, directors, or employees or by a member or other person who is associated with such member,<sup>15</sup> the proposed rule makes this clear. The substantive amendment with respect to jurisdiction is with the timeframe for bringing a disciplinary action against a member or associated person. The proposed rule expands the timeframe.

The amendment to expand jurisdiction will not apply retroactively and any complaints not filed within the existing two year time-period will be time-barred. The new jurisdiction rule will only apply to the applicable individuals or entities who terminate or deregister with the Exchange on or after September 1, 2018.

The Exchange also proposes to eliminate the rule text contained within BX Current Rules 1012(h) and 1031(f) and reserve those sections.

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the Exchange; provided, that the Exchange serves written notice to such former member, partner, officer, director, employee, associated person or member organization within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member, or as a partner, officer, director or person employed by or associated with a member organization, or prior to the deregistration of such member organization.

<sup>15</sup> The term "Associated Person" means any partner, officer, director, or branch manager of an Exchange member or Applicant (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such Exchange member or Applicant, or any employee of such Exchange member or Applicant, except that any person associated with an Exchange member or Applicant whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of the Equity Rules. See BX Rule 1011(b).

### Interested Staff Definition

The definition of Interested Staff is being conformed to Phlx's definition and includes references to Exchange and FINRA employees as those terms are proposed to be defined.<sup>16</sup> The proposed BX definition better defines who falls within the category of Interested Staff without substantively amending the definition. At this time, BX's proposal mirrors the Phlx definition, except insofar as BX's proposal omits references to FINRA's Department of Market Regulation for the reasons set forth in footnote 6 above.<sup>17</sup> The Exchange also notes that it is removing the words "a district director or" from BX Current Rules 9120(t)(1)(D), 9120(t)(2)(D), and 9120(t)(3)(D) because there is no such position at the Exchange. The use of those words in the current definition refers to the individual to whom a FINRA employee may report. Those words are therefore being preserved as they relate to FINRA in Proposed BX New Rules 9120(r)(1)(H), 9120(r)(2)(E), 9120(4)(3)(E), and 9120(4)(r)(F).

### Other Non-Substantive and Technical Amendments

The Exchange proposes to add a sentence within Current BX Rule 9270(e)(2), similar to Phlx, to add more specificity to this rule and make clear that the Office of Disciplinary Affairs may accept an offer of settlement and order of acceptance or refer

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<sup>16</sup> As noted in n.6 above, the Exchange is, however, omitting references to FINRA's Department of Market Regulation in light of FINRA's recent rule filing that similarly omitted references to its Department of Market Regulation.

<sup>17</sup> The Exchange notes that it is adopting a more comprehensive definition of "Interested Staff" under BX Current Rule 9120(t) to align it with the definition used by Phlx. Specifically, the Exchange is adopting new text that accounts for the role of the Exchange's Regulation Department, including the involvement of employees thereof. Thus, the proposed new definition will include all individuals that should be considered as "Interested Staff" for purposes of the BX Rule 9000 Series.

them to the Exchange Review Council. The Exchange notes that today the Office of Disciplinary Affairs may accept an offer of settlement and order of acceptance or refer them to the Exchange Review Council, so this language is intended to clarify the current practice under the rule.

The Exchange also proposes to make certain technical amendments throughout these rules to: (i) amend “NASD” to the updated name “FINRA”<sup>18</sup>; (ii) replace “Association” with “FINRA”<sup>19</sup>; (iii) update certain incorrect cross-references to both FINRA and Nasdaq rule citations<sup>20</sup>; (iv) add rule text in certain rules to conform the rule text of BX to Phlx<sup>21</sup>; (v) include the phrase “or person” in various places throughout the rule to make it clear that inclusion of the person associated with a member is applicable<sup>22</sup>; and correct typographical errors.<sup>23</sup>

## 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>24</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>25</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national

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<sup>18</sup> See BX Current Rule 8110 and 9120(f).

<sup>19</sup> See BX Current Rules 9558(a), 9558(a)(2), and 9610(a).

<sup>20</sup> See BX Current Rules 9231(c) and 9331(a)(2).

<sup>21</sup> See BX Current Rules IM-8310-3, 9211(a)(1)-(2), 9270(e)(2), 9522(e)(2)(A).

<sup>22</sup> See BX Current Rules 9552(b), 9553(b), 9554(b), 9555(b), and 9556(e).

<sup>23</sup> See BX Current Rules 9523(a)(4) and 9554(a).

<sup>24</sup> 15 U.S.C. 78f(b).

<sup>25</sup> 15 U.S.C. 78f(b)(5).

market system, and, in general to protect investors and the public interest. In addition, the Exchange believes that the proposed rule changes further the objectives of Section 6(b)(7) of the Act,<sup>26</sup> in particular, in that these changes provide for fair procedures for the disciplining of members 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 changes are consistent with Section 6(b)(6) of the Act,<sup>27</sup> which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or 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.

The Exchange believes that the proposed changes are consistent with these requirements because the changes further harmonize BX's investigative and adjudicatory processes with similar processes used by Phlx. The new processes are well-established as fair and designed to protect investors and the public interest. Because the Exchange is conforming the BX rule text to the Phlx rule text to eliminate any differences (except for those noted herein), the Exchange believes that the proposed changes should facilitate prompt, appropriate, and effective discipline of members and their associated persons

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<sup>26</sup> 15 U.S.C. 78f(b)(7).

<sup>27</sup> 15 U.S.C. 78f(b)(6).

consistent with the Act. The Exchange believes that adding references to the Exchange's Regulation Department within the 8000 and 9000 BX Series rules as described in this proposal clarifies the involvement that the Exchange's Regulation Department plays in the investigation and enforcement of BX's disciplinary rules. In addition, the Exchange believes that adding references to FINRA within the 8000 and 9000 BX Series rules as described in this proposal brings greater transparency to its rules and clarifies the process as it exists today. Today, FINRA is empowered to act on behalf of the Exchange.<sup>28</sup>

The Exchange believes that harmonizing the rule text of the investigative and adjudicatory processes with those of Phlx will reduce the burden on members and their associated persons as they only will need to be familiar with a single rule set going forward. Because the substance of the rules would remain unchanged, the Exchange believes that the proposed change would continue to provide fair procedures for the suspending and disciplining of members and associated persons, 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.

The Exchange's proposal to replace the current rule text related to jurisdiction of BX to initiate disciplinary actions with Phlx's jurisdiction rule text will permit the Exchange to initiate a disciplinary action beyond two years after the effective date of resignation, cancellation, or revocation of a member. This provision would not apply retroactively, but would permit the Exchange to bring actions after the effective date of

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<sup>28</sup> See BX Current Rule 8001.

termination or registration, so long as the Exchange serves written notice within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member or associated person. The Exchange believes that this provision will provide the Exchange with the same latitude as Phlx to bring actions against its members and associated persons for violations of its rule. The Exchange believes that it is consistent with the Act to provide the Exchange with the ability to initiate violations for members and their associated persons for violations which took place while these members and associated persons were members of the Exchange. The rule change will better protect investors and the public interest by allowing actions to proceed that may otherwise have been time barred under the old rule.

The Exchange's proposal to amend the definition of Interested Staff will conform BX's definition to Phlx's definition, except insofar as BX's proposal omits references to FINRA's Department of Market Regulation for the reasons set forth in footnote 6 above. The Exchange believes that it is consistent with the Act because the definition better defines who falls within the category of Interested Staff without substantively amending the definition.

Finally, making technical amendments in BX Rules 8110, IM-8310-3, 9120, 9211, 9231, 9270, 9331, 9522, 9523, 9552, 9553, 9554, 9555, 9556, 9558, and 9610 removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having incorrect or incomplete material in the Exchange's rulebook.

The Exchange believes that its proposal furthers the objectives of Section 6(b)(7) of the Act,<sup>29</sup> in that it is designed to provide a fair procedure for the disciplining of members 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. Specifically, the Exchange believes that the proposed investigatory and disciplinary process is consistent with Section 6(b)(7) of the Act<sup>30</sup> because it is based on the existing processes used by Phlx.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended to more clearly align the text of Phlx's and the Exchange's rules. Specifically and as described in detail above, the Exchange believes that this change will bring efficiency and consistency to the investigative and adjudicatory processes, thereby reducing the burden on members and their associated persons who are also members of Phlx.

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

No written comments were either solicited or received.

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<sup>29</sup> 15 U.S.C. 78f(b)(7).

<sup>30</sup> Id.

### 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)(iii) of the Act<sup>31</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>32</sup>

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: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be 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:

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<sup>31</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>32</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.



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- BX-2018-042 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- BX-2018-042. 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 Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR- BX-2018-042 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>33</sup>

Eduardo A. Aleman  
Assistant Secretary

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<sup>33</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

Deleted text is [bracketed]. New text is underlined.

**Rules of Nasdaq BX****Equity Rules**

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**1000. Membership, Registration and Qualification Requirements****Membership, Registration and Qualification Requirements**

\* \* \* \* \*

**1010. Membership Proceedings**

\* \* \* \* \*

**1012. General Provisions**

(a) – (g) No change.

**(h) Reserved. [Retention of Jurisdiction**

A resigned Exchange member or an Exchange member that has had its membership canceled or revoked shall continue to be subject to the filing of a complaint under the Rules of the Exchange based upon conduct that commenced prior to the effective date of the Exchange member's resignation from the Exchange or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within two years after the effective date of resignation, cancellation, or revocation.]

(i) – (j) No change.

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**1030. Registration of Representatives****1031. Registration Requirements**

(a) – (e) No change.

**(f) Reserved. [Retention of Jurisdiction**

(1) A person whose association with an Exchange member has been terminated and who is no longer associated with any member of the Exchange or a person whose registration has been revoked or canceled shall continue to be subject to the filing of a complaint under the Rules of the Exchange based upon conduct which commenced prior to the termination, revocation, or cancellation or upon such person's failure, while subject to the Exchange's jurisdiction as provided herein, to provide information requested by the

Exchange pursuant to the Rules of the Exchange, but any such complaint shall be filed within:

(A) two years after the effective date of termination of registration pursuant to subsection (c); provided, however, that any amendment to a notice of termination filed pursuant to paragraph (c)(2) that is filed within two years of the original notice that discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the two-year period under this subsection;

(B) two years after the effective date of revocation or cancellation of registration pursuant to the Rules of the Exchange; or

(C) in the case of an unregistered person, within two years after the date upon which such person ceased to be associated with the Exchange member.

(2) A person whose association with a member has been terminated and is no longer associated with any Exchange member shall continue to be subject to a proceeding to suspend, consistent with Section 12.2 of the Exchange By-Laws, his or her ability to associate with a member based on such person's failure to comply with an arbitration award or a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to the Rules of the Exchange, provided that such proceeding is instituted within two years after the date of entry of such award or settlement.]

\* \* \* \* \*

#### **8000. Investigations and Sanctions**

\* \* \* \* \*

#### **8100. General Provisions**

##### **8110. Availability of Manual to Customers**

Members shall keep and maintain current paper or electronic copies of the [NASD]FINRA and the Exchange Manuals in a readily accessible place and shall make them available for examination by customers upon request.

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#### **8300. Sanctions**

\* \* \* \* \*

#### **IM-8310-3. Release of Disciplinary Complaints, Decisions and Other Information**

(a) No change.

(b)

(1) The Exchange's Regulation Department shall release to the public information with respect to any disciplinary complaint initiated by the Department of Enforcement[ or the Department of Market Regulation] of FINRA, as defined in Rule 9120(f), containing an allegation of a violation of a designated statute, rule or regulation of the Commission or the Exchange, as determined by the Chief Regulatory Officer of the Exchange (a "Designated Rule"); and may also release such information with respect to any disciplinary complaint or group of disciplinary complaints that involve a significant policy or enforcement determination where the release of information is deemed by the Chief Regulatory Officer to be in the public interest.

(2) No change.

(c) – (1) No change.

\* \* \* \* \*

#### **9000. Code of Procedure**

\* \* \* \* \*

#### **9100. Application and Purpose**

##### **9110. Application**

(a) – (c) No change.

##### **(d) Jurisdiction**

Any member or any partner, officer, director or person employed by or associated with any member (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities Exchange Act of 1934 (Exchange Act), the rules and regulations thereunder, the By-Laws and Rules of the Exchange or any interpretation thereof, and the Rules, Regulations, resolutions and stated policies of the Board of Directors or any Committee of the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a member organization, or any other fitting sanction in accordance with the provisions of these disciplinary Rules.

An individual member, or a partner, officer, director or person employed by or associated with a member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by employees under his supervision or by the member with which he is associated, as though such violations were his own. A member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or employees or by a member or other person who is associated with such member, as though such violation were its own.

Any member, or any partner, officer, director, or person employed by or associated with a member, and any member shall continue to be subject to the disciplinary jurisdiction of

the Exchange following the termination of such person's permit or the termination of the employment by or the association with a member of such member or partner, officer, director or person, or following the deregistration of a member from the Exchange; provided, that the Exchange serves written notice to such former member, partner, officer, director, employee, associated person or member within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member, or as a partner, officer, director or person employed by or associated with a member, or prior to the deregistration of such member.

\* \* \* \* \*

## **9120. Definitions**

**(a) – (e)** No change.

### **(f) “Department of Enforcement”**

The term “Department of Enforcement” means the Department of Enforcement of [NASD]FINRA Regulation, acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.

### **(g) “Department of Market Regulation”**

The term “Department of Market Regulation” means the Department of Market Regulation of FINRA, acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.]

### **(h)(g) “Department of Member Regulation”**

The term “Department of Member Regulation” means the Department of Member Regulation of FINRA, acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.

### **(i)(h) “Director”**

The term “Director” means a member of the Board of Directors of the Exchange.

### **(j)(i) “Document”**

The term “Document” means writing, drawing, graph, chart, photograph, recording, or any other data compilation, including data stored by computer, from which information can be obtained.

### **(k)(i) “Extended Hearing”**

The term “Extended Hearing” means a disciplinary proceeding described in Rule 9231(c).

**[(l)](k)** “Extended Hearing Panel”

The term “Extended Hearing Panel” means an Adjudicator that is constituted under Rule 9231(c) to conduct a disciplinary proceeding that is classified as an “Extended Hearing” and is governed by the Rule 9200 Series.

**[(m)](l)** “Extended Proceeding”

The term “Extended Proceeding” means a disciplinary proceeding described in Rule 9331(a)(2).

**[(n)](m)** “Extended Proceeding Committee”

The term “Extended Proceeding Committee” means an appellate Adjudicator that is constituted under Rule 9331 to participate in the Exchange Review Council’s consideration of a disciplinary proceeding that is classified as an “Extended Proceeding” and governed by the Rule 9300 Series.

**[(o)](n)** “Head of Enforcement”

The term “Head of Enforcement” means the individual that manages the Department of Enforcement of FINRA, or his or her delegatee in the Department of Enforcement.

**[(p)]** “Head of Market Regulation”

The term “Head of Market Regulation” means the individual that manages the Department of Market Regulation of FINRA, or his or her delegatee in the Department of Market Regulation.]

**[(q)](o)** “Head of Member Regulation”

The term “Head of Member Regulation” means the individual that manages the Department of Member Regulation of FINRA, or his or her delegatee in the Department of Member Regulation.

**[(r)](p)** “Hearing Officer”

The term “Hearing Officer” means an attorney 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 9200 Series regarding disciplinary proceedings, the Rule 9550 Series regarding expedited proceedings, and the Rule 9800 Series regarding temporary cease and desist proceedings brought against members and associated persons.

Hearing Officers may be drawn from FINRA’s pool of Hearing Officers pursuant to the Regulatory Contract, if approved by the Exchange Board of Directors at least annually.

**[(s)](q) “Hearing Panel”**

The term “Hearing Panel” means an Adjudicator that is constituted under Rule 9231 to conduct a disciplinary proceeding governed by the Rule 9200 Series, that is constituted under the Rule 9520 Series or the Rule 9550 Series to conduct a proceeding, or that is constituted under the Rule 9800 Series to conduct a temporary cease and desist proceeding.

**[(t)](r) “Interested Staff”**

The term “Interested Staff” means, in the context of:

- (1) a disciplinary proceeding under the Rule 9200 Series and the Rule 9300 Series:
    - (A) the Head of the Exchange’s Regulation Department[Enforcement];
    - (B) an Exchange employee of the Exchange’s Regulation Department [or a FINRA employee of the Department of Enforcement ]who reports, directly or indirectly, to the [Head of Enforcement]Exchange’s Regulation Department;
    - (C) an Exchange employee [of the Exchange’s Regulation Department or a FINRA employee ]who directly participated in the authorization of the complaint;
    - (D) an Exchange employee [of the Exchange’s Regulation Department or a FINRA employee ]who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and [a district director or ]department head to whom such employee reports;
    - (E) the Head of the Department of Enforcement;
    - (F) a FINRA employee of the Department of Enforcement who reports, directly or indirectly, to the Head of Enforcement;
    - (G) a FINRA employee who directly participated in the authorization of the complaint; or
    - (H) a FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and a district director or department head to whom such employee reports;
- [(E) the Head of the Department of Market Regulation; or
- (F) an employee of the Department of Market Regulation who reports, directly or indirectly, to the Head of the Department of Market Regulation;]



(2) a proceeding under the Rule 9520 Series or Rule 9550 Series:

(A) the head of the Exchange or FINRA department or office that issues the notice or petition or is designated as a Party;

(B) an Exchange employee [of the Exchange's Regulation Department ]or [a ]FINRA employee who reports, directly or indirectly, to such person;

(C) an Exchange employee [of the Exchange's Regulation Department ]or [a ]FINRA employee who directly participated in the authorization or initiation of the proceeding;[ or]

(D) an Exchange employee [of the Exchange's Regulation Department or a FINRA employee ]who directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and[ a district director or] department head to whom such employee reports; or

(E) a FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and a district director or department head to whom such employee reports; or

(3) a proceeding under the Rule 9600 Series:

(A) the head of the Exchange or FINRA department or office that issues the decision granting or denying an exemption or is designated as a Party;

(B) an Exchange employee [of the Exchange's Regulation Department ]or [a ]FINRA employee who reports, directly or indirectly, to such person;

(C) an Exchange employee [of the Exchange's Regulation Department ]or [a ]FINRA employee who directly participated in the exemption proceeding;[ or]

(D) an Exchange employee [of the Exchange's Regulation Department or a FINRA employee ]who directly participated in an examination, investigation, prosecution, or litigation related to a specific exemption proceeding, and [a district director or ]department head to whom such employee reports; or

(E) a FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific exemption proceeding, and a district director or department head to whom such employee reports; or

(4) a proceeding under the Rule 9800 Series:

(A) the Head of the Exchange's Regulation Department[Enforcement];

**(B)** an employee of the Exchange’s Regulation Department[Department of Enforcement] who reports, directly or indirectly, to the Head of the Exchange’s Regulation Department[Enforcement];

**(C)** the Head of Enforcement;

**(D)** a FINRA employee who reports, directly or indirectly, to the Head of Enforcement;

**(E)**[**(C)**] an Exchange employee[Regulation Department] or FINRA employee who directly participated in the authorization of the notice that initiates a temporary cease and desist proceeding; or

**(F)**[**(D)**] an Exchange employee[Regulation Department] or FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific temporary cease and desist proceeding, and a district director or department head to whom such employee reports.[:];

**(E)** the Head of the Department of Market Regulation; or

**(F)** an employee of the Department of Market Regulation who reports, directly or indirectly, to the Head of the Department of Market Regulation.]

**(u)** Reserved.]

**(s)**[**(v)**] **“the Exchange Board”**

The term “the Exchange Board” means the Board of Directors of the Exchange.

**(t)**[**(w)**] **“the Exchange’s Regulation Department”**

The term “the Exchange’s Regulation Department” means the [D]department of the Exchange that administers the Code, and includes the Exchange’s Enforcement Department.

**(u)**[**(x)**] **“Office of Disciplinary Affairs”**

The term “Office of Disciplinary Affairs” means the Office of Disciplinary Affairs for FINRA, acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.

**(v)**[**(y)**] **“Office of Hearing Officers”**

The term “Office of Hearing Officers” means the Office of Hearing Officers of FINRA, acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.

**(w)**[**(z)**] **“Panelist”**

The term “Panelist,” as used in the Rule 9200 Series, the Rule 9550 Series, and the Rule 9800 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer. As used in the Rule 9300 Series, the term means a current or former member of the Exchange Review Council or a former Director who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.

**(x)[(aa)] “Party”**

With respect to a particular proceeding, the term “Party” means:

**(1)** in the Rule 9200 Series, the Rule 9300 Series, and the Rule 9800 Series, the Exchange’s Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] or a Respondent;

**(2)** in the Rule 9400 Series, the Exchange’s Regulation Department or Department of Enforcement, or a Member or associated person of a Member that is the subject of a notice under Rule 9400(a)(2);

**(3)****(2)** in the Rule 9520 Series, the Department of Enforcement[Member Regulation] or a member that is the subject of a notice or files an application under Rule 9522;

**(4)****(3)** in the Rule 9550 Series, the Exchange or FINRA department or office that issued the notice or, if another Exchange FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, the Exchange or FINRA department or office that is so designated or a member or person that is the subject of a notice under the Rule 9550 Series; or

**(5)****(4)** in the Rule 9600 Series, the department or office designated under Rule 9620 to issue the decision granting or denying an exemption or a member that seeks the exemption under Rule 9610.

**(y)[(bb)] “Respondent”**

The term “Respondent” means, in a disciplinary proceeding governed by the Rule 9200 Series and in an appeal or review governed by the Rule 9300 Series, an Exchange member or associated person against whom a complaint is issued. In a proceeding governed by the Rule 9800 Series, the term “Respondent” means an Exchange member or associated person that has been served a notice initiating a cease and desist proceeding.

**(z)[(cc)] “Review Subcommittee”**

The term “Review Subcommittee” means a body appointed by the Exchange Review Council pursuant to the Exchange By-Laws.

**(aa)[(dd)] “Statutory Disqualification Committee”**

The term “Statutory Disqualification Committee” means a Subcommittee of the Exchange Review Council that makes a recommended decision to grant or deny an application for relief from the eligibility requirements of the Exchange to the Exchange Review Council pursuant to the Rule 9520 Series.

**(bb)[(ee)] “Subcommittee”**

The term “Subcommittee” means an Adjudicator that is:

(1) and (2) No change.

**9130. Service; Filing of Papers**

**9131. Service of Complaint and Document Initiating a Proceeding**

(a) Service on Each Party

A complaint shall be served on each Party by the Department of Enforcement[ or the Department of Market Regulation]. A document initiating a proceeding shall be served on each Party by the Party or person initiating such proceeding or his or her counsel or representative.

(b) and (c) No change.

\* \* \* \* \*

**9140. Proceedings**

\* \* \* \* \*

**9146. Motions**

(a) – (j) No change.

(k) Motion For Protective Order

(1) A Party, a person who is the owner, subject, or creator of a Document subject to production under Rule 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 may file a motion requesting a protective order to limit disclosure or prohibit from disclosure to other Parties, witnesses or other persons, except the Department of Enforcement[ and the Department of Market Regulation] and the Exchange's Regulation Department staff, Documents or testimony that contain confidential information. The motion shall include a general summary or extract of the Documents or testimony without revealing confidential details. If the movant seeks a protective order against disclosure to other Parties, copies of the Documents shall not be served on the other Parties. Unless the Documents are unavailable, the movant shall file for in camera inspection a sealed copy of the Documents for which the order is sought. If the movant is not a Party, the motion shall be served on each Party by the movant using a method in Rule 9134(a) and filed with the Adjudicator. A motion for a protective order shall be

granted only upon a finding that disclosure of the Document or testimony would have a demonstrated adverse business effect on the movant or would involve an unreasonable breach of the movant's personal privacy.

(2) No change.

(1) No change.

\* \* \* \* \*

## **9200. Disciplinary Proceedings**

### **9210. Complaint and Answer**

### **9211. Authorization of Complaint**

#### **(a) Complaint**

(1) If the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] believes that any Exchange member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Exchange has jurisdiction to enforce, the Exchange's Regulation Department or[, including] the Department of Enforcement[ or the Department of Market Regulation] may request authorization from the FINRA Office of Disciplinary Affairs to issue a complaint.

(2) The Exchange Board shall have the authority to direct the Exchange's Regulation Department, including the FINRA Office of Disciplinary Affairs, to authorize and the Department of Enforcement[ or the Department of Market Regulation] to issue a complaint when, on the basis of information and belief, the Exchange Board is of the opinion that any Exchange member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Exchange has jurisdiction to enforce.

(b) No change.

### **9212. Complaint Issuance — Requirements, Service, Amendment, Withdrawal, and Docketing**

#### **(a) Form, Content, Notice, Docketing, and Service**

(1) If a complaint is authorized, the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] shall issue the complaint. Each complaint shall be in writing and signed by the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation]. The complaint shall specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated. If the complaint consists of several causes of action, each cause shall be stated separately. Complaints shall be served by the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] on each Party pursuant to Rules 9131 and 9134, and

filed at the time of service with the Office of Hearing Officers pursuant to Rules 9135, 9136, and 9137.

(2) At the time of issuance of a complaint, the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] may propose an appropriate location for the hearing.

**(b) Amendments to Complaint**

The Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] may file and serve an amended complaint once as a matter of course at any time before the Respondent answers the complaint. Otherwise, upon motion by the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation], the Hearing Officer may permit the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] to amend the complaint, including amendments so as to make the complaint conform to the evidence presented, after considering whether the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] has shown good cause for the amendment and whether any Respondent will suffer any unfair prejudice if the amendment is allowed. Amendments to complaints will be freely granted when justice so requires.

**(c) Withdrawal of Complaint**

With prior leave of the Hearing Officer, the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] may withdraw a complaint. If the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] withdraws the complaint before the earlier of (1) the Hearing Panel's or, if applicable, the Extended Hearing Panel's, issuance of a ruling on a motion for summary disposition, or (2) the start of the hearing on the merits, the withdrawal of the complaint by the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] shall be without prejudice and the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] shall be permitted to refile a case based on allegations concerning the same facts and circumstances that are set forth in the withdrawn complaint. If the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] requests to withdraw such complaint after the occurrence of either of the two events set forth in (1) and (2) in this paragraph, the Hearing Panel or, if applicable, the Extended Hearing Panel, after considering the facts and circumstances of the request, shall determine whether the withdrawal shall be granted with prejudice.

**(d)** No change.

**9213. Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel****(a) Assignment of Hearing Officer**

As soon as practicable after the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] has filed a complaint with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the disciplinary proceeding and shall serve the Parties with notice of the Hearing Officer's assignment pursuant to Rule 9132.

(b) No change.

\* \* \* \* \*

**9215. Answer to Complaint**

(a) – (e) No change.

**(f) Failure to Answer, Default**

If a Respondent does not file an answer or make any other filing or request related to the complaint with the Office of Hearing Officers within the time required, the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] shall send a second notice to such Respondent requiring an answer within 14 days after service of the second notice. The second notice shall state that failure of the Respondent to reply within the period specified shall allow the Hearing Officer, in the exercise of his or her discretion, pursuant to Rule 9269 to: (1) treat as admitted by the Respondent the allegations in the complaint; and (2) issue a default decision against the Respondent. If the Respondent fails to file an answer with the Office of Hearing Officers within the time required, the Hearing Officer may issue, a default decision against the Respondent pursuant to Rule 9269.

**9216. Acceptance, Waiver, and Consent; Plan Pursuant to SEC Rule 19d-1(c)(2)****(a) Acceptance, Waiver, and Consent Procedures**

(1) Notwithstanding Rule 9211, if the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] has reason to believe a violation has occurred and the member or associated person does not dispute the violation, the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] may prepare and request that the member or associated person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Exchange Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall 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 will be a date to be determined by the Exchange's Regulation Department staff.

(2) – (4) No change.

**(b) Procedure for Violation Under Plan Pursuant to SEC Rule 19d-1(c)(2)**

(1) Notwithstanding Rule 9211, the Exchange Review Council may, subject to the requirements set forth in subparagraphs (b)(2) through (b)(4) and in SEC Rule 19d-1(c)(2), impose a fine (not to exceed \$2,500) and/or a censure on any member or associated person with respect to any rule listed in IM-9216. If the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] has reason to believe a violation has occurred and if the member or associated person does not dispute the violation, the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] may prepare and request that the member or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Exchange Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall 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 will be a date to be determined by the Exchange's Regulation Department staff.

(2) – (4) No change.

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**9230. Appointment of Hearing Panel, Extended Hearing Panel**

**9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer**

(a) and (b) No change.

**(c) Extended Hearing Panel**

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 Rule 9234(a), (c), (d), or (e). The Hearing Officer will serve as the chair of the Extended Hearing Panel. The Panelists shall be associated with a member of the Exchange, or retired therefrom. The Chief Hearing Officer shall have discretion to compensate any or all Panelists of an Extended Hearing Panel at the rate then in effect for arbitrators



appointed under the FINRA Rule [10000]12000 and 13000 Series. The Chief Hearing Officer shall select as a Panelist a person who meets the criteria set forth in paragraph (b)(1).

(d) and (e) No change.

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## **9250. Discovery**

### **9251. Inspection and Copying of Documents in Possession of Staff**

#### **(a) Documents to be Available for Inspection and Copying**

(1) Unless otherwise provided by this Rule, or by order of the Hearing Officer, the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] shall make available for inspection and copying by any Respondent, Documents prepared or obtained by Interested Staff in connection with the investigation that led to the institution of proceedings. Such Documents include but are not limited to:

(A) – (E) No change.

(2) The Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] shall promptly inform the Hearing Officer and each other Party if, after the issuance of a complaint, requests for information under Rule 8210 are issued under the same investigative file number under which the investigation leading to the institution of disciplinary proceedings was conducted. If Interested Staff receives Documents pursuant to a request for information under Rule 8210 after Documents have been made available to a Respondent for inspection and copying as set forth in paragraph (a), and if such Documents are material and relevant to the disciplinary proceeding in which such Respondent is a Party, the additional Documents shall be made available to the Respondent not later than 14 days after the Interested Staff receives such Documents. If a hearing on the merits is scheduled to begin, Interested Staff shall make the additional Documents available to the Respondent not less than ten days before the hearing. If Interested Staff receives such Documents ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, Interested Staff shall make the additional Documents available immediately to the Respondent.

(3) Nothing in subparagraph (a)(1) shall limit the discretion of the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] to make available any other Document or the authority of the Hearing Officer to order the production of any other Document.

#### **(b) Documents That May Be Withheld**

(1) The Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] may withhold a Document if:

(A) – (D) No change.

(2) Nothing in subparagraph (b)(1) authorizes the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] to withhold a Document, or a part thereof, that contains material exculpatory evidence.

**(c) Withheld Document List**

The Hearing Officer may require the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] to submit to the Hearing Officer a list of Documents withheld pursuant to subparagraphs (b)(1)(A) through (D) or to submit to the Hearing Officer any Document withheld. Upon review, the Hearing Officer may order the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] to make the list or any Document withheld available to the other Parties for inspection and copying. A motion to require the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] to produce a list of Documents withheld pursuant to paragraph (b) shall be based upon some reason to believe that a Document is being withheld in violation of the Code.

**(d) Timing of Inspection and Copying**

The Hearing Officer shall determine the schedule of production of documents pursuant to this Rule. Unless otherwise ordered by the Hearing Officer, the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] shall commence making Documents available to a Respondent for inspection and copying pursuant to this Rule not later than 21 days after service of the Respondent's answer or, if there are multiple Respondents, not later than 21 days after the last timely answer is filed. If a Respondent in a multi-Respondent case fails to answer, the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] shall make Documents available to all other Respondents not later than the later of:

(1) and (2) No change.

(e) and (f) No change.

**(g) Failure to Make Documents Available — Harmless Error**

In the event that a Document required to be made available to a Respondent pursuant to this Rule is not made available by the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation], no rehearing or amended decision of a proceeding already heard or decided shall be required unless the Respondent establishes that the failure to make the Document available was not harmless error. The Hearing Officer, or, upon appeal or review, a Subcommittee, an Extended

Proceeding Committee, or the Exchange Review Council, shall determine whether the failure to make the document available was not harmless error.

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### **9253. Production of Witness Statements**

#### **(a) Availability**

Notwithstanding the provisions of Rule 9251(b),

(1) A Respondent in a disciplinary proceeding may file a motion requesting that the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] produce for inspection and copying any statement of any person called or to be called as a witness by the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] that pertains, or is expected to pertain, to his or her direct testimony and which is "a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement," as that phrase is used in 18 U.S.C. § 3500(e)(2).

(2) A Respondent in a disciplinary proceeding may also file a motion requesting that the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] produce for inspection and copying any contemporaneously written statement made by an Interested Staff member during a routine examination or inspection about the substance of oral statements made by a non-Exchange person when (a) either the Interested Staff member or non-Exchange person is called as a witness by the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation], and (b) that portion of the statement for which production is sought directly relates to the Interested Staff member's testimony or the testimony of the non-Exchange witness.

#### **(b) Failure to Produce — Harmless Error**

In the event that a statement required to be made available for inspection and copying by a Respondent is not provided by the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation], there shall be no rehearing of a proceeding already heard, or issuance of an amended decision in a proceeding already decided, unless the Respondent establishes that the failure to provide the statement was not harmless error. The Hearing Officer, or upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the Exchange Review Council, shall determine whether the failure to provide any statement was not harmless error.

### **9260. Hearing and Decision**

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**9264. Motion for Summary Disposition****(a) Pre-hearing**

After a Respondent's answer has been filed and Documents have been made available to that Respondent for inspection and copying pursuant to Rule 9251, the Respondent or the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation], without leave of the Hearing Officer, may make a motion for summary disposition of any or all the causes of action in the complaint with respect to that Respondent, as well as any defense raised in a Respondent's answer. All pre-hearing motions for summary disposition and supporting papers shall be filed at least 21 days before the time set for the hearing, or at such earlier time as ordered by the Hearing Officer. Notwithstanding the provisions of Rule 9146(d), any opposition or response to a pre-hearing motion for summary disposition shall be filed at least seven days before the time set for the hearing.

**(b) After Commencement of Hearing on Merits**

After a hearing on the merits has commenced, a Respondent or the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] may make a motion for summary disposition of any or all of the causes of action in the complaint with respect to that Respondent or defenses raised in that Respondent's answer only with leave of the Hearing Officer.

(c) – (e) No change.

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**9269. Default Decisions****(a) Issuance of Default Decisions**

(1) No change.

(2) If the defaulting Party is the Respondent, the Hearing Officer may deem the allegations against that Respondent admitted. If the Defaulting Party is the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation], the Hearing Officer may issue a default decision ordering that the complaint be dismissed with prejudice.

(3) and (4) No change.

(b) – (d) No change.

**9270. Settlement Procedure**

(a) – (d) No change.

**(e) Uncontested Offers of Settlement**

If a Respondent makes an offer of settlement and the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] does not oppose it, the offer of settlement is uncontested. If an offer of settlement is determined to be uncontested by the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] before a hearing on the merits has begun, the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] shall transmit the uncontested offer of settlement and a proposed order of acceptance to the Exchange Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of the Exchange within the meaning of Rule 2140) with its recommendation. If an offer of settlement is determined to be uncontested by the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] after a hearing on the merits has begun, the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] shall transmit the offer of settlement and a proposed order of acceptance to the Hearing Panel or, if applicable, the Extended Hearing Panel for acceptance or rejection. If accepted by the Hearing Panel or, if applicable, Extended Hearing Panel, the offer of settlement and the order of acceptance shall be forwarded to the Exchange Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of the Exchange within the meaning of Rule 2140) to accept or reject.

(1) No change.

(2) Before an offer of settlement and an order of acceptance shall become effective, they shall be submitted to and accepted by the Exchange Review Council or the Office of Disciplinary Affairs. The Office of Disciplinary Affairs may accept such offer of settlement and order of acceptance or refer them to the Exchange Review Council. The Review Subcommittee may accept or reject such offer of settlement and order of acceptance or refer them to the Exchange Review Council for acceptance or rejection by the Exchange Review Council. In the case of a Respondent that is an affiliate of the Exchange within the meaning of Rule 2140, the offer of settlement and order of acceptance shall be accepted or rejected by the Office of Disciplinary Affairs and shall not be referred to the Exchange Review Council.

(3) If the offer of settlement and order of acceptance are accepted by the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs, they shall become final and the Director of the Office of Disciplinary Affairs shall issue the order and notify the Office of Hearing Officers. The Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] shall provide a copy of an issued order of acceptance to each Exchange member with which a Respondent is associated.

**(f) Contested Offers of Settlement**

If a Respondent makes an offer of settlement and the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] opposes it,

the offer of settlement is contested. When the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] opposes an offer of settlement, the Respondent's written offer and the Exchange's Regulation Department or the Department of Enforcement's[ or the Department of Market Regulation's] written opposition shall be submitted to a Hearing Panel or, if applicable, an Extended Hearing Panel. The Hearing Panel or, if applicable, the Extended Hearing Panel, may order the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] and the Respondent to attend a settlement conference.

(1) – (3) No change.

(g) – (j) No change.

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**9300. Review of Disciplinary Proceeding by the Exchange Review Council and the Exchange Board; Application for Commission Review**

**9310. Appeal to or Review by the Exchange Review Council**

**9311. Appeal by Any Party; Cross-Appeal**

**(a) Time to File Notice of Appeal**

A Respondent or the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] may file a written notice of appeal within 25 days after service of a decision issued pursuant to Rule 9268 or Rule 9269; provided, however, that a decision with respect to a Respondent that is an affiliate of the Exchange within the meaning of Rule 2140 may not be appealed to the Exchange Review Council.

(b) – (f) No change.

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**9330. Appointment of Subcommittee or Extended Proceeding Committee; Disqualification and Recusal**

**9331. Appointment of Subcommittee or Extended Proceeding Committee**

**(a) Appointment by the Exchange Review Council**

Following the filing of a notice of appeal pursuant to Rule 9311 or a notice of review pursuant to Rule 9312, the Exchange Review Council or the Review Subcommittee shall appoint a Subcommittee or an Extended Proceeding Committee to participate, subject to Rule 9345, in a disciplinary proceeding appealed or called for review.

(1) No change.

**(2) Extended Proceeding Committee**

Upon consideration of the volume and complexity of the certified record, or other factors the Exchange Review Council or the Review Subcommittee deems material, the Exchange Review Council or the Review Subcommittee may determine that a disciplinary proceeding appealed or called for review shall be designated an Extended Proceeding and shall appoint an Extended Proceeding Committee to participate, subject to Rule 9345, in the appeal or review. The Extended Proceeding Committee shall be composed of two or more persons who shall be current or former members of the Exchange Review Council or former Directors. The Review Subcommittee shall have discretion to compensate any or all Panelists of an Extended Proceeding Committee at the rate then in effect for arbitrators appointed under the FINRA Rule [10000]12000 and 13000 Series.

(b) No change.

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#### **9400. Expedited Client Suspension Proceeding**

##### (a) Initiation of Proceeding

(1) *Scope of Authority.* With the prior written authorization of the Chief Regulatory Officer (“CRO”) or such other senior officers as the CRO may designate, the [BX Regulatory]Exchange’s Regulation Department or the Department of Enforcement may initiate an expedited suspension proceeding with respect to alleged violations of Rule 2170 or Chapter III, Section 16 (Disruptive Quoting and Trading Activity Prohibited).

(2) *Service of Notice.* The Exchange or FINRA shall initiate the proceeding by serving a notice on a Member or associated person of a Member (hereinafter “Respondent”). The Exchange or FINRA shall serve the notice by personal service or overnight commercial courier. The notice shall be effective upon service.

(3) No change.

##### (b) Appointment of Hearing Officers and Hearing Panel

(1) As soon as practicable after the Exchange or FINRA initiates a suspension proceeding, a Hearing Panel shall be assigned in accordance with paragraph (a) of Rule 9231(b).

(2) No change.

##### (c) Hearing

(1) – (6) No change.

(7) *Record and Evidence Not Admitted.* The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in subparagraph

(a)(3) above; the transcript of the hearing; all evidence considered by the Hearing Panel; and any other document or item accepted into the record by the Hearing Panel. [BX]The Exchange’s Regulation Department shall be the custodian of the record. Proffered evidence that is not accepted into the record by the Hearing Panel shall be retained by the custodian of the record until the date when the Exchange’s decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(8) *Failure to Appear at a Hearing.* 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. If the Exchange or FINRA fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

(d) – (f) No change.

## **9500. Other Proceedings**

### **9510. Reserved**

### **9520. Eligibility Proceedings**

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### **9522. Initiation of Eligibility Proceeding; Member Regulation Consideration**

#### **(a) Initiation**

##### **(1) Issuance of Notice of Disqualification or Ineligibility**

If staff of the Exchange’s Regulation Department [staff ]has reason to believe that a disqualification exists or that a member or person associated with a member otherwise fails to meet the eligibility requirements of the Exchange, staff of the [Exchange’s]Department of Member Regulation [Department staff ]shall issue a written notice to the member or applicant for membership under Rule 1013. The notice shall specify the grounds for such disqualification or ineligibility. [The Exchange’s]Staff of the Department of Member Regulation [Department staff ]shall not issue such written notice to members or applicants for membership under Rule 1013 with respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, unless the member or applicant for membership under BX Rule 1013 is required to file an application pursuant to a Regulatory Alert entitled “Eligibility Proceedings: Amendments to Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications” (the “SD Regulatory Alert”).

(2) – (4) No change.



(b) – (d) No change.

(e) Member Regulation Consideration

(1) No change.

(2) Matters that may be Approved by the Department of Member Regulation after the Filing of an Application

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, is authorized to approve an application filed by a disqualified member or sponsoring member if the disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification (other than a matter set forth in subparagraph(e)(1)):

(A) The disqualified person is already a participant in, a member (or equivalent) of, or a person associated with a member (or equivalent) of, a self-regulatory organization (other than the Exchange), and the terms and conditions of the proposed admission to the Exchange are the same in all material respects as those imposed or not disapproved in connection with such person's prior admission or continuance pursuant to an order of the Commission under SEC Rule 19h-1 or other substantially equivalent written communication;

(B) – (F) No change.

(3) No change.

### **9523. Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to SEC Rule 19h-1**

(a) With respect to all disqualifications, except those arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, after an application is filed, the Department of Member Regulation may recommend the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member, sponsoring member, and/or disqualified person, as the case may be, consent to the recommendation and the imposition of the supervisory plan. The disqualified member, sponsoring member, and/or disqualified person, as the case may be, shall execute a letter consenting to the imposition of the supervisory plan.

(1) – (3) No change.

(4) If the recommendation and supervisory plan is accepted by the Exchange Review Council, the Chairman of the Statutory Disqualification Committee it shall be deemed final and, where required, the proposed Notice under SEC Rule 19h-1 will be filed by the

Exchange. If the recommendation and supervisory plan are rejected by the Chairman of the Statutory Disqualification Committee, the Exchange Review Council or the Exchange's Regulation Department may take any other appropriate action with respect to the disqualified member, sponsoring member, and/or disqualified person. If the recommendation and supervisory plan are rejected, the disqualified member, sponsoring member, and/or disqualified person shall not be prejudiced by the execution of the letter consenting to the supervisory plan under subparagraph (a) and the letter may not be introduced into evidence in any proceeding.

(b) No change.

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### **9550. Expedited Proceedings**

#### **9551. Reserved**

### **9552. Failure to Provide Information or Keep Information Current**

(a) No Change.

#### **(b) Service of Notice of Suspension**

Except as provided below, the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 1160, except that, if the Exchange's Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending

the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) – (e) No change.

**(f) Request for Termination of the Suspension**

A member or person subject to a suspension pursuant to this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Exchange or FINRA department or office that issued the notice or, if another Exchange or FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the Exchange or FINRA department or office that is so designated. The head of the appropriate department or office may grant relief for good cause shown.

(g) and (h) No change.

**9553. Failure to Pay the Exchange Dues, Fees and Other Charges**

(a) No change.

**(b) Service of Notice of Suspension, Cancellation or Bar**

Except as provided below, the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 1160, except that, if the Exchange's Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in

conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) – (f) No change.

**(g) Request for Termination of the Suspension**

A member or person subject to a suspension under this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Exchange or FINRA department or office that issued the notice or, if another Exchange or FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the Exchange or FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**9554. Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution**

**(a) Notice of Suspension or Cancellation**

If a member, person associated with a member or person subject to the [Nasdaq]Exchange's jurisdiction fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under the [Nasdaq]Exchange By-Laws or a FINRA order of restitution or FINRA settlement agreement providing for restitution, the [Nasdaq]Exchange's Regulation Department staff may provide written notice to such member or 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 member.

**(b) Service of Notice of Suspension or Cancellation**

Except as provided below, the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 1160, except that, if the Exchange's Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent

to the member's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) – (f) No change.

**(g) Request for Termination of the Suspension**

A member or person subject to a suspension under this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Exchange or FINRA department or office that issued the notice or, if another Exchange or FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the Exchange or FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**9555. Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services**

**(a) Notice to Member or Person of Suspension, Cancellation, Bar, or Limitation or Prohibition on Access to Services**

(1) If a member or an associated person does not meet the eligibility or qualification standards set forth in the Exchange By-Laws or Rules, the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) may provide written notice to such member or person stating 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 member.

(2) If a member, associated person, or other person does not meet the prerequisites for access to services offered by the Exchange or a member thereof or cannot be permitted to continue to have access to services offered by the Exchange or a member thereof with safety to investors, creditors, members, or the Exchange, the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) may provide written

notice to such member or person limiting or prohibiting access to services offered by the Exchange or a member thereof.

**(b) Service of Notice**

Except as provided below, the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 1160, except that, if the Exchange's Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) – (f) No change.

**(g) Request for Termination of the Limitation, Prohibition or Suspension**

A member or person subject to a limitation, prohibition or suspension under this Rule may file a written request for termination of the limitation, prohibition or suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Exchange or FINRA department or office that issued the notice or, if another Exchange or FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the Exchange or FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**9556. Failure to Comply with Temporary and Permanent Cease and Desist Orders****(a) Notice of Suspension, Cancellation or Bar**

If a member, person associated with a member or person subject to the Exchange's jurisdiction fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300 or 9800 Series, the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) — after receiving written authorization from the Chief Regulatory Officer — may issue a notice to such member or person stating that the failure to comply with the temporary or permanent cease and desist order within seven days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

**(b) Service of Notice**

The Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member or person subject to a notice issued under this Rule (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) by facsimile, email, overnight courier or personal delivery. Papers served on a member, person, or counsel for such member or person, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member or person, (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 1160, except that, if the Exchange's Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

**(c) and (d)** No change.

**(e) Request for a Hearing**

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the Exchange action.

**(f)** No change.

**(g) Request for Termination of the Suspension**

A member or person subject to a suspension imposed after the process described in paragraphs (a) through (f) of this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Exchange or FINRA department or office that issued the notice or, if another Exchange or FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the Exchange or FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

**(h)** No change.

**9557. Procedures for Regulating Activities Under Rules 4110A and 4120A Regarding a Member Experiencing Financial or Operational Difficulties****(a) Notice of Requirements and/or Restrictions; Exchange Action**

The Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) may issue a notice directing a member to comply with the provisions of Rule 4110A or 4120A or restrict its business activities, either by limiting or ceasing to conduct those activities consistent with Rule 4110A or 4120A, if the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) has reason to believe that a condition specified in Rule 4110A or 4120A exists. A notice served under this Rule shall constitute Exchange action.

**(b) Service of Notice**

The Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member subject to a notice issued under this Rule (or upon counsel representing the member, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member) by facsimile, email, overnight courier or personal delivery. Papers served on a member, counsel for such member, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member, (b)(2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile



number listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 1160, except that, if the Exchange's Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on counsel for a member, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(c) and (d) No change.

**(e) Request for a Letter of Withdrawal of the Notice; Request for a Hearing**

A member served with a notice under this Rule may request from the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) a letter of withdrawal of the notice pursuant to paragraph (g)(2) of this Rule and/or file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559.

(1) and (2) No change.

**(f) Enforcement of Notice**

A member that has failed to comply with the requirements and/or restrictions imposed by an effective notice under this Rule shall be deemed, without further notice from the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange), automatically and immediately suspended. Such suspension shall remain in effect unless the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall issue a letter, pursuant to paragraph (g)(2) of this Rule, stating that the suspension is lifted.

**(g) Additional Requirements and/or Restrictions or the Removal or Reduction of Requirements and/or Restrictions; Letter of Withdrawal of the Notice**

(1) Additional Requirements and/or Restrictions

If a member continues to experience financial or operational difficulty specified in Rule 4110A or 4120A, notwithstanding an effective notice, the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) may impose additional

requirements and/or restrictions by serving an additional notice under paragraph (b) of this Rule. The additional notice shall inform the member that it may apply for relief from the additional requirements and/or restrictions by filing a written request for a letter of withdrawal of the notice and/or a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable to such additional notice.

**(2) Removal or Reduction of Requirements and/or Restrictions and/or Lifting of Suspension; Letter of Withdrawal**

**(A) Removal or Reduction of Requirements and/or Restrictions**

If, upon the member's demonstration to the satisfaction of the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange), the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) determines that any requirements and/or restrictions imposed by a notice under this Rule should be removed or reduced, the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member, pursuant to paragraph (b) of this Rule, a written letter of withdrawal that shall, in the sole discretion of the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange), withdraw the notice in whole or in part. A notice that is withdrawn in part shall remain in force, unless the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall remove the remaining requirements and/or restrictions.

**(B) Lifting of Suspension**

If, upon the member's demonstration to the satisfaction of the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange), the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) determines that a suspension imposed by a notice under this Rule should be lifted, the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member, pursuant to paragraph (b) of this Rule, a letter that shall, in the sole discretion of the Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange), lift the suspension. Where all or some of the requirements and/or restrictions imposed by a notice issued under this Rule remain in force, the letter shall state that the member's failure to continue to comply with those requirements and/or restrictions that remain effective shall result in the member being immediately suspended.

**(h) [The Exchange's Regulation Department staff ]For purposes of this Rule, the "Exchange's Regulation Department staff" shall mean:**

**(1)** the head of the Exchange department or office (or FINRA, acting on behalf of the Exchange) that issued the notice, or his or her written officer delegate; or

**(2)** if another Exchange (or FINRA, acting on behalf of the Exchange) department or office is named as the party handling the matter on behalf of the issuing department or

office, the head of the Exchange (or FINRA, acting on behalf of the Exchange) department or office that is so designated, or his or her written officer delegate.

**9558. Summary Proceedings for Actions Authorized by Section 6(d)(3) of the Act**  
**(a) Notice of Initiation of Summary Proceedings**

The Chief Regulatory Officer of the Exchange may provide written authorization to [Association]FINRA staff to issue on a case-by-case basis a written notice that summarily:

(1) No change.

(2) suspends a member who is in such financial or operating difficulty that [Association]FINRA staff determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the Exchange; or

(3) No change.

**(b) Service of Notice**

The Exchange's Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member or person subject to a notice issued under this Rule (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) by facsimile, email, overnight courier, or personal delivery. Papers served on a member, person or counsel for such member or person, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member or person, (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in FINRA Contact System submitted to the Exchange pursuant to Rule 1160, except that, if the Exchange's Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized

to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(c) – (f) No change.

**(g) Request for Termination of the Limitation, Prohibition or Suspension**

A member or person subject to a limitation, prohibition or suspension under this Rule may file a written request for termination of the limitation, prohibition or suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Exchange or FINRA department or office that issued the notice or, if another Exchange or FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the Exchange or FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

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**9600. Procedures for Exemptions**

**9610. Application**

**(a) Where to File**

A member seeking exemptive relief as specifically permitted under any Equity Rule referencing the 9600 Series shall file a written application with the appropriate [Association]FINRA department or staff and provide a copy of the application to the Exchange's Regulation Department.

(b) and (c) No change.

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**9800. Temporary Cease and Desist Orders**

**9810. Initiation of Proceeding**

**(a) Exchange's Regulation Department or Department of Enforcement[ or Department of Market Regulation]**

With the prior written authorization of FINRA's Chief Executive Officer or such other senior officers as the Chief Executive Officer may designate, and the Exchange's Chief Regulatory Officer, the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Exchange Act and SEC Rule 10b-5 thereunder; SEC Rules 15g-1 through 15g-9; Equity Rule 2110 (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); Equity Rule 2120; or Equity Rule 2150 (if the alleged violation is misuse or conversion of customer assets). The Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] shall initiate the proceeding by serving a notice on a member or associated person (hereinafter "Respondent") (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) and filing a copy thereof with the Office of Hearing Officers. The Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] shall serve the notice by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The notice shall be effective when service is complete.

**(b) Contents of Notice**

The notice shall set forth the rule or statutory provision that the Respondent is alleged to have violated and that the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] is seeking to have the Respondent ordered to cease violating. The notice also shall state whether the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] is requesting the Respondent to be required to take action, refrain from taking action or both. The notice shall be accompanied by:

(1) No change.

(2) a memorandum of points and authorities setting forth the legal theories upon which the Department of Enforcement[ or the Department of Market Regulation] relies; and

(3) No change.

(c) No change.

**(d) Filing of Underlying Complaint**

If the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] has not issued a complaint under Rule 9211 against the Respondent 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 paragraph (b), the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] 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 paragraph (a).

#### **9820. Appointment of Hearing Officer and Hearing Panel**

(a) As soon as practicable after the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] files a copy of the notice initiating a temporary cease and desist proceeding with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the temporary cease and desist proceeding. The Chief Hearing Officer shall appoint two Panelists to serve on a Hearing Panel with the Hearing Officer. Each Panelist shall be associated with a member of the Exchange or retired therefrom. The Chief Hearing Officer shall select as a Panelist a person who:

(1) – (5) No change.

(b) No change.

#### **9830. Hearing**

(a) No change.

#### **(b) Service of Notice of Hearing**

The Office of Hearing Officers shall serve a notice of date, time, and place of the hearing on the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] and the Respondent (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) not later than seven days before the hearing, unless otherwise ordered by the Hearing Officer. Service shall be made by personal service, overnight commercial courier, facsimile or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The notice shall be effective when service is complete.

(c) – (g) No change.

#### **(h) Failure to Appear at Hearing**

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 temporary cease and desist order without further proceedings. If the Exchange's Regulation Department or the Department of Enforcement[ or Department of Market Regulation] fails to appear at a hearing for which it has notice, the Hearing Panel may order that the temporary cease and desist proceeding be dismissed.

**9840. Issuance of Temporary Cease and Desist Order by Hearing Panel****(a) Basis for Issuance**

The Hearing Panel shall issue a written decision stating whether a temporary cease and desist order shall be imposed. The Hearing Panel shall 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. A temporary cease and desist order shall be imposed if the Hearing Panel finds:

(1) that the Exchange's Regulation Department or the Department of Enforcement[ or Department of Market Regulation] has made a showing of a likelihood of success on the merits; and

(2) No change.

(b) and (c) No change.

**(d) Service and Dissemination Requirements**

The Office of Hearing Officers shall serve the Hearing Panel's decision and any temporary cease and desist order on the Exchange's Regulation Department or the Department of Enforcement[ or the Department of Market Regulation] and the Respondent (or upon counsel representing the Respondent or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the Hearing Panel's decision and any temporary cease and desist order by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The temporary cease and desist order shall be effective when service is complete. The Office of Hearing Officers shall provide a copy of the temporary cease and desist order to each Exchange member with which a Respondent is associated.

(e) No change.

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