

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 151	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2019 - * 022	Amendment No. (req. for Amendments *)
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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 *).

A proposal to amend and restate the Exchange membership rules.

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 * Brett Last Name * Kitt

Title * Senior Associate General Counsel

E-mail * Brett.Kitt@Nasdaq.com

Telephone * (301) 978-8132 Fax

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 07/10/2019 Global Chief Legal and Policy Officer

By Edward S. Knight

(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 EFFS 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”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to amend and restate the Exchange’s membership rules.

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 the Board of Directors of the Exchange on January 4, 2019. No other action is necessary for the filing of the rule change.

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

Brett Kitt
Senior Associate General Counsel
Nasdaq, Inc.
(301) 978-8132

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The Exchange’s Rule 1000 Series prescribes the qualifications and the procedures for applying for membership on the Exchange. The Exchange now proposes to delete and replace these rules, as described below.³

The Exchange proposes to delete most of its existing Rule 1000 Series rules (with certain exceptions identified below) and replace them with the membership rules of The Nasdaq Stock Market, LLC (“Nasdaq”), which exist in the Rule 1000 Series of the Nasdaq Rulebook (the “Nasdaq Rule 1000 Series” or the “Nasdaq Membership Rules”). The Exchange proposes to incorporate the Nasdaq Membership Rules by reference into its own Rule 1000 Series.⁴ In a recent filing,⁵ Nasdaq amended its own Rule 1000 Series; immediately prior to Nasdaq’s rule filing, the Nasdaq Rule 1000 Series was the same, in all material respects, as the Exchange’s Rule 1000 Series. By incorporating by reference the revised Nasdaq Rule 1000 Series, the Exchange seeks to incorporate the changes that Nasdaq made to the Nasdaq Rule 1000 Series into the BX Rule 1000 Series.

³ The Exchange proposes to separately request an exemption from the rule filing requirements of Section 19(b) of the Act for changes to the Rule 1000 Series to the extent such rules are effected solely by virtue of a change to the Nasdaq Rule 1000 Series. The Exchange’s proposed rule change will not become effective unless and until the Commission approves this exemption request.

⁴ The Exchange notes that Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq PHLX, LLC (together with Nasdaq and Nasdaq BX, the “Affiliated Exchanges”) each plan to propose similar changes to their respective membership processes and associated rules that will also render them the same or substantially similar to those of Nasdaq.

⁵ See Securities Exchange Act Release No. 34-85513 (Apr. 4, 2019), 84 FR 14429 (Apr. 10, 2019) (SR-NASDAQ-2019-022).

As compared to the Exchange's existing Rule 1000 Series, by virtue of incorporating by reference the Nasdaq Rule 1000 Series into Exchange's Rulebook, the Exchange's revised membership rules (the "Proposed Rule 1000 Series" or the "Proposed Rules") will be organized in a more logical order. The Proposed Rule 1000 Series will eliminate duplicative provisions that exist in the existing Rule 1000 Series, eliminate unnecessary complexity in the membership process, and otherwise streamline the existing membership rules and their associated procedures. The Proposed Rule 1000 Series will relax needlessly rigid deadlines that the rules prescribe for taking certain actions with respect to membership applications.⁶

Summary of Proposed Changes

A comparison between the Exchange's existing Rule 1000 Series and the Proposed Rule 1000 Series, is summarized below. For ease of comparison, this summary refers to the deletion of the existing Rule 1000 Series and its replacement with the Proposed Rule 1000 Series, as incorporated by reference, as "amendments" to, "restatements" of, or "moves" of the existing rules. Exhibit 3A to this proposal compares the Exchange's existing Rule 1000 Series to the Nasdaq Rule 1000 Series and shows the changes described below.

Rule 1001

Existing Exchange Rule 1000 includes a reference to the fact that FINRA is in the process of consolidating certain NASD rules into a new FINRA rulebook, and that if a

⁶ The Exchange does not believe that any of the proposed changes will adversely impact the existing rights of prospective or existing Members or Associated Persons. Likewise, the Exchange does not believe that the proposed changes will compromise the ability of the Exchange or its Membership Department to scrutinize prospective or existing Members or Associated Persons.

NASD rule that is incorporated by reference into a BX rule is transferred to the FINRA rulebook, then the BX rule will be construed to require Exchange members to comply with the FINRA rule, as it may be renumbered or amended. This same reference exists, not only in existing Rule 1000, but also IM-1002-4, 1012(j), and 1017(g). The Proposed Rule 1000 Series deletes these references in all of these Rules because they will no longer be necessary going forward. The Proposed Rule 1000 Series rules does not cite specific FINRA (or NASD) Rules.

Rule 1002

Proposed Rule 1002 differs from the existing Exchange Rule 1000 in several respects. First, Proposed Rule 1002 deletes existing paragraph (c), which pertains to the payment by Members and Associated Persons of dues, fees, assessments and other charges, because the requirement of Members and Associated Persons to make such payments is set forth elsewhere in the Rules, such that existing paragraph (c) is unnecessary.⁷ The Proposed Rule 1000 Series also moves existing paragraph 1002(d), which governs the reinstatement of membership and registration, to a new Proposed Rule 1018 that will consolidate all provisions of the Rules relating to transfer, resignation, termination, and reinstatement of membership. Additionally, the Proposed Rule 1000 Series consolidates and moves to Proposed Rule 1002, as newly-renumbered paragraph (d), largely duplicative provisions relating to the registration of branch offices and the designation of offices of supervisory jurisdiction, which presently reside in Rule 1012(j) and IM-1002-4, respectively.⁸ Within the new paragraph (d), the Proposed Rule deletes

⁷ See Rule 9553.

⁸ In subparagraph (d)(3)(B) of the Proposed Rule, the Exchange clarifies the existing rule text in Rule 1012(j) and IM-1002-4, which provide that Members

language from existing Rule 1012(j)(1) that requires a Member to pay dues, fees, and charges associated with a branch office – as that provision is superfluous for reasons discussed above. Under paragraph (d)(3)(A) of the Proposed Rule, the Exchange also simplifies the existing rules for determining compliance with branch office registration and supervisory office designation requirements. Whereas the existing processes – as set forth in existing Rule 1012(j) and IM-1002-4 – provide that Exchange Members that are also FINRA members are deemed to comply with the branch office and designated supervisory office requirements to the extent that they comply with NASD-1000-4 and Article IV, Section 8 of the NASD’s By-Laws, the Proposed Rule 1000 Series states that such Exchange Members are deemed to comply to the extent that they keep current Form BR, which contains the requisite information and which is accessible electronically to the Exchange. Members that are not FINRA members shall continue to submit to the Exchange a Branch Office Disclosure Form, as they have done previously.⁹

Existing Rule 1002(f) provides for broker-dealers who were approved as member organizations and associated persons of the Boston Stock Exchange prior to its acquisition by the Nasdaq OMX Group (now, Nasdaq, Inc.) (and its subsequent re-

that are not FINRA members shall designate offices of supervisory jurisdiction and branch offices by submitting to the Exchange a “written filing” to the Exchange “in such form as the Exchange may prescribe.” The Proposed Rule clarifies that this written filing is the “Branch Office Disclosure Form.” The Branch Office Disclosure Form is presently in use for this purpose and it is not a new form. Nevertheless, the Exchange believes that it will be helpful in the Rule to identify the specific form that must be filed rather than refer vaguely to a filing in such form as the Exchange may prescribe.

⁹ The existing Rule states that Members that are not FINRA members shall designate offices of supervisory jurisdiction and branch offices by submitting to the Exchange “a written filing in such form as the Exchange may prescribe.” The form that the Exchange presently prescribes for this purpose is the Branch Office Disclosure Form. To improve clarity, the Proposed Rule identifies this form by name in the Rule. The Exchange proposes no substantive changes to this Form.

launching as Nasdaq BX) to have their status grandfathered into Nasdaq BX. The Proposed Rule 1000 Series does not have this provision; it is no longer necessary given that Nasdaq acquired the Boston Stock Exchange and launched Nasdaq BX more than ten years ago. All grandfathered Boston Stock Exchange members and associated persons are duly accounted for in the Exchange's membership rolls.

Lastly, the Proposed Rule 1000 Series moves IM-1002-1, which prohibits a Member or an Associated Person from filing with the Exchange misleading information in connection with membership or registration, and requires misleading information to be corrected, to Proposed Rule 1012 (General Application Provisions), where the Exchange believes it more logically fits.¹⁰

Rule 1011

Proposed Rule 1011, which includes definitions for the Proposed Rule 1000 Series, defines the term "Investment banking or securities business" differently from existing Rule 1011 in that the Proposed Rule eliminates the reference to "investment banking." The Exchange does not accept applications from firms that are engaged in the investment banking business but are not otherwise brokers or dealers in securities. The Exchange believes that references to the investment banking business in the existing Rule and elsewhere in the Exchange's membership rules are unintended errors.

Whereas existing Rule 1011(g) includes the defined term "material change in business operations," the Proposed Rule 1000 Series omits this definition and instead

¹⁰ The Proposed Rule also amends the definition of a "Proprietary Trading Firm" in paragraph (o) to make clear that such entities may be both Applicants and Members of the Exchange for purposes of the Rules.

incorporates its substance into Proposed Rule 1017(a)(5), which is the only context in which it actually applies.

Rule 1012

Existing Rule 1012, which is presently entitled “General Provisions,” differs from the proposed version of the Rule in several ways. Principally, the Proposed Rule limits its scope to include only general provisions relating to applications, and the title of the Rule reflects that narrowed scope (“General Application Provisions”). It also omits several existing provisions that are outside of this scope, including existing paragraphs (b) (lapses in applications), (c) (ex parte communications), (d) (recusals and disqualifications from membership appeal proceedings), (g) (resignation of Exchange Members), (i) (transfer and termination of Exchange membership), and (j) (registration of branch offices). As is discussed in further detail below, the Proposed Rule 1000 Series locates these provisions in other Rules to which they more logically relate. The Exchange does not believe that relocating these provisions as described will have any substantive effect.

Rule 1012(a) is presently entitled “Filing by Applicant or Service by the Exchange.” Proposed Rule 1012(a) retitles the paragraph for clarity purposes as “Instructions for Filing Application Materials with the Exchange and Requirements for Service of Documents by the Exchange.” Whereas existing subparagraph (a)(1) presently permits an Applicant to file an application only by first-class mail, overnight courier, or hand delivery, the Proposed Rule modernizes this provision by allowing for electronic filing as well. In a new subparagraph (a)(3)(E) of the Proposed Rule, the Exchange states that service by electronic filing shall be deemed complete on the day of transmission,

except that service or filing will not be deemed to have occurred if, subsequent to transmission, the serving or filing party receives notice that its attempted transmission was unsuccessful.

Furthermore, Proposed Rule 1012 eliminates existing paragraph (f) (similarity of membership names) because the Exchange believes that it is unnecessary for it to monitor for similarities in the names of prospective Members given that FINRA, through WebCRD, and the SEC monitor this.

Finally, the Proposed Rule 1000 Series relocates and restates IM-1002-1 (regarding misleading information as to membership or registration) and the last paragraph of Rule 1013(a)(1) (requiring Members and Applicants to keep application materials current) to Proposed Rule 1012(c). Rather than state, as does IM-1002-1, that Applicants, Members, and Associated Persons shall not file false or misleading membership information with the Exchange, the Proposed Rule states in paragraph (c)(1) that they shall have an affirmative duty to ensure that their membership information is accurate, complete, and current at the time of filing. The Exchange believes that the proposed formulation is more comprehensive than the existing one.¹¹ Likewise, rather than merely require, as does existing Rule 1013(a)(1), that Applicants shall keep current their application materials after filing them, the Proposed Rule, in paragraph (c)(2), more broadly requires Applicants, Members, and Associated Persons to ensure that their membership applications and supporting materials remain accurate, complete, and current at all times, by filing supplementary amendments with the Department, as is necessary.

¹¹ The reformatted text of the Proposed Rule also omits the references in IM-1002-1 to registration decisions (which are now covered elsewhere in the Exchange's Rules).

(The Proposed Rule omits the language in existing Rule 1013(a)(1) that specifies that supplementary amendments shall be filed by electronic means insofar as Proposed Rule 1012(a) specifies the acceptable methods by which membership materials shall be filed with the Department.)¹²

Rule 1013

Proposed Rule 1013 is a substantial restatement of existing Rule 1013, which sets forth procedures for filing applications for new membership on the Exchange.

In paragraph (a) of Proposed Rule 1013, which describes the contents of new membership applications and procedures for filing, the Proposed Rule amends subparagraphs (a)(1)(A) and (B), which presently require an Applicant to file a copy of its current Form BD as well as an Exchange-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f-2.¹³ The corresponding subparagraphs in the Proposed Rule provide that the Applicant must provide copies of this Form and card only if the Exchange is not able to access them through the Central Registration Depository (“CRD” or “WebCRD”) or a similar source. The language in the Proposed Rule relieves Applicants of the burden of filing a Form or fingerprint cards that the Exchange can readily retrieve itself.

¹² The language of existing Rule 1013(a)(1)(V), which provides that amendments to a membership application must be filed with the Exchange not later than 15 business days after a Member “knew or should have known” of the facts or circumstances giving rise to the need for the amendment, differs from the corresponding Proposed Rule 1012(c), which provides that the amendment must be filed not later than 15 business days after a Member “learns of” the facts or circumstances giving rise to the amendment. The Exchange believes that this difference between the two provisions is immaterial.

¹³ The existing provision exempts Applicants from filing fingerprint cards if it has already filed them with another self-regulatory organization.

Whereas subparagraph (a)(1)(C) of the existing Rule requires an Applicant to provide a “check” for such fees as it may be required to pay under the Exchange’s Rules, the corresponding provision of the Proposed Rule deletes the word “check” and replaces it with a more general term, “payment,” so as to afford an Applicant flexibility to pay the fee through additional means, such as wire transfer.

Subparagraph (a)(1)(G) of the existing Rule requires disclosure of the Applicant’s principal place of business and “all other offices, if any, whether or not such offices would be required to be registered under the Equity Rules.” The corresponding Proposed Rule clarifies this provision by specifying that it applies to “branch” offices. The Proposed Rule also omits the phrase “whether or not such offices would be required to be registered under the Equity Rules,” as the Exchange deems it unnecessary for the Applicant to list offices other than those that must be registered. Finally, the Proposed Rule states that an Applicant need not separately provide this branch office information to the Exchange to the extent that the information is otherwise available to the Exchange electronically through WebCRD or a similar source.

Next, Proposed Rule 1013 consolidates subparagraphs (a)(1)(J) and (a)(1)(K) of the existing Rule. Whereas existing subparagraph (a)(1)(J) presently requires the Applicant to state whether it is currently or has been in the prior ten years the subject of certain investigations or disciplinary proceedings that have not been reported to the CRD, the corresponding provision in the Proposed Rule adds language – in subparagraph (a)(1)(K) of the existing Rule – which states that the obligation to disclose the Applicant’s disciplinary history pertains, not only to the Applicant itself, but also “any

person listed on Schedule A of the Applicant's Form BD."¹⁴ Proposed Rule 1013 omits subparagraph (a)(1)(K), as it is duplicative of Proposed Rule 1013(a)(1)(J).

Compared to subparagraph (a)(1)(N) of the existing Rule, which requires an Applicant to disclose how it complies with Rule 3011, the corresponding Proposed Rule clarifies that Rule 3011 requires Members to have anti-money laundering compliance programs.

In subparagraph (a)(1)(P) of the Proposed Rule, the Exchange omits language that presently permits an Applicant to submit a Form U-4 for each person conducting and supervising the conduct of the Applicant's market making and other trading activities. The Proposed Rule omits the existing requirement that an Applicant submit a Form U-4 because the information that the Form contains is otherwise accessible to the Exchange through WebCRD, such that submission of the Form itself is unnecessary.

In subparagraph (a)(1)(Q) of the Proposed Rule, the Exchange omits the requirement in the corresponding provision of the existing Rule that the Applicant provide to the Exchange a FINRA Entitlement Program agreement and Terms of Use and an Account Administration Entitlement Form, if not previously provided to FINRA. The Proposed Rule omits this requirement because the Exchange has determined that the requirement is unnecessary. Any Applicant for membership will have already completed and submitted this agreement and form prior to applying to the Exchange. The completion and submission of the agreement and form will be evident to the Exchange from the fact that FINRA has granted the Applicant access to WebCRD. The Exchange

¹⁴ Such persons listed on Form BD include the Applicant's direct owners (as that term is defined on Form BD), and certain partners, trusts and trustees, and limited liability company members, and executive officers of the Applicant.

understands that completion of the Account Administration Entitlement Form is a prerequisite to the creation of a registered BD and receiving WebCRD access.

The Proposed Rule amends subparagraphs (a)(1)(T), (U), and (V) of the existing Rule, which presently require an Applicant to submit to the Exchange an agreement to comply with the federal securities laws, the rules and regulations thereunder, the Exchange's Rules, and all rulings, orders, directions, decisions, and sanctions thereunder, as well as an agreement to pay such dues, assessments, and other charges in the manner and in the amount as the Exchange prescribes. The Proposed Rule prefaces these requirements with a more general requirement that an Applicant submit a duly executed copy of the Exchange's Membership Agreement. The Membership Agreement comprises the foregoing commitments, among others, and Applicants presently submit an executed copy of the Membership Agreement to satisfy existing subparagraphs (a)(1)(T) and (U). The Proposed Rule inserts the new language in subparagraph (a)(1)(T) and moves the language in existing subparagraphs (a)(1)(T) and (U) to new subparagraphs (a)(1)(T)(1) and (2). The Proposed Rule renumbers existing subparagraph (a)(1)(V) as subparagraph (a)(1)(U).

The Proposed Rule omits existing subparagraph (a)(2) of the existing Rule, which presently requires an Applicant to submit uniform registration forms, due to the fact that the information that these forms contain is readily accessible to the Exchange through WebCRD.

Next, the Proposed Rule restates the Exchange's requirements and procedures for deeming applications to be filed, for dealing with incomplete applications, and for requesting additional information from an Applicant or a third party in connection with a

pending application. The Proposed Rule restates these requirements and procedures to improve their clarity, to relax certain procedural deadlines that are needlessly rigid, and to provide additional due process to Applicants.

First, in lieu of the omitted text in subparagraph (a)(2) of the existing Rule, the Proposed Rule includes a new provision, entitled “When an Application is Deemed to be Filed,” which states expressly what is now only implied in existing Rule 1013 – that the Department will deem an application to be filed on the date when it is “substantially complete,” meaning the date on which the Department receives from the Applicant all material documentation and information required under Rule 1013. The Exchange believes that Applicants will benefit from this clarification, particularly because it affords the Department discretion to deem an application to be filed when it obtains sufficient information or documentation from the Applicant to enable the Department to commence processing the application. The new provision in the Proposed Rule also requires the Department to inform the Applicant in writing when the Exchange deems an application to be substantially complete so that there will be no ambiguity as to when the Department will begin to process the application.

Second, the Proposed Rule omits existing subparagraph (a)(3), which presently governs the rejection of applications that are not substantially complete. In lieu of the omitted text, the Proposed Rule contains two new provisions that deal with lapses in applications that are not substantially complete, and the rejection of filed applications that remain or become incomplete after filing.

Subparagraph (a)(3)(A) of the Proposed Rule, which governs lapses of applications, also replaces existing Rule 1012(b). This provision of the Proposed Rule

states that if the Department does not deem an application to be substantially complete (and thereby filed, in accordance with proposed subparagraph (a)(2)) within 90 calendar days after an Applicant initiates it, then absent a showing of good cause by the Applicant, the Department may, at its discretion, deem the application to have lapsed without filing, such the Department will take no action in furtherance of the application. The Proposed Rule is conceptually different from existing Rule 1012(b). The Proposed Rule conceives of a lapsed application as one that an Applicant initiates but does not substantially complete even after a prolonged period of time, such that the Department treats it as having been abandoned prior to filing. Under existing Rule 1012(b), by contrast, the Exchange treats lapses more broadly as any unexcused failure of an Applicant to complete an application, to respond to the Department's requests for information or documents, to participate in a membership interview, or to file with the Exchange an executed membership agreement. As is discussed below, the Proposed Rule treats an Applicant's post-filing non-responsiveness to the Department's requirements as a basis for rejection of an application, not a lapse of an application, because once an application is deemed filed, the Department will begin to take action in furtherance of the application. Also unlike the existing Rule, the Proposed Rule provides that the Department merely has discretion to, but need not deem an application to have lapsed once it meets the requirements of the subparagraph. Moreover, the Proposed Rule requires that once the Department deems an application to have lapsed, then the Department must serve a written notice of that determination on the Applicant and refund any application fees that the Applicant paid to the Exchange (provided that the Exchange did not, in fact, take action in furtherance of the lapsed application). Finally, the

Proposed Rule states that an Applicant that still wishes to apply for membership on the Exchange after receiving notice of a lapse in its application must submit a new application pursuant to these Rules and pay a new application fee for doing so, if applicable.

Subparagraph (a)(3)(B) of the Proposed Rule governs the circumstances in which the Department may reject an application that it already has deemed to be “substantially complete” and thus filed. Specifically, the Proposed Rule states that if a pending application remains incomplete after filing, or becomes incomplete after filing due to the fact that the Applicant has not timely responded to the Department’s request for supplemental information or documents, then the Department will serve notice on the Applicant of the nature of the incompleteness and afford the Applicant a reasonable time period in which to address it. If the Applicant fails to address the incompleteness within the time period that the Department prescribes in the notice, then, absent a showing of good cause by the Applicant, the Department may – but again it is not required to – deem the application to be rejected and it must serve written notice of any such determination upon the Applicant. The Proposed Rule states, moreover, that if the Department deems an application to be rejected, then the Applicant shall not be entitled to a refund of any fees that the Applicant may have paid in connection with its application so that the Exchange can recover its costs associated with processing the filed application prior to rejecting it. Finally, the Proposed Rule states that if an Applicant chooses to continue to pursue membership following a rejection of its application, then it must submit a new application and pay any associated fees that are required under the Rule.

Third, the Proposed Rule restates subparagraph (a)(4) of the existing Rule, which governs requests made by the Department for additional information or documents during its consideration of an application. The Proposed Rule also restates and consolidates into subparagraph (a)(4) the provision of existing Rule 1013 that governs membership interviews and information pertinent to the application that the Department gathers from third party sources other than the Applicant (existing paragraph (b)). The Exchange believes that rules governing supplemental information and document requests, membership interviews, and third party information are related and should be consolidated into a single provision. Moreover, the Exchange notes that it does not, as a practical matter, opt to conduct formal membership interviews because it is more efficient and less onerous for all parties to instead engage in informal discussions when questions and concerns arise. Because the Exchange does not exercise its discretion to conduct formal interviews the Exchange believes that it is reasonable to eliminate the concept and the procedures that govern such interviews in the new subparagraph.

In particular, the subparagraph, as restated in the Proposed Rule, provides that at any time before the Department serves its decision on a membership application,¹⁵ it may issue a request for additional information or documents – either from the Applicant or from a third party – if the Department deems such information or documentation to be necessary to clarify, verify, or supplement the application materials. The Proposed Rule

¹⁵ The restated provision of the Proposed Rule eliminates the requirement in the existing Rule that the Department must serve an initial supplemental request for information or documents within 15 business days after an application is deemed to be filed. The Exchange finds no good reason to distinguish in the rule between an “initial” and a subsequent supplemental Departmental request or to impose a specific deadline for the Department to issue any such requests; the Department has a shared interest with the Applicant in issuing supplemental requests expeditiously such that no artificial deadline is necessary.

states that the Department may request that the information or documentation be provided in writing or through an in-person or telephonic interview. The Proposed Rule furthermore states that the Department shall serve its request in writing. The Proposed Rule states that the Department must afford the recipient a reasonable amount of time within which to respond to the request¹⁶ and that the failure of an Applicant to respond within the allotted time may serve as a basis for the Department to reject an application under subparagraph (a)(3)(B), described above. Finally, the Proposed Rule for the first time affords the Applicant due process in the event that the Department obtains information or documentation about the Applicant from a third party that the Department reasonably believes could adversely impact its decision on an application.¹⁷ In such a circumstance, the Proposed Rule requires the Department to promptly inform the Applicant in writing and describe the third party information or documentation that the Department obtained. The Department must also afford the Applicant a reasonable opportunity to discuss with it or object to the Department's use of the third party information or documentation in its application decision prior to the Department rendering the decision.

¹⁶ Rather than impose a minimum time period for a response, the Proposed Rule requires only that the Department prescribe a reasonable deadline for a response. The Exchange believes that the appropriate response period will vary depending upon the nature of the information or documentation requested. Moreover, the Exchange again believes that the Department and the Applicant have a shared interest in ensuring that the Applicant has adequate time to respond to a request.

¹⁷ The Department may consult third parties, such as other SROs of which an Applicant is or was a member previously, to obtain additional information about or to confirm aspects of an application or the Applicant's character or history. The Department might also consult third party services to investigate or verify the Applicant's financial condition or history.

Fourth, the Proposed Rule 1000 Series includes a new Rule 1013(b), entitled “Special Application Procedures,” which restates and expands upon the special application procedures set forth in subparagraph (a)(5) of the existing Rule 1013. Presently, subparagraph (a)(5)(A) states that when an Applicant is applying for FINRA membership and Exchange membership at the same time, then the Exchange will wait to process the application until the applicant becomes a FINRA member.¹⁸ Presently, subparagraph (a)(5)(C) states that expedited application procedures will apply to Applicants that are already members of FINRA and Nasdaq, or Nasdaq PHLX LLC. The Proposed Rule omits subparagraph (a)(5)(A) and (B) because the Exchange believes that these provision add little value, especially in light of other changes that the Exchange adopted in the Proposed Rules. Likewise, the Proposed Rule omits subparagraph (a)(5)(C) because it has become outdated in that it does not provide expedited application procedures for Applicants that are members of the Exchange’s other affiliates; this provision also does not explain what an “expedited” application process entails.

In lieu of the existing subparagraph (a)(5), the Proposed Rule includes two types of special applications in Rule 1013(b). First, Proposed Rule 1013(b)(1) prescribes a special application process for Applicants that are already FINRA members. Specifically, the Proposed Rule states that such an Applicant will have the option to “waive-in” to become an Exchange Member and to register with the Exchange all persons associated with it whose registrations FINRA has approved (in categories recognized by the Exchange’s rules). The Proposed Rule defines the term “waive-in” to

¹⁸ Existing subparagraph (a)(5)(B) also specifies that Applicants that are already members of another registered securities association or exchange must submit a regular application form.

mean that the Department will rely substantially upon FINRA's prior determination to approve the Applicant for FINRA membership when the Department evaluates the Applicant for Exchange membership. That is, the Department will normally permit a FINRA member to waive-into Exchange membership without conducting an independent examination of the Applicant's qualifications for membership on the Exchange, provided that the Department is not otherwise aware of any basis set forth in Rule 1014 to deny or condition approval of the application.

Procedurally, the Proposed Rule states that a FINRA member that wishes to waive-into Exchange membership must do so by submitting to the Department an application form (the standard application form contains an option to select waive-in membership) and an executed Exchange Membership Agreement. The Department, in turn, will act upon a duly submitted waive-in application within a reasonable time frame not to exceed 20 days from submission of the application, unless the Department and the Applicant agree to a longer time frame for issuing a decision.¹⁹ If the Department fails to issue a decision on a waive-in application within the prescribed time frame, then the Applicant may petition the Exchange's Board of Directors to force the Department to act, as set forth in Rule 1014(c)(3). Finally, the Proposed Rule states that a decision issued under this provision shall have the same effectiveness as set forth in Rule 1014 and shall be subject to review as set forth in Rules 1015 and 1016.

The second special application process, which is set forth in Proposed Rule 1013(b)(2), permits Applicants for Exchange membership that are already approved

¹⁹ The Proposed Rule prescribes this time frame to accommodate FINRA, which will review waive-in applications on behalf of the Exchange to verify that the Applicants are FINRA members in good standing. As a practical matter, the Exchange expects to act on waive-in applications prior to the 20 day deadline.

members of one or more of the Affiliated Exchanges to waive-into the Exchange membership. In this context, “waive-in” means that the Department will rely substantially upon an Affiliated Exchange’s prior determination to approve the Applicant for membership on the Affiliated Exchange when the Department evaluates the Applicant for Exchange membership. The procedures in the Proposed Rule for an Applicant to submit a waive-in application under this provision and for the Department to issue a decision based upon such an application are identical to the procedures described above for FINRA members that seek to waive-into Exchange membership. The Exchange amends its application form to reflect the fact that Applicants may waive-into membership on the Exchange based upon their membership on any of the other five Affiliated Exchanges.

Rule 1014

In several respects, Proposed Rule 1014 differs from the existing Rule, which governs the issuance of membership application decisions by the Department.

First, to improve clarity, the Proposed Rule is reorganized relative to the existing Rule. Rather than begin the Rule with a paragraph that describes the bases for the Department to issue a decision on an application, as is the case presently, the Proposed Rule begins with a paragraph (a) entitled “Authority of Department to Approve, Approve with Restrictions, or Deny an Application.” This new paragraph sets forth the general authority of the Department to act on an application by approving it, denying it, or approving it subject to restrictions: (1) that are reasonably designed to address a specific (financial, operational, supervisory, disciplinary, investigatory, or other regulatory) concern; or (2) that mirror a restriction placed upon the Applicant by FINRA or an

Affiliated Exchange. It incorporates elements of what is now Rule 1014(b) (which the Exchange proposes to delete going forward).

Second, the Proposed Rule renumbers existing paragraph (a) as new paragraph (b). This paragraph is retitled “Bases for Approval, Conditional Approval, or Denial” but otherwise is the same.

Third, as noted above, existing paragraph (b) is omitted from the Proposed Rule.

Fourth, the Proposed Rule amends paragraph (c), which prescribes the time period within which the Department must issue and serve a written decision on a membership application. Presently, the provision requires the Department to serve a written decision within 15 business days after the Applicant concludes its membership interview (if any) or files all of its required information or documents, whichever is later. The Proposed Rule relaxes this requirement by stating that the Department must respond in a reasonable time period, not to exceed 45 (calendar) days after the Applicant files and provides to the Exchange all required and requested information or documents in connection with the application, unless the Department and the Applicant agree to further extend the decision deadline.²⁰ The Proposed Rule includes these amendments because the Exchange adjudges the existing timeframe to be needlessly short and inflexible. In certain instances where the Department has outstanding questions or concerns associated with an application, the existing Rule may force the parties to rush to address outstanding questions and resolve outstanding issues. The Proposed Rule allows for such questions and issues to be addressed with less time pressure involved. The Exchange notes that it

²⁰ The Proposed Rule also contains conforming amendments to Rule 1014(c)(3), which addresses failures of the Department to serve a decision within the prescribed time frame.

does not intend for the Proposed Rule to routinely lengthen the Department's timeframe for serving application decisions. Under the existing Rule, the Exchange typically issues decisions far in advance of the 15 business day deadline and the Exchange expects that it will continue to do so in most instances. Indeed, the Exchange has a self-interest in issuing decisions as soon as is possible. The 45 day decision period in the Proposed Rule is merely intended to allow for the parties to have flexibility in unusual circumstances.

Fifth, the Proposed Rule omits existing paragraph (d), which states that a decision by the Department to approve an application is contingent upon the Applicant filing with the Department an executed written membership agreement that contains the Applicant's agreement to abide by any restriction specified in the Department's decision and to obtain the Department's approval prior to undertaking a change in ownership, control, or business operations, or prior to modifying or removing a membership restriction. The Proposed Rule omits this provision because, as explained above, the Exchange expressly requires, in Proposed Rule 1013, that an Applicant must file a duly executed copy of the Membership Agreement as part of its application. The existing Membership Agreement contains the undertakings described in existing paragraph (d). Accordingly, existing paragraph (d) is superfluous.

Rule 1015

The Proposed Rule 1000 Series amends existing Rule 1015, which states that the Department's membership decisions are subject to review by the Exchange Review Council. Specifically, the Proposed Rule 1000 Series moves from existing Rule 1012(c) to Proposed Rule 1015(k) a provision that prohibits ex parte communications involving membership decisions subject to review among certain Exchange staff, members of the

Exchange Review Council, members of a Subcommittee of the Council, and the Board of Directors. Similarly, the Proposed Rule 1000 Series moves from existing Rule 1012(d) to Proposed Rule 1015(l) a provision that governs the recusal and disqualification of a member of the Exchange Review Council, a Subcommittee thereof, or the Board of Directors from participating in a review of a membership decision. The Proposed Rule 1000 Series moves these provisions because the Exchange believes that they fit logically within the section of the membership rules that govern appeals of membership decisions. The Proposed Rules contain no substantive changes to these provisions²¹ and the Exchange does not believe that moving them will have any substantive effect.

Rule 1017

The Proposed Rule 1000 Series contains substantial changes to existing Rule 1017, which requires Members to obtain approval prior to effecting a change in ownership, control, or business operations. These changes are generally intended to streamline and simplify the existing Rule, which the Exchange believes are unnecessary onerous and complex. As much as possible, the Proposed Rule applies the same procedures to these applications for approval as it does to its applications for membership under Proposed Rules 1013 and 1014.

The first difference between the existing and Proposed Rule 1017 concerns Rule 1017(a), which presently defines the events that require Members to file applications. The existing paragraph states that a Member shall file an application for approval prior to effecting the following changes: (1) a merger of the Member with another Member

²¹ The Proposed Rule omits the requirement in existing Rule 1015(a) that an applicant file a request for review “by first-class mail.” Proposed Rule 1012(a) now provides for a more modern array of filing options that includes electronic submission.

(unless both are members or the surviving member will continue to be a member of the New York Stock Exchange (“NYSE”)); (2) a direct or indirect acquisition by the Member of another Member (unless the acquiring Member is a member of the NYSE); (3) direct or indirect acquisitions or transfers of 25% or more in the aggregate of the Member’s assets or any asset, business line or line of operations that generates revenues comprising 25% or more in the aggregate of the Member’s earnings measured on a rolling 36 month basis (unless both the seller and acquirer are members of the NYSE); (4) a change in the equity ownership or partnership capital of the Member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital; or (5) a “material change in business operations.” Existing Rule 1011(g), in turn, defines a “material change in business operations” to mean, among other things: (1) removing or modifying a membership restriction; (2) acting as a dealer for the first time; (3) market making for the first time on the Exchange (except when the member’s market making has been approved previously by FINRA or Nasdaq); (4) adding business activities that require higher minimum net capital under SEC Rule 15c3-1; and (5) adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term contained in the rule.

For ease of reference, the Proposed Rule 1000 Series incorporates into Proposed Rule 1017(a)(5) the definition of a “material change in business operations” rather than define it separately in Rule 1011(g). The Proposed Rule 1000 Series also takes the existing exclusion from that definition – excluding first time market makers on the Exchange whose market making activities have been approved previously by FINRA or Nasdaq – and applies it more broadly to all of Rule 1017(a). That is, none of the changes

enumerated in Proposed Rule 1017(a) require prior Departmental approval to the extent that the Member's Designated Examining Authority ("DEA"), or an Affiliated Exchange, has approved the change previously in accordance with their respective rules and provided that the Member provides written evidence to the Department of such prior approval. The Exchange believes that this is prudent because in all instances in which a Member's DEA or any Affiliated Exchange²² have already approved a change, the Exchange can be reasonably confident that such prior approval would be consistent with its own judgment on the matter, such that no purpose would be served in requiring the Department to independently approve the same change.²³ The Proposed Rule 1000 Series also eases burdens on Members that wish to make changes to their businesses and which presently require multiple approvals to do so. The Exchange notes that in the Proposed Rules, it retains authority to require approval of a proposed change where the nature, terms, or conditions of the change have altered since the Member's DEA or an Affiliated Exchange approved it.

Next, the Proposed Rule 1000 Series makes several organizational and clarifying amendments to existing Rule 1017(b), which governs the filing and content of applications filed under Rule 1017. to the Proposed Rule prefaces subparagraph (b)(2) –

²² Exchange notes that the existing Rule is under-inclusive in that it does not account for prior approvals granted by all of the Affiliated Exchanges. The Exchange believes that there is no reasonable basis for it to defer to a prior approval granted by Nasdaq and to not do the same with respect to prior approvals granted by the other Affiliated Exchanges.

²³ Proposed Rule 1017(a) eliminates exceptions relating to NYSE membership. The Exchange believes that this proposal is reasonable insofar as the NYSE's rules may, at times, diverge with those of the Exchange. Going forward, the Exchange feels more confident deferring to the prior judgment of a Member's DEA or of an Affiliated Exchange as to the specific change event at issue than it does to the mere fact that a Member or its counterparty in a business transaction are NYSE members.

which presently states vaguely that the “application” shall contain certain items – with language clarifying that the provision pertains to applications for approval of a change in ownership or control or a material change in the business operations of a member. It also breaks out the last sentence of (b)(2) into new subparagraphs (2)(A) and (2)(B). Furthermore, the Proposed Rule contains clarifying changes in (2)(A) (specifying that a description of a “change in ownership, control, or business operations” means a “proposed” change in ownership, control, or “material” business operations) and (2)(B) (specifying that the Member must “attach” rather than “include” a business plan, pro forma financials, an organizational chart, and written supervisory procedures relating to the “proposed” change). Finally, the Proposed Rule renumbers the remainder of the existing Rule.

Proposed Rule 1017(c) is more limited in its scope than is existing Rule 1017(c). Specifically, the proposed Rule omits from subparagraph (c)(1) the ability of a Member to effect a change in ownership or control prior to receiving approval from the Department and the ability of the Department to impose interim restrictions on the Member pending final Department approval. The Exchange believes that the concepts of interim changes and restrictions are overly complex, potentially disruptive, and ultimately unnecessary given the short time frames that the Rules prescribe for the Department to act on applications.²⁴ Additionally, the Exchange notes that in its experience reviewing applications under Rule 1017, these provisions never have been invoked. Finally, the

²⁴ The Exchange also notes that FINRA is also publicly contemplating eliminating the concept of allowing its members to effect business changes on an interim basis. See FINRA, Regulatory Notice 18-23: Membership Application Proceedings (Request for Public Comment), Attachment B (July 26, 2018), available at http://www.finra.org/sites/default/files/Attachment-B_Regulatory-Notice-18-23.pdf.

Proposed Rule changes the title of this provision to reflect the omission of the foregoing. Whereas now, the title is “Effecting Change and Imposition of Interim Restrictions,” the Proposed Rule is entitled “When Applications Shall or May Be Filed.”

Existing paragraphs (d), (e), and (f) of Rule 1017, prescribe standards for rejecting applications that are not substantially complete, authorize the Department to serve a request for additional documents and information, and permit the Department to conduct interviews of Applicants, respectively. Proposed Rule 1017 omits these provisions and replaces them with provisions that are more consistent with Proposed Rule 1013(a)(2), (3), and (4). That is, Proposed Rule 1017(d) states that the Department will deem an application to be filed on the date when it is substantially complete, meaning the date on which the Department receives from the Applicant all material documentation and information required under the Rule. It also requires the Department to inform the Applicant in writing when the Department deems an application to be substantially complete. Proposed Rule 1017(d) states that the Department may treat an application filed under this Rule as having lapsed, and the Department may reject an application filed under this Rule, in accordance with Proposed Rule 1013(a)(3), except that the Department may treat an application as having lapsed if it is not substantially complete for 30 days or more after the applicant initiates it.²⁵ Finally, Proposed Rule 1017(f) states that at any time before the Department serves its decision on an application filed under

²⁵ The Exchange notes that this 30 day time period for deeming an application to have lapsed derives from existing Rule 1017(d).

Rule 1017, the Department may request additional information or documentation from the Applicant or from a third party in accordance with Rule 1013(a)(4).²⁶

Existing Rule 1017(g) prescribes a complex system for the Department to issue decisions in response to applications filed under Rule 1017. For example, it differentiates between decisions issued with respect to Members that are and are not FINRA members (or required to be FINRA members). With respect to Members that are FINRA members, the Rule requires the Department to consider whether the Applicant and its Associated Persons meet the standards set forth in NASD (FINRA) Rule 1014(a). It also prescribes specific criteria for issuing decisions where the Applicant seeks a modification or removal of a membership restriction. The Exchange believes that this complex system is unnecessary and can be simplified considerably, particularly in light of the proposal described above to exempt a Member from obtaining the Exchange's approval to effect a change in ownership or control or a material change in its business operations when FINRA has already approved the change previously. That is, there is no reason for the Exchange to make an independent assessment of whether the proposed change complies with FINRA rules if FINRA has already made that determination.

In lieu of the existing provisions, Proposed Rule 1017 states that the Department will render a decision on an application filed under Rule 1017 in accordance with the standards set forth in Rule 1014, except with respect to applications to modify or remove a membership restriction, in which case the Department will consider the factors

²⁶ As stated previously, circumstances where the Department may consult a third party include to seek additional information about or to verify aspects of an application. For example, the Department may consult another SRO to verify the financial status or prior disciplinary history of a Member's prospective new ownership.

presently set forth in existing Rule 1017(g)(1)(D) (Proposed Rule 1017 rennumbers this provision as subparagraph (g)(1)).

Additionally, in lieu of existing Rule 1017(g)(2), which requires the Department to serve a written decision on an application filed under Rule 1017 within 30 (calendar days) after conclusion of a membership interview or the filing of additional information or documents (whichever is later), Proposed Rule 1017 states that the Department will serve a written decision in accordance with Rule 1013(c).²⁷ The Proposed Rule 1000 Series makes this change to 1017(g)(2) for the same reasons that it discussed above with respect to Rule 1013(c).

Finally, the Proposed Rule 1000 Series omits existing Rule 1017(k). This provision presently states that if an application for approval of a change in ownership lapses or is denied and all appeals are exhausted or waived, the Member must, within 60 days, submit a new application, unwind the transaction, or file a Form BDW. It also provides for the Department to shorten or lengthen the 60 day period under certain circumstances. Due to the fact that the Exchange – as explained previously – will eliminate the ability of a Member to effect a change in ownership while its application for Departmental approval is pending, this provision is no longer necessary. That is, there will be no interim change in ownership that will need to be unwound or otherwise addressed if the Department denies an application or it lapses.

²⁷ The Exchange notes that the cross-reference to Rule 1013(c) in the Proposed Rules also addresses the Applicant's rights in the event that the Department does not serve it with a timely written decision. Accordingly, the Proposed Rule omits existing subparagraph (g)(3), which covers the same topic.

Rule 1018

The Proposed Rule 1000 Series consolidates within Proposed Rule 1018, which is reserved under the existing Rules, existing provisions of the Rules pertaining to the resignation of members (existing Rule 1012(g), transfer of membership (existing Rule 1012(i)(1)), termination of membership (existing Rule 1012(i)(2)), and reinstatement of membership (existing Rule 1002(d)). The Exchange believes that these provisions are logically related and belong together in a single Rule. Proposed Rule 1018 maintains the substance of these consolidated provisions unchanged from their existing state, except that resignations no longer require a 30 day time period to become effective. Also, the provision on reinstatement applies to membership only and not to registration, which is covered separately in the Exchange's Rules.

Other Miscellaneous Changes

The Proposed Rule 1000 Series contains other non-substantive differences from the existing Rule 1000 Series, as follows. Where the existing Rules refer specifically to "Nasdaq BX" or "BX," the Proposed Rules replace such references with more general term "Exchange." This difference makes it easier in the future to harmonize the Exchange's membership rules with those of the other Affiliated Exchanges. The Proposed Rule 1000 Series also updates obsolete references to the "NASD" to reflect the fact that the NASD is now known as "FINRA." Finally, where applicable, the Proposed Rule 1000 Series renumbers the Rules and updates or corrects cross-references.

Proposed Introductory Paragraph to the BX Rule 1000 Series

The Exchange proposes to include an introductory paragraph to the BX Rule 1000 Series which states that it incorporates by reference the Nasdaq Rule 1000 Series (other

than Nasdaq Rules 1031, 1050, 1090, 1130, 1150, 1160, and 1170),²⁸ and that such Nasdaq Rules shall be applicable to Exchange Members, Associated Persons, and other persons subject to the Exchange's jurisdiction.

These proposed introductory paragraphs also list instances in which cross references in the Nasdaq Rule 1000 Series to other Nasdaq rules should be read to refer instead to the Exchange rules, and references to defined Nasdaq terms shall be read to refer to the Exchange-related meanings of those terms. For example, references in the Nasdaq Rule 1000 Series to the following defined terms shall be read to refer to the Exchange-specific meanings of those terms: "Exchange" or "Nasdaq" shall be read to refer to the Nasdaq BX Exchange; "Rule" or "Exchange Rule" shall be read to refer to the Exchange Rules; the defined term "Applicant" in the Nasdaq Rule 1000 Series shall be read to refer to an Applicant to the Nasdaq BX Exchange; the defined terms "Board" or "Exchange Board" in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq BX Board of Directors; the defined term "Director" in the Nasdaq Rule 1000 Series shall be read to refer to a Director of the Board of the Nasdaq BX Exchange; the defined term "Exchange Review Council" in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq BX Exchange Review Council; the defined term "Subcommittee" in the Nasdaq Rule 1000 Series shall be read to refer to a Subcommittee of the Nasdaq BX Exchange Review Council; the defined term "Interested Staff" in the Nasdaq Rule 1000 Series shall be read to refer to Interested Staff of Nasdaq BX; the defined term "Member" in the Nasdaq Rule 1000 Series shall be read to refer to a Nasdaq BX Member; the defined term

²⁸ The Exchange notes that these rules, both for BX and Nasdaq, are separate from the membership rules. The proposal will not supplant or amend BX Rules 1031, 1050, 1090, 1130, 1150, 1160, or 1170.

“Associated Person” shall be read to refer to a Nasdaq BX Associated Person; the defined terms “Exchange Membership Department” or “Membership Department” shall be read to refer to the Nasdaq BX Membership Department; and the defined term “Exchange Regulation Department” shall be read to refer to the Nasdaq BX Regulation Department.

Additionally, the proposed introduction to the BX Rule 1000 Series states that cross references in the Nasdaq Rule 1000 Series to “Rule 0120” shall refer to Nasdaq BX Rule 0120, cross references in the Nasdaq Rule 1000 Series to Rule 3010 shall refer to Nasdaq BX Rule 3010; cross references in the Nasdaq Rule 1000 Series to Rule 3011 shall refer to Nasdaq BX Rule 3011; and cross references to “General 4, Section 1.1200 Series” shall be read to refer to the Nasdaq BX Rule 1200 Series.

Conclusion

The changes proposed herein will allow the Exchange to harmonize its membership rules and processes with those of Nasdaq and, ultimately, with the other Affiliated Exchanges,²⁹ thus providing a uniform criteria across the Affiliated Exchanges for membership qualifications and a uniform process across the Affiliated Exchanges for processing membership applications. The proposal will also provide for full membership reciprocity between Nasdaq and the Exchange – and hopefully, in time, across all of the Affiliated Exchanges – so that a member of one Affiliated Exchange would receive expedited treatment in applying for membership on any other Affiliated Exchange. Harmonizing the membership rules and processes of the Affiliated Exchanges will render administration of the Affiliated Exchanges’ responsibilities more efficient in that the Membership Department will only need to administer a single set of criteria and

²⁹ See n.4, supra.

processes, rather than six sets thereof. Similarly, harmonized membership rules and processes will benefit Exchange Applicants and Members by reducing the number of requirements that must be met and the processes that must be followed to apply for membership on the Affiliated Exchanges.

Moreover, as to the Exchange itself, the proposed changes described herein will render the Exchange's membership rules and processes clearer, better organized, simpler, and easier to comply with. Again, such changes will provide benefits both to the Exchange's Membership Department and to Exchange Applicants.

The proposed membership rules and processes are substantially similar to the existing rules and process, and where there are differences between the new and old processes, the Exchange believes that the new process does not disadvantage its Members or Associated Persons. To the contrary, the Exchange believes that the new rules and processes will benefit all parties as it again provides greater clarity, simplicity, and efficiency than the retired rules and processes.

Implementation

To facilitate an orderly transition from the existing Rule 1000 Series to the Proposed Rule 1000 Series, the Exchange is proposing to apply the existing Rules to all applications which have been submitted to the Exchange (including applications that are not yet complete) and are pending approval prior to the operative date. The Exchange also will apply the existing Rules to any appeal of an Exchange membership decision or any request for the Board to direct action on an application pending before the Exchange Review Council, the Board, or the Commission, as applicable. As a consequence of this transition process, the Exchange will retain the existing processes during the transition

period until such time that there are no longer any applications or matters proceeding under the existing rules. To facilitate this transition process, the Exchange will retain a transitional Rulebook that will contain the Exchange's membership rules as they are at the time that this proposal is filed with the Commission. This transitional Rulebook will apply only to matters initiated prior to the operational date of the changes proposed herein and it will be posted to the Exchange's public rules website. When the transition is complete, the Exchange will remove the transitional Rulebook from its public rules website.

The Exchange will announce and explain this transition process in a regulatory alert.

The Exchange notes that Nasdaq applied the same process described above to govern its transition to its amended membership rules.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Section 6(b)(5) and of the Act,³¹ 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. It is also consistent with Section 6(b)(7) of the Act in that it provides for a fair procedure for denying Exchange membership to any person who seeks it, barring any person from

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(5).

becoming associated with an Exchange Member, and prohibiting or limiting any person with respect to access to services offered by the Exchange or a Member thereof.³²

As a general matter, the Exchange believes that its proposal to delete its existing membership rules and incorporate by reference the Nasdaq Membership Rules will promote a free and open market, and will benefit investors, the public, and the markets, because the new rules will be clearer, better organized, and simpler.

The proposal is just and equitable because it will render the Exchange's membership rules easier for Applicants and Members to read and understand, including by doing the following:

- Establishing a “roadmap” paragraph in proposed Rule 1014(a) that sets forth the basic authority of the Department to approve, approve with conditions, or deny applications for membership before the Rule goes on to enumerate criteria for the Department to apply when taking each of those actions;
- Making the titles of the rules more accurate and descriptive (e.g., Proposed Rule 1014(b) (amending the existing title “Bases for Denial” to also include bases for approval and conditional approval to make it more accurate and complete));
- Grouping logically-related provisions together in the Rules (e.g., provisions governing resignation, termination, transfer, and reinstatement of membership (moving them from Rule 1002(d) and 1012(g) and (i) to Proposed Rule 1018); provisions relating to ex parte communications (existing Rule 1012(c)) and

³² 15 U.S.C. 78f(b)(7).

- recusals and disqualifications (existing Rule 1012(d) (moving them into Proposed Rule 1015, which governs reviews of membership decisions));
- Rationalizing and consolidating provisions that presently govern lapses and rejections of applications, including by making clearer conceptual distinctions between lapses (i.e., applications that are not substantially complete and which the Department may deem to be abandoned, such that the Department will refund any application fees paid by the Applicant) and rejections (i.e., applications that the Department deemed to be filed but which it refuses to act upon due to lingering incompleteness, in which case the Department will not refund application fees paid to it), and by consolidating Rules 1012(b) and 1013(a)(3) into Proposed Rule 1013(a)(3)(A) and (B);
 - Consolidating overlapping provisions that govern the registration of branch offices and office of supervisory jurisdiction into a single provision (consolidating Rule 1012(j) and IM-1002-4 into Proposed Rule 1002(d));
 - Omitting from the Proposed Rule references in existing Rule 1002(c), Rule 1012(j), and Rule 1013(a)(1)(U) to the obligation of Members (and their branch offices) to pay fees, charges, dues, and assessments to the Exchange insofar as those obligations are duplicative of Rule 9553;
 - Converting IM-1002-1 and IM-1002-4 into rule text in the Proposed Rule 1000 Series;
 - Clarifying when the Membership Department will deem an application to be filed (when the application is “substantially complete,” as set forth in

Proposed Rule 1013(a)(2)) and by requiring the Department to notify an Applicant in writing of the filing date;

- Clarifying what the Exchange means when it states that an Applicant may “waive-in” to Exchange membership (as set forth in Proposed Rule 1013(b)); and
- Updating obsolete cross-references throughout the Rules from NASD to FINRA.

The proposal will also make compliance with the membership rules simpler and less burdensome for Applicants and Members by doing the following:

- Eliminating obsolete requirements to submit paper copies of Forms U-4 and BD or explain information listed on the forms (Rule 1013(a)(1)(A), (J), (K), and (P) and Rule 1013(a)(2)) where the Department already has electronic access to the Forms and the information contained therein;
- Permitting electronic filing of applications (proposed Rule 1012(a)(1));
- Allowing payment of application fees by means other than paper check (Proposed Rule 1013(a)(1)(C));
- Relaxing deadlines that needlessly rush the process of responding to the Department’s questions and concerns about an application³³ or that force the

³³ Rather than require an Applicant to file a response to a supplemental request for documents or information within 15 business days, Proposed Rule 1013(a)(3) states that the Applicant must respond within a “reasonable period of time” to be prescribed by the Department. Even then, Rule 1013(a)(3)(B) states that the Department must serve upon the Applicant a notice of incompleteness if it fails to respond to a supplemental request and then afford the Applicant an additional reasonable time period to remedy the failure before it may reject the Applicant’s application.

Department to render a decision when the Applicant is not ready for the Department to do so;³⁴

- Eliminating formal membership interviews and procedures related thereto, which the Exchange has not utilized historically (Rule 1013(b));³⁵
- Harmonizing disparate procedures under Rules 1013 and 1017 for filing, evaluating, and responding to initial membership applications and applications for approval of business changes, including by streamlining the Rule 1017 procedures;
- Broadening the circumstances in which an Applicant may waive-into Exchange membership to include the Applicant's membership in any of the

³⁴ Rather than require the Department to serve a written decision within 15 business days, Proposed Rule 1014(c) states that it must issue a decision within a reasonable period of time, not to exceed 45 calendar days after the application is filed and complete, unless the parties agree to a later date. The Exchange does not intend for this change to result in the Department routinely issuing decisions later than it does presently. The Exchange presently issues decisions, in most instances, well in advance of the current 15 business day deadline and it has a self-interest in continuing to do so whenever possible. However, the Exchange believes that it is in the interest of Applicants for the Department to have discretion to respond at a later time in the event that the Applicant needs to address or resolve outstanding questions or concerns associated with its application.

³⁵ The elimination of the formal membership interview process will have no practical effect on the membership process insofar as the Department otherwise has authority to request additional information from the Applicant. Under Proposed Rule 1014(a)(4), this authority may include a request for the Applicant to provide information or documents in-person or by telephone. In other words, the Department will retain authority to conduct an informal interview of the Applicant.

Affiliated Exchanges³⁶ and defining procedures for processing and responding to waive-in applications (Proposed Rule 1013(b));

- Narrowing the circumstances in which a Member must obtain prior Department approval before effecting a change in ownership, control, or material business operations by excluding changes for which a Member has obtained prior approval from the Member's DEA, or an Affiliated Exchange (Proposed Rule 1017(a))³⁷;
- Eliminating the unused, unnecessary, and potentially disruptive ability of Members, pursuant to Rule 1017(c), to effect ownership changes on an interim basis while an application for Department approval is pending; and
- Eliminating the 30 day waiting period for Members that seek to resign their memberships under proposed Rule 1018(a).

In sum, the foregoing changes will update, rationalize, and streamline the Exchange's membership rules and processes, all to the benefit of Applicants and Members. Moreover, these changes will not adversely impact the rights of Applicants or

³⁶ As noted above, the Exchange believes that it is reasonable to permit reciprocity in membership among all of the Affiliated Exchanges. The Exchange believes that there is no reasonable basis for it to defer to a prior approval granted by Nasdaq and to not do the same with respect to prior approvals granted by the other Affiliated Exchanges.

³⁷ As is discussed above, the Exchange believes that deference to prior approvals of a proposed business change made by an Affiliated Exchange or the Exchange's DEA is reasonable because the judgment of these entities on such matters is likely to be the same as that which the Exchange would itself employ. The Exchange assesses that any marginal benefit that might be gained from it applying its own independent judgment outweighs the burden to Applicants of obtaining multiple approvals for the same proposed change. The Exchange notes that it will require a Member to obtain approval for such a change if the nature, terms, or conditions of the proposed change have altered since its DEA or an Affiliated Exchange approved it.

Members to appeal adverse Departmental decisions under these Rules or to request Board action to compel the Department to render decisions on applications.

Last, the Exchange believes that its proposal to phase-in the implementation of the new membership rules and processes is consistent with Section 6(b)(7) of the Act³⁸ because both the current and proposed processes provide fair procedures for granting and denying applications for becoming an Exchange Member, becoming an Associated Person, and making material changes to the business operations of a Member. The Exchange is proposing to provide advanced notice of the implementation date of the new processes, and will apply the new processes to new applications, appeals, and requests for Board action that are initiated on or after that implementation date. Any application, appeal, or request for Board action initiated prior to the implementation date will be completed using the current processes. As a consequence, the Exchange will maintain a transitional Rulebook on the Exchange's public rules website which will contain the Exchange Rules as they are at the time of filing this rule change. These transitional rules will apply exclusively to applications, appeals, and requests for Board action initiated prior to the implementation date. Upon conclusion of the last decision on a matter to which the transitional rules apply, the Exchange will remove the defunct transitional rules from its public rules website. Thus, the transition will be conducted in a fair, orderly, and transparent manner. Lastly, the proposed transition process is the same process that Nasdaq implemented during its transition to new membership rules.

³⁸ 15 U.S.C. 78f(b)(7).

4. 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 Exchange does not expect that its proposed changes to the membership rules will have any competitive impact on its existing or prospective membership. The proposed changes will apply equally to all similarly situated Applicants and Members and they will confer no relative advantage or disadvantage upon any category of Exchange Applicant or Member. Moreover, the Exchange does not expect that its proposal will have an adverse impact on competition among exchanges for members; to the contrary, the Exchange hopes that by clarifying, reorganizing, and streamlining its membership rules, and by making the Exchange's membership process less burdensome for Applicants and Members, the Exchange will improve its competitive standing relative to other exchanges.

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

The Exchange does not consent to an extension of the time period for Commission action.

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)³⁹ of the Act and Rule 19b-4(f)(6) thereunder⁴⁰ in that it effects a change

³⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

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.

In this case, the proposed rule change will not significantly affect the protection of investors or the public interest because it is intended, primarily, to update and reorganize the Exchange's existing membership rules and processes. To the extent that the Exchange proposes to amend the substance of the membership rules and processes, these changes are intended to streamline and clarify those rules and processes, and to eliminate unused and outdated provisions, so that the membership process will be easier for Applicants, Members, and Associated Persons to comprehend and less burdensome to follow. At the same time, these changes will not adversely impact the Exchange's membership program or the ability of its Membership Department to appropriately scrutinize prospective and existing Members and Associated Persons. Likewise, the changes will not limit the due process rights of Applicants or of Members or Associated Persons. The proposed changes will not substantively change the Exchange's existing system of adjudicating appeals of adverse membership decisions.

Additionally, the Exchange does not expect that its proposed changes to the membership rules will have any competitive impact on its existing or prospective membership.

⁴⁰ 17 CFR 240.19b-4(f)(6).

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.

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

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

The proposal is based upon SR-NASDAQ-2019-022.

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.

3A. Comparison of existing BX Rule 1000 Series and the Nasdaq Rule 1000 Series

3B. Broker-Dealer Membership Application Form and Membership Agreement (with proposed additions underlined and deletions bracketed).

5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-BX-2019-022)

July __, 2019

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delete the Exchange's Existing Membership Rules and to Incorporate by Reference the Membership Rules of The Nasdaq Stock Exchange, LLC

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 10, 2019, 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 incorporate by reference into the Exchange's rules the membership rules of The Nasdaq Stock Exchange, LLC.

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.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The Exchange's Rule 1000 Series prescribes the qualifications and the procedures for applying for membership on the Exchange. The Exchange now proposes to delete and replace these rules, as described below.³

The Exchange proposes to delete most of its existing Rule 1000 Series rules (with certain exceptions identified below) and replace them with the membership rules of The Nasdaq Stock Market, LLC ("Nasdaq"), which exist in the Rule 1000 Series of the Nasdaq Rulebook (the "Nasdaq Rule 1000 Series" or the "Nasdaq Membership Rules"). The Exchange proposes to incorporate the Nasdaq Membership Rules by reference into its own Rule 1000 Series.⁴ In a recent filing,⁵ Nasdaq amended its own Rule 1000

³ The Exchange proposes to separately request an exemption from the rule filing requirements of Section 19(b) of the Act for changes to the Rule 1000 Series to the extent such rules are effected solely by virtue of a change to the Nasdaq Rule 1000 Series. The Exchange's proposed rule change will not become effective unless and until the Commission approves this exemption request.

⁴ The Exchange notes that Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq PHLX, LLC (together with Nasdaq and Nasdaq BX, the "Affiliated Exchanges") each plan to propose similar changes to their respective

Series; immediately prior to Nasdaq's rule filing, the Nasdaq Rule 1000 Series was the same, in all material respects, as the Exchange's Rule 1000 Series. By incorporating by reference the revised Nasdaq Rule 1000 Series, the Exchange seeks to incorporate the changes that Nasdaq made to the Nasdaq Rule 1000 Series into the BX Rule 1000 Series.

As compared to the Exchange's existing Rule 1000 Series, by virtue of incorporating by reference the Nasdaq Rule 1000 Series into Exchange's Rulebook, the Exchange's revised membership rules (the "Proposed Rule 1000 Series" or the "Proposed Rules") will be organized in a more logical order. The Proposed Rule 1000 Series will eliminate duplicative provisions that exist in the existing Rule 1000 Series, eliminate unnecessary complexity in the membership process, and otherwise streamline the existing membership rules and their associated procedures. The Proposed Rule 1000 Series will relax needlessly rigid deadlines that the rules prescribe for taking certain actions with respect to membership applications.⁶

Summary of Proposed Changes

A comparison between the Exchange's existing Rule 1000 Series and the Proposed Rule 1000 Series, is summarized below. For ease of comparison, this summary refers to the deletion of the existing Rule 1000 Series and its replacement with the Proposed Rule 1000 Series, as incorporated by reference, as "amendments" to,

membership processes and associated rules that will also render them the same or substantially similar to those of Nasdaq.

⁵ See Securities Exchange Act Release No. 34-85513 (Apr. 4, 2019), 84 FR 14429 (Apr. 10, 2019) (SR-NASDAQ-2019-022).

⁶ The Exchange does not believe that any of the proposed changes will adversely impact the existing rights of prospective or existing Members or Associated Persons. Likewise, the Exchange does not believe that the proposed changes will compromise the ability of the Exchange or its Membership Department to scrutinize prospective or existing Members or Associated Persons.

“restatements” of, or “moves” of the existing rules. Exhibit 3A to this proposal compares the Exchange’s existing Rule 1000 Series to the Nasdaq Rule 1000 Series and shows the changes described below.

Rule 1001

Existing Exchange Rule 1000 includes a reference to the fact that FINRA is in the process of consolidating certain NASD rules into a new FINRA rulebook, and that if a NASD rule that is incorporated by reference into a BX rule is transferred to the FINRA rulebook, then the BX rule will be construed to require Exchange members to comply with the FINRA rule, as it may be renumbered or amended. This same reference exists, not only in existing Rule 1000, but also IM-1002-4, 1012(j), and 1017(g). The Proposed Rule 1000 Series deletes these references in all of these Rules because they will no longer be necessary going forward. The Proposed Rule 1000 Series rules does not cite specific FINRA (or NASD) Rules.

Rule 1002

Proposed Rule 1002 differs from the existing Exchange Rule 1000 in several respects. First, Proposed Rule 1002 deletes existing paragraph (c), which pertains to the payment by Members and Associated Persons of dues, fees, assessments and other charges, because the requirement of Members and Associated Persons to make such payments is set forth elsewhere in the Rules, such that existing paragraph (c) is unnecessary.⁷ The Proposed Rule 1000 Series also moves existing paragraph 1002(d), which governs the reinstatement of membership and registration, to a new Proposed Rule 1018 that will consolidate all provisions of the Rules relating to transfer, resignation,

⁷ See Rule 9553.

termination, and reinstatement of membership. Additionally, the Proposed Rule 1000 Series consolidates and moves to Proposed Rule 1002, as newly-renumbered paragraph (d), largely duplicative provisions relating to the registration of branch offices and the designation of offices of supervisory jurisdiction, which presently reside in Rule 1012(j) and IM-1002-4, respectively.⁸ Within the new paragraph (d), the Proposed Rule deletes language from existing Rule 1012(j)(1) that requires a Member to pay dues, fees, and charges associated with a branch office – as that provision is superfluous for reasons discussed above. Under paragraph (d)(3)(A) of the Proposed Rule, the Exchange also simplifies the existing rules for determining compliance with branch office registration and supervisory office designation requirements. Whereas the existing processes – as set forth in existing Rule 1012(j) and IM-1002-4 – provide that Exchange Members that are also FINRA members are deemed to comply with the branch office and designated supervisory office requirements to the extent that they comply with NASD-1000-4 and Article IV, Section 8 of the NASD’s By-Laws, the Proposed Rule 1000 Series states that such Exchange Members are deemed to comply to the extent that they keep current Form BR, which contains the requisite information and which is accessible electronically to the

⁸ In subparagraph (d)(3)(B) of the Proposed Rule, the Exchange clarifies the existing rule text in Rule 1012(j) and IM-1002-4, which provide that Members that are not FINRA members shall designate offices of supervisory jurisdiction and branch offices by submitting to the Exchange a “written filing” to the Exchange “in such form as the Exchange may prescribe.” The Proposed Rule clarifies that this written filing is the “Branch Office Disclosure Form.” The Branch Office Disclosure Form is presently in use for this purpose and it is not a new form. Nevertheless, the Exchange believes that it will be helpful in the Rule to identify the specific form that must be filed rather than refer vaguely to a filing in such form as the Exchange may prescribe.

Exchange. Members that are not FINRA members shall continue to submit to the Exchange a Branch Office Disclosure Form, as they have done previously.⁹

Existing Rule 1002(f) provides for broker-dealers who were approved as member organizations and associated persons of the Boston Stock Exchange prior to its acquisition by the Nasdaq OMX Group (now, Nasdaq, Inc.) (and its subsequent re-launching as Nasdaq BX) to have their status grandfathered into Nasdaq BX. The Proposed Rule 1000 Series does not have this provision; it is no longer necessary given that Nasdaq acquired the Boston Stock Exchange and launched Nasdaq BX more than ten years ago. All grandfathered Boston Stock Exchange members and associated persons are duly accounted for in the Exchange's membership rolls.

Lastly, the Proposed Rule 1000 Series moves IM-1002-1, which prohibits a Member or an Associated Person from filing with the Exchange misleading information in connection with membership or registration, and requires misleading information to be corrected, to Proposed Rule 1012 (General Application Provisions), where the Exchange believes it more logically fits.¹⁰

Rule 1011

Proposed Rule 1011, which includes definitions for the Proposed Rule 1000 Series, defines the term "Investment banking or securities business" differently from

⁹ The existing Rule states that Members that are not FINRA members shall designate offices of supervisory jurisdiction and branch offices by submitting to the Exchange "a written filing in such form as the Exchange may prescribe." The form that the Exchange presently prescribes for this purpose is the Branch Office Disclosure Form. To improve clarity, the Proposed Rule identifies this form by name in the Rule. The Exchange proposes no substantive changes to this Form.

¹⁰ The Proposed Rule also amends the definition of a "Proprietary Trading Firm" in paragraph (o) to make clear that such entities may be both Applicants and Members of the Exchange for purposes of the Rules.

existing Rule 1011 in that the Proposed Rule eliminates the reference to “investment banking.” The Exchange does not accept applications from firms that are engaged in the investment banking business but are not otherwise brokers or dealers in securities. The Exchange believes that references to the investment banking business in the existing Rule and elsewhere in the Exchange’s membership rules are unintended errors.

Whereas existing Rule 1011(g) includes the defined term “material change in business operations,” the Proposed Rule 1000 Series omits this definition and instead incorporates its substance into Proposed Rule 1017(a)(5), which is the only context in which it actually applies.

Rule 1012

Existing Rule 1012, which is presently entitled “General Provisions,” differs from the proposed version of the Rule in several ways. Principally, the Proposed Rule limits its scope to include only general provisions relating to applications, and the title of the Rule reflects that narrowed scope (“General Application Provisions”). It also omits several existing provisions that are outside of this scope, including existing paragraphs (b) (lapses in applications), (c) (ex parte communications), (d) (recusals and disqualifications from membership appeal proceedings), (g) (resignation of Exchange Members), (i) (transfer and termination of Exchange membership), and (j) (registration of branch offices). As is discussed in further detail below, the Proposed Rule 1000 Series locates these provisions in other Rules to which they more logically relate. The Exchange does not believe that relocating these provisions as described will have any substantive effect.

Rule 1012(a) is presently entitled “Filing by Applicant or Service by the Exchange.” Proposed Rule 1012(a) retitles the paragraph for clarity purposes as “Instructions for Filing Application Materials with the Exchange and Requirements for Service of Documents by the Exchange.” Whereas existing subparagraph (a)(1) presently permits an Applicant to file an application only by first-class mail, overnight courier, or hand delivery, the Proposed Rule modernizes this provision by allowing for electronic filing as well. In a new subparagraph (a)(3)(E) of the Proposed Rule, the Exchange states that service by electronic filing shall be deemed complete on the day of transmission, except that service or filing will not be deemed to have occurred if, subsequent to transmission, the serving or filing party receives notice that its attempted transmission was unsuccessful.

Furthermore, Proposed Rule 1012 eliminates existing paragraph (f) (similarity of membership names) because the Exchange believes that it is unnecessary for it to monitor for similarities in the names of prospective Members given that FINRA, through WebCRD, and the SEC monitor this.

Finally, the Proposed Rule 1000 Series relocates and restates IM-1002-1 (regarding misleading information as to membership or registration) and the last paragraph of Rule 1013(a)(1) (requiring Members and Applicants to keep application materials current) to Proposed Rule 1012(c). Rather than state, as does IM-1002-1, that Applicants, Members, and Associated Persons shall not file false or misleading membership information with the Exchange, the Proposed Rule states in paragraph (c)(1) that they shall have an affirmative duty to ensure that their membership information is accurate, complete, and current at the time of filing. The Exchange believes that the

proposed formulation is more comprehensive than the existing one.¹¹ Likewise, rather than merely require, as does existing Rule 1013(a)(1), that Applicants shall keep current their application materials after filing them, the Proposed Rule, in paragraph (c)(2), more broadly requires Applicants, Members, and Associated Persons to ensure that their membership applications and supporting materials remain accurate, complete, and current at all times, by filing supplementary amendments with the Department, as is necessary. (The Proposed Rule omits the language in existing Rule 1013(a)(1) that specifies that supplementary amendments shall be filed by electronic means insofar as Proposed Rule 1012(a) specifies the acceptable methods by which membership materials shall be filed with the Department.)¹²

Rule 1013

Proposed Rule 1013 is a substantial restatement of existing Rule 1013, which sets forth procedures for filing applications for new membership on the Exchange.

In paragraph (a) of Proposed Rule 1013, which describes the contents of new membership applications and procedures for filing, the Proposed Rule amends subparagraphs (a)(1)(A) and (B), which presently require an Applicant to file a copy of its current Form BD as well as an Exchange-approved fingerprint card for each

¹¹ The reformatted text of the Proposed Rule also omits the references in IM-1002-1 to registration decisions (which are now covered elsewhere in the Exchange's Rules).

¹² The language of existing Rule 1013(a)(1)(V), which provides that amendments to a membership application must be filed with the Exchange not later than 15 business days after a Member "knew or should have known" of the facts or circumstances giving rise to the need for the amendment, differs from the corresponding Proposed Rule 1012(c), which provides that the amendment must be filed not later than 15 business days after a Member "learns of" the facts or circumstances giving rise to the amendment. The Exchange believes that this difference between the two provisions is immaterial.

Associated Person who will be subject to SEC Rule 17f-2.¹³ The corresponding subparagraphs in the Proposed Rule provide that the Applicant must provide copies of this Form and card only if the Exchange is not able to access them through the Central Registration Depository (“CRD” or “WebCRD”) or a similar source. The language in the Proposed Rule relieves Applicants of the burden of filing a Form or fingerprint cards that the Exchange can readily retrieve itself.

Whereas subparagraph (a)(1)(C) of the existing Rule requires an Applicant to provide a “check” for such fees as it may be required to pay under the Exchange’s Rules, the corresponding provision of the Proposed Rule deletes the word “check” and replaces it with a more general term, “payment,” so as to afford an Applicant flexibility to pay the fee through additional means, such as wire transfer.

Subparagraph (a)(1)(G) of the existing Rule requires disclosure of the Applicant’s principal place of business and “all other offices, if any, whether or not such offices would be required to be registered under the Equity Rules.” The corresponding Proposed Rule clarifies this provision by specifying that it applies to “branch” offices. The Proposed Rule also omits the phrase “whether or not such offices would be required to be registered under the Equity Rules,” as the Exchange deems it unnecessary for the Applicant to list offices other than those that must be registered. Finally, the Proposed Rule states that an Applicant need not separately provide this branch office information to the Exchange to the extent that the information is otherwise available to the Exchange electronically through WebCRD or a similar source.

¹³ The existing provision exempts Applicants from filing fingerprint cards if it has already filed them with another self-regulatory organization.

Next, Proposed Rule 1013 consolidates subparagraphs (a)(1)(J) and (a)(1)(K) of the existing Rule. Whereas existing subparagraph (a)(1)(J) presently requires the Applicant to state whether it is currently or has been in the prior ten years the subject of certain investigations or disciplinary proceedings that have not been reported to the CRD, the corresponding provision in the Proposed Rule adds language – in subparagraph (a)(1)(K) of the existing Rule – which states that the obligation to disclose the Applicant’s disciplinary history pertains, not only to the Applicant itself, but also “any person listed on Schedule A of the Applicant’s Form BD.”¹⁴ Proposed Rule 1013 omits subparagraph (a)(1)(K), as it is duplicative of Proposed Rule 1013(a)(1)(J).

Compared to subparagraph (a)(1)(N) of the existing Rule, which requires an Applicant to disclose how it complies with Rule 3011, the corresponding Proposed Rule clarifies that Rule 3011 requires Members to have anti-money laundering compliance programs.

In subparagraph (a)(1)(P) of the Proposed Rule, the Exchange omits language that presently permits an Applicant to submit a Form U-4 for each person conducting and supervising the conduct of the Applicant’s market making and other trading activities. The Proposed Rule omits the existing requirement that an Applicant submit a Form U-4 because the information that the Form contains is otherwise accessible to the Exchange through WebCRD, such that submission of the Form itself is unnecessary.

In subparagraph (a)(1)(Q) of the Proposed Rule, the Exchange omits the requirement in the corresponding provision of the existing Rule that the Applicant

¹⁴ Such persons listed on Form BD include the Applicant’s direct owners (as that term is defined on Form BD), and certain partners, trusts and trustees, and limited liability company members, and executive officers of the Applicant.

provide to the Exchange a FINRA Entitlement Program agreement and Terms of Use and an Account Administration Entitlement Form, if not previously provided to FINRA. The Proposed Rule omits this requirement because the Exchange has determined that the requirement is unnecessary. Any Applicant for membership will have already completed and submitted this agreement and form prior to applying to the Exchange. The completion and submission of the agreement and form will be evident to the Exchange from the fact that FINRA has granted the Applicant access to WebCRD. The Exchange understands that completion of the Account Administration Entitlement Form is a prerequisite to the creation of a registered BD and receiving WebCRD access.

The Proposed Rule amends subparagraphs (a)(1)(T), (U), and (V) of the existing Rule, which presently require an Applicant to submit to the Exchange an agreement to comply with the federal securities laws, the rules and regulations thereunder, the Exchange's Rules, and all rulings, orders, directions, decisions, and sanctions thereunder, as well as an agreement to pay such dues, assessments, and other charges in the manner and in the amount as the Exchange prescribes. The Proposed Rule prefaces these requirements with a more general requirement that an Applicant submit a duly executed copy of the Exchange's Membership Agreement. The Membership Agreement comprises the foregoing commitments, among others, and Applicants presently submit an executed copy of the Membership Agreement to satisfy existing subparagraphs (a)(1)(T) and (U). The Proposed Rule inserts the new language in subparagraph (a)(1)(T) and moves the language in existing subparagraphs (a)(1)(T) and (U) to new subparagraphs (a)(1)(T)(1) and (2). The Proposed Rule renumbers existing subparagraph (a)(1)(V) as subparagraph (a)(1)(U).

The Proposed Rule omits existing subparagraph (a)(2) of the existing Rule, which presently requires an Applicant to submit uniform registration forms, due to the fact that the information that these forms contain is readily accessible to the Exchange through WebCRD.

Next, the Proposed Rule restates the Exchange's requirements and procedures for deeming applications to be filed, for dealing with incomplete applications, and for requesting additional information from an Applicant or a third party in connection with a pending application. The Proposed Rule restates these requirements and procedures to improve their clarity, to relax certain procedural deadlines that are needlessly rigid, and to provide additional due process to Applicants.

First, in lieu of the omitted text in subparagraph (a)(2) of the existing Rule, the Proposed Rule includes a new provision, entitled "When an Application is Deemed to be Filed," which states expressly what is now only implied in existing Rule 1013 – that the Department will deem an application to be filed on the date when it is "substantially complete," meaning the date on which the Department receives from the Applicant all material documentation and information required under Rule 1013. The Exchange believes that Applicants will benefit from this clarification, particularly because it affords the Department discretion to deem an application to be filed when it obtains sufficient information or documentation from the Applicant to enable the Department to commence processing the application. The new provision in the Proposed Rule also requires the Department to inform the Applicant in writing when the Exchange deems an application to be substantially complete so that there will be no ambiguity as to when the Department will begin to process the application.

Second, the Proposed Rule omits existing subparagraph (a)(3), which presently governs the rejection of applications that are not substantially complete. In lieu of the omitted text, the Proposed Rule contains two new provisions that deal with lapses in applications that are not substantially complete, and the rejection of filed applications that remain or become incomplete after filing.

Subparagraph (a)(3)(A) of the Proposed Rule, which governs lapses of applications, also replaces existing Rule 1012(b). This provision of the Proposed Rule states that if the Department does not deem an application to be substantially complete (and thereby filed, in accordance with proposed subparagraph (a)(2)) within 90 calendar days after an Applicant initiates it, then absent a showing of good cause by the Applicant, the Department may, at its discretion, deem the application to have lapsed without filing, such the Department will take no action in furtherance of the application. The Proposed Rule is conceptually different from existing Rule 1012(b). The Proposed Rule conceives of a lapsed application as one that an Applicant initiates but does not substantially complete even after a prolonged period of time, such that the Department treats it as having been abandoned prior to filing. Under existing Rule 1012(b), by contrast, the Exchange treats lapses more broadly as any unexcused failure of an Applicant to complete an application, to respond to the Department's requests for information or documents, to participate in a membership interview, or to file with the Exchange an executed membership agreement. As is discussed below, the Proposed Rule treats an Applicant's post-filing non-responsiveness to the Department's requirements as a basis for rejection of an application, not a lapse of an application, because once an application is deemed filed, the Department will begin to take action in furtherance of the

application. Also unlike the existing Rule, the Proposed Rule provides that the Department merely has discretion to, but need not deem an application to have lapsed once it meets the requirements of the subparagraph. Moreover, the Proposed Rule requires that once the Department deems an application to have lapsed, then the Department must serve a written notice of that determination on the Applicant and refund any application fees that the Applicant paid to the Exchange (provided that the Exchange did not, in fact, take action in furtherance of the lapsed application). Finally, the Proposed Rule states that an Applicant that still wishes to apply for membership on the Exchange after receiving notice of a lapse in its application must submit a new application pursuant to these Rules and pay a new application fee for doing so, if applicable.

Subparagraph (a)(3)(B) of the Proposed Rule governs the circumstances in which the Department may reject an application that it already has deemed to be “substantially complete” and thus filed. Specifically, the Proposed Rule states that if a pending application remains incomplete after filing, or becomes incomplete after filing due to the fact that the Applicant has not timely responded to the Department’s request for supplemental information or documents, then the Department will serve notice on the Applicant of the nature of the incompleteness and afford the Applicant a reasonable time period in which to address it. If the Applicant fails to address the incompleteness within the time period that the Department prescribes in the notice, then, absent a showing of good cause by the Applicant, the Department may – but again it is not required to – deem the application to be rejected and it must serve written notice of any such determination upon the Applicant. The Proposed Rule states, moreover, that if the Department deems

an application to be rejected, then the Applicant shall not be entitled to a refund of any fees that the Applicant may have paid in connection with its application so that the Exchange can recover its costs associated with processing the filed application prior to rejecting it. Finally, the Proposed Rule states that if an Applicant chooses to continue to pursue membership following a rejection of its application, then it must submit a new application and pay any associated fees that are required under the Rule.

Third, the Proposed Rule restates subparagraph (a)(4) of the existing Rule, which governs requests made by the Department for additional information or documents during its consideration of an application. The Proposed Rule also restates and consolidates into subparagraph (a)(4) the provision of existing Rule 1013 that governs membership interviews and information pertinent to the application that the Department gathers from third party sources other than the Applicant (existing paragraph (b)). The Exchange believes that rules governing supplemental information and document requests, membership interviews, and third party information are related and should be consolidated into a single provision. Moreover, the Exchange notes that it does not, as a practical matter, opt to conduct formal membership interviews because it is more efficient and less onerous for all parties to instead engage in informal discussions when questions and concerns arise. Because the Exchange does not exercise its discretion to conduct formal interviews the Exchange believes that it is reasonable to eliminate the concept and the procedures that govern such interviews in the new subparagraph.

In particular, the subparagraph, as restated in the Proposed Rule, provides that at any time before the Department serves its decision on a membership application,¹⁵ it may issue a request for additional information or documents – either from the Applicant or from a third party – if the Department deems such information or documentation to be necessary to clarify, verify, or supplement the application materials. The Proposed Rule states that the Department may request that the information or documentation be provided in writing or through an in-person or telephonic interview. The Proposed Rule furthermore states that the Department shall serve its request in writing. The Proposed Rule states that the Department must afford the recipient a reasonable amount of time within which to respond to the request¹⁶ and that the failure of an Applicant to respond within the allotted time may serve as a basis for the Department to reject an application under subparagraph (a)(3)(B), described above. Finally, the Proposed Rule for the first time affords the Applicant due process in the event that the Department obtains information or documentation about the Applicant from a third party that the Department

¹⁵ The restated provision of the Proposed Rule eliminates the requirement in the existing Rule that the Department must serve an initial supplemental request for information or documents within 15 business days after an application is deemed to be filed. The Exchange finds no good reason to distinguish in the rule between an “initial” and a subsequent supplemental Departmental request or to impose a specific deadline for the Department to issue any such requests; the Department has a shared interest with the Applicant in issuing supplemental requests expeditiously such that no artificial deadline is necessary.

¹⁶ Rather than impose a minimum time period for a response, the Proposed Rule requires only that the Department prescribe a reasonable deadline for a response. The Exchange believes that the appropriate response period will vary depending upon the nature of the information or documentation requested. Moreover, the Exchange again believes that the Department and the Applicant have a shared interest in ensuring that the Applicant has adequate time to respond to a request.

reasonably believes could adversely impact its decision on an application.¹⁷ In such a circumstance, the Proposed Rule requires the Department to promptly inform the Applicant in writing and describe the third party information or documentation that the Department obtained. The Department must also afford the Applicant a reasonable opportunity to discuss with it or object to the Department's use of the third party information or documentation in its application decision prior to the Department rendering the decision.

Fourth, the Proposed Rule 1000 Series includes a new Rule 1013(b), entitled "Special Application Procedures," which restates and expands upon the special application procedures set forth in subparagraph (a)(5) of the existing Rule 1013. Presently, subparagraph (a)(5)(A) states that when an Applicant is applying for FINRA membership and Exchange membership at the same time, then the Exchange will wait to process the application until the applicant becomes a FINRA member.¹⁸ Presently, subparagraph (a)(5)(C) states that expedited application procedures will apply to Applicants that are already members of FINRA and Nasdaq, or Nasdaq PHLX LLC. The Proposed Rule omits subparagraph (a)(5)(A) and (B) because the Exchange believes that these provision add little value, especially in light of other changes that the Exchange adopted in the Proposed Rules. Likewise, the Proposed Rule omits subparagraph (a)(5)(C) because it has become outdated in that it does not provide expedited application

¹⁷ The Department may consult third parties, such as other SROs of which an Applicant is or was a member previously, to obtain additional information about or to confirm aspects of an application or the Applicant's character or history. The Department might also consult third party services to investigate or verify the Applicant's financial condition or history.

¹⁸ Existing subparagraph (a)(5)(B) also specifies that Applicants that are already members of another registered securities association or exchange must submit a regular application form.

procedures for Applicants that are members of the Exchange's other affiliates; this provision also does not explain what an "expedited" application process entails.

In lieu of the existing subparagraph (a)(5), the Proposed Rule includes two types of special applications in Rule 1013(b). First, Proposed Rule 1013(b)(1) prescribes a special application process for Applicants that are already FINRA members. Specifically, the Proposed Rule states that such an Applicant will have the option to "waive-in" to become an Exchange Member and to register with the Exchange all persons associated with it whose registrations FINRA has approved (in categories recognized by the Exchange's rules). The Proposed Rule defines the term "waive-in" to mean that the Department will rely substantially upon FINRA's prior determination to approve the Applicant for FINRA membership when the Department evaluates the Applicant for Exchange membership. That is, the Department will normally permit a FINRA member to waive-into Exchange membership without conducting an independent examination of the Applicant's qualifications for membership on the Exchange, provided that the Department is not otherwise aware of any basis set forth in Rule 1014 to deny or condition approval of the application.

Procedurally, the Proposed Rule states that a FINRA member that wishes to waive-into Exchange membership must do so by submitting to the Department an application form (the standard application form contains an option to select waive-in membership) and an executed Exchange Membership Agreement. The Department, in turn, will act upon a duly submitted waive-in application within a reasonable time frame not to exceed 20 days from submission of the application, unless the Department and the

Applicant agree to a longer time frame for issuing a decision.¹⁹ If the Department fails to issue a decision on a waive-in application within the prescribed time frame, then the Applicant may petition the Exchange's Board of Directors to force the Department to act, as set forth in Rule 1014(c)(3). Finally, the Proposed Rule states that a decision issued under this provision shall have the same effectiveness as set forth in Rule 1014 and shall be subject to review as set forth in Rules 1015 and 1016.

The second special application process, which is set forth in Proposed Rule 1013(b)(2), permits Applicants for Exchange membership that are already approved members of one or more of the Affiliated Exchanges to waive-into the Exchange membership. In this context, "waive-in" means that the Department will rely substantially upon an Affiliated Exchange's prior determination to approve the Applicant for membership on the Affiliated Exchange when the Department evaluates the Applicant for Exchange membership. The procedures in the Proposed Rule for an Applicant to submit a waive-in application under this provision and for the Department to issue a decision based upon such an application are identical to the procedures described above for FINRA members that seek to waive-into Exchange membership. The Exchange amends its application form to reflect the fact that Applicants may waive-into membership on the Exchange based upon their membership on any of the other five Affiliated Exchanges.

Rule 1014

¹⁹ The Proposed Rule prescribes this time frame to accommodate FINRA, which will review waive-in applications on behalf of the Exchange to verify that the Applicants are FINRA members in good standing. As a practical matter, the Exchange expects to act on waive-in applications prior to the 20 day deadline.

In several respects, Proposed Rule 1014 differs from the existing Rule, which governs the issuance of membership application decisions by the Department.

First, to improve clarity, the Proposed Rule is reorganized relative to the existing Rule. Rather than begin the Rule with a paragraph that describes the bases for the Department to issue a decision on an application, as is the case presently, the Proposed Rule begins with a paragraph (a) entitled "Authority of Department to Approve, Approve with Restrictions, or Deny an Application." This new paragraph sets forth the general authority of the Department to act on an application by approving it, denying it, or approving it subject to restrictions: (1) that are reasonably designed to address a specific (financial, operational, supervisory, disciplinary, investigatory, or other regulatory) concern; or (2) that mirror a restriction placed upon the Applicant by FINRA or an Affiliated Exchange. It incorporates elements of what is now Rule 1014(b) (which the Exchange proposes to delete going forward).

Second, the Proposed Rule renumbers existing paragraph (a) as new paragraph (b). This paragraph is retitled "Bases for Approval, Conditional Approval, or Denial" but otherwise is the same.

Third, as noted above, existing paragraph (b) is omitted from the Proposed Rule.

Fourth, the Proposed Rule amends paragraph (c), which prescribes the time period within which the Department must issue and serve a written decision on a membership application. Presently, the provision requires the Department to serve a written decision within 15 business days after the Applicant concludes its membership interview (if any) or files all of its required information or documents, whichever is later. The Proposed Rule relaxes this requirement by stating that the Department must respond in a reasonable

time period, not to exceed 45 (calendar) days after the Applicant files and provides to the Exchange all required and requested information or documents in connection with the application, unless the Department and the Applicant agree to further extend the decision deadline.²⁰ The Proposed Rule includes these amendments because the Exchange adjudges the existing timeframe to be needlessly short and inflexible. In certain instances where the Department has outstanding questions or concerns associated with an application, the existing Rule may force the parties to rush to address outstanding questions and resolve outstanding issues. The Proposed Rule allows for such questions and issues to be addressed with less time pressure involved. The Exchange notes that it does not intend for the Proposed Rule to routinely lengthen the Department's timeframe for serving application decisions. Under the existing Rule, the Exchange typically issues decisions far in advance of the 15 business day deadline and the Exchange expects that it will continue to do so in most instances. Indeed, the Exchange has a self-interest in issuing decisions as soon as is possible. The 45 day decision period in the Proposed Rule is merely intended to allow for the parties to have flexibility in unusual circumstances.

Fifth, the Proposed Rule omits existing paragraph (d), which states that a decision by the Department to approve an application is contingent upon the Applicant filing with the Department an executed written membership agreement that contains the Applicant's agreement to abide by any restriction specified in the Department's decision and to obtain the Department's approval prior to undertaking a change in ownership, control, or business operations, or prior to modifying or removing a membership restriction. The

²⁰ The Proposed Rule also contains conforming amendments to Rule 1014(c)(3), which addresses failures of the Department to serve a decision within the prescribed time frame.

Proposed Rule omits this provision because, as explained above, the Exchange expressly requires, in Proposed Rule 1013, that an Applicant must file a duly executed copy of the Membership Agreement as part of its application. The existing Membership Agreement contains the undertakings described in existing paragraph (d). Accordingly, existing paragraph (d) is superfluous.

Rule 1015

The Proposed Rule 1000 Series amends existing Rule 1015, which states that the Department's membership decisions are subject to review by the Exchange Review Council. Specifically, the Proposed Rule 1000 Series moves from existing Rule 1012(c) to Proposed Rule 1015(k) a provision that prohibits ex parte communications involving membership decisions subject to review among certain Exchange staff, members of the Exchange Review Council, members of a Subcommittee of the Council, and the Board of Directors. Similarly, the Proposed Rule 1000 Series moves from existing Rule 1012(d) to Proposed Rule 1015(l) a provision that governs the recusal and disqualification of a member of the Exchange Review Council, a Subcommittee thereof, or the Board of Directors from participating in a review of a membership decision. The Proposed Rule 1000 Series moves these provisions because the Exchange believes that they fit logically within the section of the membership rules that govern appeals of membership decisions. The Proposed Rules contain no substantive changes to these provisions²¹ and the Exchange does not believe that moving them will have any substantive effect.

Rule 1017

²¹ The Proposed Rule omits the requirement in existing Rule 1015(a) that an applicant file a request for review "by first-class mail." Proposed Rule 1012(a) now provides for a more modern array of filing options that includes electronic submission.

The Proposed Rule 1000 Series contains substantial changes to existing Rule 1017, which requires Members to obtain approval prior to effecting a change in ownership, control, or business operations. These changes are generally intended to streamline and simplify the existing Rule, which the Exchange believes are unnecessary onerous and complex. As much as possible, the Proposed Rule applies the same procedures to these applications for approval as it does to its applications for membership under Proposed Rules 1013 and 1014.

The first difference between the existing and Proposed Rule 1017 concerns Rule 1017(a), which presently defines the events that require Members to file applications. The existing paragraph states that a Member shall file an application for approval prior to effecting the following changes: (1) a merger of the Member with another Member (unless both are members or the surviving member will continue to be a member of the New York Stock Exchange (“NYSE”)); (2) a direct or indirect acquisition by the Member of another Member (unless the acquiring Member is a member of the NYSE); (3) direct or indirect acquisitions or transfers of 25% or more in the aggregate of the Member’s assets or any asset, business line or line of operations that generates revenues comprising 25% or more in the aggregate of the Member’s earnings measured on a rolling 36 month basis (unless both the seller and acquirer are members of the NYSE); (4) a change in the equity ownership or partnership capital of the Member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital; or (5) a “material change in business operations.” Existing Rule 1011(g), in turn, defines a “material change in business operations” to mean, among other things: (1) removing or modifying a membership restriction; (2) acting as a dealer for the

first time; (3) market making for the first time on the Exchange (except when the member's market making has been approved previously by FINRA or Nasdaq); (4) adding business activities that require higher minimum net capital under SEC Rule 15c3-1; and (5) adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term contained in the rule.

For ease of reference, the Proposed Rule 1000 Series incorporates into Proposed Rule 1017(a)(5) the definition of a "material change in business operations" rather than define it separately in Rule 1011(g). The Proposed Rule 1000 Series also takes the existing exclusion from that definition – excluding first time market makers on the Exchange whose market making activities have been approved previously by FINRA or Nasdaq – and applies it more broadly to all of Rule 1017(a). That is, none of the changes enumerated in Proposed Rule 1017(a) require prior Departmental approval to the extent that the Member's Designated Examining Authority ("DEA"), or an Affiliated Exchange, has approved the change previously in accordance with their respective rules and provided that the Member provides written evidence to the Department of such prior approval. The Exchange believes that this is prudent because in all instances in which a Member's DEA or any Affiliated Exchange²² have already approved a change, the Exchange can be reasonably confident that such prior approval would be consistent with its own judgment on the matter, such that no purpose would be served in requiring the

²² Exchange notes that the existing Rule is under-inclusive in that it does not account for prior approvals granted by all of the Affiliated Exchanges. The Exchange believes that there is no reasonable basis for it to defer to a prior approval granted by Nasdaq and to not do the same with respect to prior approvals granted by the other Affiliated Exchanges.

Department to independently approve the same change.²³ The Proposed Rule 1000 Series also eases burdens on Members that wish to make changes to their businesses and which presently require multiple approvals to do so. The Exchange notes that in the Proposed Rules, it retains authority to require approval of a proposed change where the nature, terms, or conditions of the change have altered since the Member's DEA or an Affiliated Exchange approved it.

Next, the Proposed Rule 1000 Series makes several organizational and clarifying amendments to existing Rule 1017(b), which governs the filing and content of applications filed under Rule 1017. to the Proposed Rule prefaces subparagraph (b)(2) – which presently states vaguely that the “application” shall contain certain items – with language clarifying that the provision pertains to applications for approval of a change in ownership or control or a material change in the business operations of a member. It also breaks out the last sentence of (b)(2) into new subparagraphs (2)(A) and (2)(B). Furthermore, the Proposed Rule contains clarifying changes in (2)(A) (specifying that a description of a “change in ownership, control, or business operations” means a “proposed” change in ownership, control, or “material” business operations) and (2)(B) (specifying that the Member must “attach” rather than “include” a business plan, pro forma financials, an organizational chart, and written supervisory procedures relating to

²³ Proposed Rule 1017(a) eliminates exceptions relating to NYSE membership. The Exchange believes that this proposal is reasonable insofar as the NYSE's rules may, at times, diverge with those of the Exchange. Going forward, the Exchange feels more confident deferring to the prior judgment of a Member's DEA or of an Affiliated Exchange as to the specific change event at issue than it does to the mere fact that a Member or its counterparty in a business transaction are NYSE members.

the “proposed” change). Finally, the Proposed Rule renumbers the remainder of the existing Rule.

Proposed Rule 1017(c) is more limited in its scope than is existing Rule 1017(c). Specifically, the proposed Rule omits from subparagraph (c)(1) the ability of a Member to effect a change in ownership or control prior to receiving approval from the Department and the ability of the Department to impose interim restrictions on the Member pending final Department approval. The Exchange believes that the concepts of interim changes and restrictions are overly complex, potentially disruptive, and ultimately unnecessary given the short time frames that the Rules prescribe for the Department to act on applications.²⁴ Additionally, the Exchange notes that in its experience reviewing applications under Rule 1017, these provisions never have been invoked. Finally, the Proposed Rule changes the title of this provision to reflect the omission of the foregoing. Whereas now, the title is “Effecting Change and Imposition of Interim Restrictions,” the Proposed Rule is entitled “When Applications Shall or May Be Filed.”

Existing paragraphs (d), (e), and (f) of Rule 1017, prescribe standards for rejecting applications that are not substantially complete, authorize the Department to serve a request for additional documents and information, and permit the Department to conduct interviews of Applicants, respectively. Proposed Rule 1017 omits these provisions and replaces them with provisions that are more consistent with Proposed Rule 1013(a)(2), (3), and (4). That is, Proposed Rule 1017(d) states that the Department will

²⁴ The Exchange also notes that FINRA is also publicly contemplating eliminating the concept of allowing its members to effect business changes on an interim basis. See FINRA, Regulatory Notice 18-23: Membership Application Proceedings (Request for Public Comment), Attachment B (July 26, 2018), available at http://www.finra.org/sites/default/files/Attachment-B_Regulatory-Notice-18-23.pdf.

deem an application to be filed on the date when it is substantially complete, meaning the date on which the Department receives from the Applicant all material documentation and information required under the Rule. It also requires the Department to inform the Applicant in writing when the Department deems an application to be substantially complete. Proposed Rule 1017(d) states that the Department may treat an application filed under this Rule as having lapsed, and the Department may reject an application filed under this Rule, in accordance with Proposed Rule 1013(a)(3), except that the Department may treat an application as having lapsed if it is not substantially complete for 30 days or more after the applicant initiates it.²⁵ Finally, Proposed Rule 1017(f) states that at any time before the Department serves its decision on an application filed under Rule 1017, the Department may request additional information or documentation from the Applicant or from a third party in accordance with Rule 1013(a)(4).²⁶

Existing Rule 1017(g) prescribes a complex system for the Department to issue decisions in response to applications filed under Rule 1017. For example, it differentiates between decisions issued with respect to Members that are and are not FINRA members (or required to be FINRA members). With respect to Members that are FINRA members, the Rule requires the Department to consider whether the Applicant and its Associated Persons meet the standards set forth in NASD (FINRA) Rule 1014(a). It also prescribes specific criteria for issuing decisions where the Applicant seeks a modification

²⁵ The Exchange notes that this 30 day time period for deeming an application to have lapsed derives from existing Rule 1017(d).

²⁶ As stated previously, circumstances where the Department may consult a third party include to seek additional information about or to verify aspects of an application. For example, the Department may consult another SRO to verify the financial status or prior disciplinary history of a Member's prospective new ownership.

or removal of a membership restriction. The Exchange believes that this complex system is unnecessary and can be simplified considerably, particularly in light of the proposal described above to exempt a Member from obtaining the Exchange's approval to effect a change in ownership or control or a material change in its business operations when FINRA has already approved the change previously. That is, there is no reason for the Exchange to make an independent assessment of whether the proposed change complies with FINRA rules if FINRA has already made that determination.

In lieu of the existing provisions, Proposed Rule 1017 states that the Department will render a decision on an application filed under Rule 1017 in accordance with the standards set forth in Rule 1014, except with respect to applications to modify or remove a membership restriction, in which case the Department will consider the factors presently set forth in existing Rule 1017(g)(1)(D) (Proposed Rule 1017 renumbers this provision as subparagraph (g)(1)).

Additionally, in lieu of existing Rule 1017(g)(2), which requires the Department to serve a written decision on an application filed under Rule 1017 within 30 (calendar days) after conclusion of a membership interview or the filing of additional information or documents (whichever is later), Proposed Rule 1017 states that the Department will serve a written decision in accordance with Rule 1013(c).²⁷ The Proposed Rule 1000 Series makes this change to 1017(g)(2) for the same reasons that it discussed above with respect to Rule 1013(c).

²⁷ The Exchange notes that the cross-reference to Rule 1013(c) in the Proposed Rules also addresses the Applicant's rights in the event that the Department does not serve it with a timely written decision. Accordingly, the Proposed Rule omits existing subparagraph (g)(3), which covers the same topic.

Finally, the Proposed Rule 1000 Series omits existing Rule 1017(k). This provision presently states that if an application for approval of a change in ownership lapses or is denied and all appeals are exhausted or waived, the Member must, within 60 days, submit a new application, unwind the transaction, or file a Form BDW. It also provides for the Department to shorten or lengthen the 60 day period under certain circumstances. Due to the fact that the Exchange – as explained previously – will eliminate the ability of a Member to effect a change in ownership while its application for Departmental approval is pending, this provision is no longer necessary. That is, there will be no interim change in ownership that will need to be unwound or otherwise addressed if the Department denies an application or it lapses.

Rule 1018

The Proposed Rule 1000 Series consolidates within Proposed Rule 1018, which is reserved under the existing Rules, existing provisions of the Rules pertaining to the resignation of members (existing Rule 1012(g)), transfer of membership (existing Rule 1012(i)(1)), termination of membership (existing Rule 1012(i)(2)), and reinstatement of membership (existing Rule 1002(d)). The Exchange believes that these provisions are logically related and belong together in a single Rule. Proposed Rule 1018 maintains the substance of these consolidated provisions unchanged from their existing state, except that resignations no longer require a 30 day time period to become effective. Also, the provision on reinstatement applies to membership only and not to registration, which is covered separately in the Exchange's Rules.

Other Miscellaneous Changes

The Proposed Rule 1000 Series contains other non-substantive differences from the existing Rule 1000 Series, as follows. Where the existing Rules refer specifically to “Nasdaq BX” or “BX,” the Proposed Rules replace such references with more general term “Exchange.” This difference makes it easier in the future to harmonize the Exchange’s membership rules with those of the other Affiliated Exchanges. The Proposed Rule 1000 Series also updates obsolete references to the “NASD” to reflect the fact that the NASD is now known as “FINRA.” Finally, where applicable, the Proposed Rule 1000 Series renumbers the Rules and updates or corrects cross-references.

Proposed Introductory Paragraph to the BX Rule 1000 Series

The Exchange proposes to include an introductory paragraph to the BX Rule 1000 Series which states that it incorporates by reference the Nasdaq Rule 1000 Series (other than Nasdaq Rules 1031, 1050, 1090, 1130, 1150, 1160, and 1170),²⁸ and that such Nasdaq Rules shall be applicable to Exchange Members, Associated Persons, and other persons subject to the Exchange’s jurisdiction.

These proposed introductory paragraphs also list instances in which cross references in the Nasdaq Rule 1000 Series to other Nasdaq rules should be read to refer instead to the Exchange rules, and references to defined Nasdaq terms shall be read to refer to the Exchange-related meanings of those terms. For example, references in the Nasdaq Rule 1000 Series to the following defined terms shall be read to refer to the Exchange-specific meanings of those terms: “Exchange” or “Nasdaq” shall be read to refer to the Nasdaq BX Exchange; “Rule” or “Exchange Rule” shall be read to refer to the

²⁸ The Exchange notes that these rules, both for BX and Nasdaq, are separate from the membership rules. The proposal will not supplant or amend BX Rules 1031, 1050, 1090, 1130, 1150, 1160, or 1170.

Exchange Rules; the defined term "Applicant" in the Nasdaq Rule 1000 Series shall be read to refer to an Applicant to the Nasdaq BX Exchange; the defined terms "Board" or "Exchange Board" in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq BX Board of Directors; the defined term "Director" in the Nasdaq Rule 1000 Series shall be read to refer to a Director of the Board of the Nasdaq BX Exchange; the defined term "Exchange Review Council" in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq BX Exchange Review Council; the defined term "Subcommittee" in the Nasdaq Rule 1000 Series shall be read to refer to a Subcommittee of the Nasdaq BX Exchange Review Council; the defined term "Interested Staff" in the Nasdaq Rule 1000 Series shall be read to refer to Interested Staff of Nasdaq BX; the defined term "Member" in the Nasdaq Rule 1000 Series shall be read to refer to a Nasdaq BX Member; the defined term "Associated Person" shall be read to refer to a Nasdaq BX Associated Person; the defined terms "Exchange Membership Department" or "Membership Department" shall be read to refer to the Nasdaq BX Membership Department; and the defined term "Exchange Regulation Department" shall be read to refer to the Nasdaq BX Regulation Department.

Additionally, the proposed introduction to the BX Rule 1000 Series states that cross references in the Nasdaq Rule 1000 Series to "Rule 0120" shall refer to Nasdaq BX Rule 0120, cross references in the Nasdaq Rule 1000 Series to Rule 3010 shall refer to Nasdaq BX Rule 3010; cross references in the Nasdaq Rule 1000 Series to Rule 3011 shall refer to Nasdaq BX Rule 3011; and cross references to "General 4, Section 1.1200 Series" shall be read to refer to the Nasdaq BX Rule 1200 Series.

Conclusion

The changes proposed herein will allow the Exchange to harmonize its membership rules and processes with those of Nasdaq and, ultimately, with the other Affiliated Exchanges,²⁹ thus providing a uniform criteria across the Affiliated Exchanges for membership qualifications and a uniform process across the Affiliated Exchanges for processing membership applications. The proposal will also provide for full membership reciprocity between Nasdaq and the Exchange – and hopefully, in time, across all of the Affiliated Exchanges – so that a member of one Affiliated Exchange would receive expedited treatment in applying for membership on any other Affiliated Exchange. Harmonizing the membership rules and processes of the Affiliated Exchanges will render administration of the Affiliated Exchanges’ responsibilities more efficient in that the Membership Department will only need to administer a single set of criteria and processes, rather than six sets thereof. Similarly, harmonized membership rules and processes will benefit Exchange Applicants and Members by reducing the number of requirements that must be met and the processes that must be followed to apply for membership on the Affiliated Exchanges.

Moreover, as to the Exchange itself, the proposed changes described herein will render the Exchange’s membership rules and processes clearer, better organized, simpler, and easier to comply with. Again, such changes will provide benefits both to the Exchange’s Membership Department and to Exchange Applicants.

The proposed membership rules and processes are substantially similar to the existing rules and process, and where there are differences between the new and old

²⁹ See n.4, supra.

processes, the Exchange believes that the new process does not disadvantage its Members or Associated Persons. To the contrary, the Exchange believes that the new rules and processes will benefit all parties as it again provides greater clarity, simplicity, and efficiency than the retired rules and processes.

Implementation

To facilitate an orderly transition from the existing Rule 1000 Series to the Proposed Rule 1000 Series, the Exchange is proposing to apply the existing Rules to all applications which have been submitted to the Exchange (including applications that are not yet complete) and are pending approval prior to the operative date. The Exchange also will apply the existing Rules to any appeal of an Exchange membership decision or any request for the Board to direct action on an application pending before the Exchange Review Council, the Board, or the Commission, as applicable. As a consequence of this transition process, the Exchange will retain the existing processes during the transition period until such time that there are no longer any applications or matters proceeding under the existing rules. To facilitate this transition process, the Exchange will retain a transitional Rulebook that will contain the Exchange's membership rules as they are at the time that this proposal is filed with the Commission. This transitional Rulebook will apply only to matters initiated prior to the operational date of the changes proposed herein and it will be posted to the Exchange's public rules website. When the transition is complete, the Exchange will remove the transitional Rulebook from its public rules website.

The Exchange will announce and explain this transition process in a regulatory alert.

The Exchange notes that Nasdaq applied the same process described above to govern its transition to its amended membership rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Section 6(b)(5) and of the Act,³¹ 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. It is also consistent with Section 6(b)(7) of the Act in that it provides for a fair procedure for denying Exchange membership to any person who seeks it, barring any person from becoming associated with an Exchange Member, and prohibiting or limiting any person with respect to access to services offered by the Exchange or a Member thereof.³²

As a general matter, the Exchange believes that its proposal to delete its existing membership rules and incorporate by reference the Nasdaq Membership Rules will promote a free and open market, and will benefit investors, the public, and the markets, because the new rules will be clearer, better organized, and simpler.

The proposal is just and equitable because it will render the Exchange's membership rules easier for Applicants and Members to read and understand, including by doing the following:

- Establishing a “roadmap” paragraph in proposed Rule 1014(a) that sets forth the basic authority of the Department to approve, approve with conditions, or

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(5).

³² 15 U.S.C. 78f(b)(7).

deny applications for membership before the Rule goes on to enumerate criteria for the Department to apply when taking each of those actions;

- Making the titles of the rules more accurate and descriptive (e.g., Proposed Rule 1014(b) (amending the existing title “Bases for Denial” to also include bases for approval and conditional approval to make it more accurate and complete));
- Grouping logically-related provisions together in the Rules (e.g., provisions governing resignation, termination, transfer, and reinstatement of membership (moving them from Rule 1002(d) and 1012(g) and (i) to Proposed Rule 1018); provisions relating to ex parte communications (existing Rule 1012(c)) and recusals and disqualifications (existing Rule 1012(d) (moving them into Proposed Rule 1015, which governs reviews of membership decisions));
- Rationalizing and consolidating provisions that presently govern lapses and rejections of applications, including by making clearer conceptual distinctions between lapses (i.e., applications that are not substantially complete and which the Department may deem to be abandoned, such that the Department will refund any application fees paid by the Applicant) and rejections (i.e., applications that the Department deemed to be filed but which it refuses to act upon due to lingering incompleteness, in which case the Department will not refund application fees paid to it), and by consolidating Rules 1012(b) and 1013(a)(3) into Proposed Rule 1013(a)(3)(A) and (B);

- Consolidating overlapping provisions that govern the registration of branch offices and office of supervisory jurisdiction into a single provision (consolidating Rule 1012(j) and IM-1002-4 into Proposed Rule 1002(d));
- Omitting from the Proposed Rule references in existing Rule 1002(c), Rule 1012(j), and Rule 1013(a)(1)(U) to the obligation of Members (and their branch offices) to pay fees, charges, dues, and assessments to the Exchange insofar as those obligations are duplicative of Rule 9553;
- Converting IM-1002-1 and IM-1002-4 into rule text in the Proposed Rule 1000 Series;
- Clarifying when the Membership Department will deem an application to be filed (when the application is “substantially complete,” as set forth in Proposed Rule 1013(a)(2)) and by requiring the Department to notify an Applicant in writing of the filing date;
- Clarifying what the Exchange means when it states that an Applicant may “waive-in” to Exchange membership (as set forth in Proposed Rule 1013(b)); and
- Updating obsolete cross-references throughout the Rules from NASD to FINRA.

The proposal will also make compliance with the membership rules simpler and less burdensome for Applicants and Members by doing the following:

- Eliminating obsolete requirements to submit paper copies of Forms U-4 and BD or explain information listed on the forms (Rule 1013(a)(1)(A), (J), (K),

and (P) and Rule 1013(a)(2)) where the Department already has electronic access to the Forms and the information contained therein;

- Permitting electronic filing of applications (proposed Rule 1012(a)(1);
- Allowing payment of application fees by means other than paper check (Proposed Rule 1013(a)(1)(C));
- Relaxing deadlines that needlessly rush the process of responding to the Department's questions and concerns about an application³³ or that force the Department to render a decision when the Applicant is not ready for the Department to do so;³⁴
- Eliminating formal membership interviews and procedures related thereto, which the Exchange has not utilized historically (Rule 1013(b));³⁵

³³ Rather than require an Applicant to file a response to a supplemental request for documents or information within 15 business days, Proposed Rule 1013(a)(3) states that the Applicant must respond within a "reasonable period of time" to be prescribed by the Department. Even then, Rule 1013(a)(3)(B) states that the Department must serve upon the Applicant a notice of incompleteness if it fails to respond to a supplemental request and then afford the Applicant an additional reasonable time period to remedy the failure before it may reject the Applicant's application.

³⁴ Rather than require the Department to serve a written decision within 15 business days, Proposed Rule 1014(c) states that it must issue a decision within a reasonable period of time, not to exceed 45 calendar days after the application is filed and complete, unless the parties agree to a later date. The Exchange does not intend for this change to result in the Department routinely issuing decisions later than it does presently. The Exchange presently issues decisions, in most instances, well in advance of the current 15 business day deadline and it has a self-interest in continuing to do so whenever possible. However, the Exchange believes that it is in the interest of Applicants for the Department to have discretion to respond at a later time in the event that the Applicant needs to address or resolve outstanding questions or concerns associated with its application.

³⁵ The elimination of the formal membership interview process will have no practical effect on the membership process insofar as the Department otherwise

- Harmonizing disparate procedures under Rules 1013 and 1017 for filing, evaluating, and responding to initial membership applications and applications for approval of business changes, including by streamlining the Rule 1017 procedures;
- Broadening the circumstances in which an Applicant may waive-into Exchange membership to include the Applicant's membership in any of the Affiliated Exchanges³⁶ and defining procedures for processing and responding to waive-in applications (Proposed Rule 1013(b));
- Narrowing the circumstances in which a Member must obtain prior Department approval before effecting a change in ownership, control, or material business operations by excluding changes for which a Member has obtained prior approval from the Member's DEA, or an Affiliated Exchange (Proposed Rule 1017(a))³⁷;

has authority to request additional information from the Applicant. Under Proposed Rule 1014(a)(4), this authority may include a request for the Applicant to provide information or documents in-person or by telephone. In other words, the Department will retain authority to conduct an informal interview of the Applicant.

³⁶ As noted above, the Exchange believes that it is reasonable to permit reciprocity in membership among all of the Affiliated Exchanges. The Exchange believes that there is no reasonable basis for it to defer to a prior approval granted by Nasdaq and to not do the same with respect to prior approvals granted by the other Affiliated Exchanges.

³⁷ As is discussed above, the Exchange believes that deference to prior approvals of a proposed business change made by an Affiliated Exchange or the Exchange's DEA is reasonable because the judgment of these entities on such matters is likely to be the same as that which the Exchange would itself employ. The Exchange assesses that any marginal benefit that might be gained from it applying its own independent judgment outweighs the burden to Applicants of obtaining multiple approvals for the same proposed change. The Exchange notes that it will require a Member to obtain approval for such a change if the nature, terms, or conditions of

- Eliminating the unused, unnecessary, and potentially disruptive ability of Members, pursuant to Rule 1017(c), to effect ownership changes on an interim basis while an application for Department approval is pending; and
- Eliminating the 30 day waiting period for Members that seek to resign their memberships under proposed Rule 1018(a).

In sum, the foregoing changes will update, rationalize, and streamline the Exchange's membership rules and processes, all to the benefit of Applicants and Members. Moreover, these changes will not adversely impact the rights of Applicants or Members to appeal adverse Departmental decisions under these Rules or to request Board action to compel the Department to render decisions on applications.

Last, the Exchange believes that its proposal to phase-in the implementation of the new membership rules and processes is consistent with Section 6(b)(7) of the Act³⁸ because both the current and proposed processes provide fair procedures for granting and denying applications for becoming an Exchange Member, becoming an Associated Person, and making material changes to the business operations of a Member. The Exchange is proposing to provide advanced notice of the implementation date of the new processes, and will apply the new processes to new applications, appeals, and requests for Board action that are initiated on or after that implementation date. Any application, appeal, or request for Board action initiated prior to the implementation date will be completed using the current processes. As a consequence, the Exchange will maintain a transitional Rulebook on the Exchange's public rules website which will contain the

the proposed change have altered since its DEA or an Affiliated Exchange approved it.

³⁸ 15 U.S.C. 78f(b)(7).

Exchange Rules as they are at the time of filing this rule change. These transitional rules will apply exclusively to applications, appeals, and requests for Board action initiated prior to the implementation date. Upon conclusion of the last decision on a matter to which the transitional rules apply, the Exchange will remove the defunct transitional rules from its public rules website. Thus, the transition will be conducted in a fair, orderly, and transparent manner. Lastly, the proposed transition process is the same process that Nasdaq implemented during its transition to new membership rules.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not expect that its proposed changes to the membership rules will have any competitive impact on its existing or prospective membership. The proposed changes will apply equally to all similarly situated Applicants and Members and they will confer no relative advantage or disadvantage upon any category of Exchange Applicant or Member. Moreover, the Exchange does not expect that its proposal will have an adverse impact on competition among exchanges for members; to the contrary, the Exchange hopes that by clarifying, reorganizing, and streamlining its membership rules, and by making the Exchange's membership process less burdensome for Applicants and Members, the Exchange will improve its competitive standing relative to other exchanges.

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.

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 Act³⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁴⁰

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

³⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴⁰ 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. Please include File Number SR- BX-2019-022 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-2019-022. 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-2019-022 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.⁴¹

Eduardo A. Aleman
Assistant Secretary

⁴¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 3A**COMPARISON OF EXISTING BX RULE 1000 SERIES AND THE NASDAQ
RULE 1000 SERIES TO BE INCORPORATED BY REFERENCE INTO THE BX
RULES****Membership and Registration Rules (1000)****1000. Membership, Registration and Qualification Requirements****1001. Nasdaq Regulatory Contract with FINRA**

The Exchange and FINRA are parties to the Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions described in the Rule 1000 Series and the General 4, Section 1.1200 Series on behalf of the Exchange. Exchange Rules that refer to the Exchange's Regulation Department, Nasdaq Regulation Department 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 Regulatory Contract.

Notwithstanding the fact that the Exchange has entered into the Regulatory Contract with FINRA to perform some of the Exchange's functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions. In addition, the Exchange has incorporated by reference certain FINRA rules. Members shall comply with these rules and interpretations as if such rules and interpretations were part of the Exchange's Rules.

1002. Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction**(a) Persons Eligible to Become Members and Associated Persons.**

(1) Any registered broker or dealer shall be eligible for membership in the Exchange, except such registered brokers or dealers as are excluded under paragraph (b).

(2) Any person shall be eligible to become an Associated Person of a Member, except such persons as are excluded under paragraph (b).

(b) Ineligibility of Certain Persons for Membership or Association

(1) Subject to such exceptions as may be explicitly provided elsewhere in the Rules, no registered broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if such broker, dealer, or Member fails or ceases to satisfy the qualification requirements established by the Rules, or if such broker, dealer, or Member is or becomes subject to a statutory disqualification, or if such broker, dealer, or Member fails to file such forms as may be required in accordance with such process as the Exchange may prescribe.

(2) Subject to such exceptions as may be explicitly provided elsewhere in the Rules, no person shall become associated with a Member, continue to be associated with a

Member, or transfer association to another Member, if such person fails or ceases to satisfy the qualification requirements established by the Rules, or if such person is or becomes subject to a statutory disqualification; and no broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if any person associated with it is ineligible to be an Associated Person under this subsection.

(c) Membership in a Registered Securities Association or Another Registered Exchange.

As a condition to maintaining membership in the Exchange, Members shall at all times maintain membership in a registered securities association that is not registered solely under Section 15A(k) of the Securities Exchange Act of 1934, or another registered exchange that is not registered solely under Section 6(g) of the Securities Exchange Act of 1934. Members that transact business with customers shall at all times be members of FINRA.

(d) Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction

- (1) Each branch office of a Member shall be registered with the Exchange.
- (2) Each Member must designate to the Exchange those offices of supervisory jurisdiction, including the main office in accordance with the standards set forth in Exchange Rule 3010.
- (3) Each Member shall promptly advise the Exchange, via electronic means or such other means as the Exchange may prescribe, of the opening, closing, relocation, change in designated supervisor, or change in designated activities of any branch office of such Member not later than 30 days after the effective date of such change.
 - (A) Members that are also FINRA members shall be deemed to have complied with this provision if they are in compliance with FINRA rules by keeping current Form BR.
 - (B) Members that are not FINRA members shall promptly advise the Exchange by submitting to the Exchange a Branch Office Disclosure Form.

1010. Membership Proceedings

1011. Definitions

Unless otherwise provided, terms used in the Rule 1000 Series and the General 4, Section 1.1200 Series shall have the meaning as defined in Rule 0120.

(a) "Applicant"

The term "Applicant" means a person that applies for membership in the Exchange under Rule 1013 or a Member that files an application for approval of a change in ownership, control, or business operations under Rule 1017.

(b) "Associated Person"

The term "Associated Person" means any partner, officer, director, or branch manager of a 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 Member or Applicant, or any employee of such Member or Applicant, except that any person associated with a Member or Applicant whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of the Rules.

(c) "Department"

The term "Department" means the Exchange's Membership Department located within the Exchange's Regulation Department.

(d) "Director"

The term "Director" means a member of the Exchange Board.

(e) "Interested Staff"

The term "Interested Staff" means an employee who directly participates in a decision under Rule 1014 or 1017, an employee who directly supervises an employee with respect to such decision, an employee who conducted an investigation or examination of a member that files an application under Rule 1017, and the head of the Department.

(f) "Securities business"

The term "securities business" means the business of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others.

(g) Reserved.**(h) "Exchange Board"**

The term "Exchange Board" means the Board of Directors of the Exchange.

(i) "principal place of business"

The term "principal place of business" means the executive office from which the sole proprietor or the officers, partners, or managers of the Applicant direct, control, and coordinate the activities of the Applicant, unless the Department determines that the principal place of business is where: (1) the largest number of Associated Persons of the Applicant are located; or (2) the books and records necessary to provide information and data to operate the business and comply with applicable rules are located.

(j) "registered broker or dealer"

The term "registered broker or dealer" means any broker or dealer, as defined in Section 3(a)(48) of the Act, that is registered with the Commission under the Act.

(k) "Representative"

The term "Representative" shall have the meaning assigned to it in General 4, Section 1.1220(b)(1). All Representatives of the Exchange Members are required to be registered with the Exchange, and Representatives that are so registered are referred to herein as "Registered Representatives."

(l) "sales practice event"

The term "sales practice event" means any customer complaint, arbitration, or civil litigation that has been reported to the Central Registration Depository, currently is required to be reported to the Central Registration Depository, or otherwise has been reported to the Exchange.

(m) "Subcommittee"

The term "Subcommittee" means a subcommittee of the Exchange Review Council that is constituted pursuant to Rule 1015 to conduct a review of a Department decision issued under the Rule 1010 Series.

(n) "statutory disqualification"

The term "statutory disqualification" shall have the meaning set forth in Section 3(a)(39) of the Act.

(o) "Proprietary Trading Firm"

The term "proprietary trading firm" means an Applicant or Member with the following characteristics:

- (1) the Applicant or Member is not required by Section 15(b)(8) of the Act to become a FINRA member but is a member of another registered securities exchange not registered solely under Section 6(g) of the Act;
- (2) all funds used by the Applicant or Member or proposed to be used by the Applicant or Member for trading are the Applicant's or Member's own capital, traded through the Applicant's or Member's own accounts;
- (3) the Applicant or Member does not, and will not have "customers," as that term is defined in Exchange Rule 0120(g); and

- (4) all Principals and Representatives of the Applicant or Member acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Applicant.

1012. General Application Provisions

(a) Instructions for Filing Application Materials with the Exchange and Requirements for Service of Documents by the Exchange;

(1) An Applicant or Member may file an application or any document or information requested under the Rule 1010 Series by first-class mail, overnight courier, hand delivery, or by electronic means. If the Department and the Applicant or Member agree, the Applicant or Member also may file a requested document or information by facsimile.

(2) The Exchange shall serve a notice or decision issued under the Rule 1010 Series by first-class mail or electronic means on the Applicant or Member or its counsel, unless a Rule specifies a different method of service.

(3) Service by the Exchange or filing by an Applicant or Member shall be deemed complete as follows:

(A) Service or filing by first-class mail shall be deemed complete on the date of postmark;

(B) Service or filing by overnight courier shall be deemed complete on the date of delivery to the overnight courier as specified in the airbill;

(C) Service or filing by hand delivery shall be deemed complete on the date of receipt as evidenced by a date stamp;

(D) Service or filing by facsimile shall be deemed complete on the date specified in the document and on the written confirmation of transmission; and

(E) Service or filing by electronic means shall be deemed complete on the date of transmission, except that service or filing shall not be deemed to have occurred if, subsequent to transmission, the serving or filing party receives notice that its attempted transmission was unsuccessful.

(b) Computation of Time

(1) Calendar Day

In the Rule 1010 Series, "day" means calendar day, unless otherwise specified.

(2) Formula

In computing a period of time under the Rule 1010 Series, the day of the act, event, default, or lapse from which the period of time designated begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall be excluded from the computation when the period prescribed is ten days or less or when the term "business day" is used.

(c) Duty to Ensure the Accuracy, Completeness, and Current Nature of Membership Information Filed with the Exchange

(1) Each Applicant, Member, and Associated Person shall ensure that all membership information they file with the Exchange, including but not limited to their application forms and all information they file in support of their applications under Rules 1013 and 1017, is accurate, complete, and current at the time of filing.

(2) Each Applicant, Member, and Associated Person shall ensure that their membership applications and supporting materials filed with the Exchange remain accurate, complete, and current at all times by filing supplementary amendments with the Department, as necessary. Such amendments to the application shall be filed with the Department not later than 15 business days after the Applicant, Member, or Associated Person learns of the facts or circumstances giving rise to the need for the amendment. The Applicant, Member, and Associated Person shall promptly notify the Department in writing of any material adverse change in its financial condition.

1013. New Member Application**(a) Filing of Application****(1) Where to File; Contents**

An Applicant for membership shall file its application with the Department in accordance with this Rule. An Applicant shall submit an application that includes:

- (A) a copy of the Applicant's current Form BD, if not otherwise available to the Exchange electronically through the Central Registration Depository;
- (B) an original Exchange-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f-2 and for whom a fingerprint card has not been filed with another self-regulatory organization, if such fingerprints are not otherwise available electronically to the Exchange through the Central Registration Depository;
- (C) payment for such fee as may be required under the Rules;

- (D) a description of the Applicant's proposed trading activities on the Exchange, such as the types of securities it will trade, whether it will be a market maker, or an order entry firm, and/or engage in block trading activities, and the extent to which the Applicant is conducting such activities as a member of other SRO(s);
- (E) a copy of the Applicant's most recent audited financial statements and a description of any material changes in the Applicant's financial condition since the date of the financial statements;
- (F) an organizational chart;
- (G) the intended location of the Applicant's principal place of business and all other branch offices, if any, and the names of the persons who will be in charge of each office;
- (H) a description of the communications and operational systems the Applicant will employ to conduct business and the plans and procedures the Applicant will employ to ensure business continuity, including: system capacity to handle the anticipated level of usage; contingency plans in the event of systems or other technological or communications problems or failures; system redundancies; disaster recovery plans; and system security;
- (I) a copy of any decision or order by a federal or state authority or self-regulatory organization taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;
- (J) a statement indicating whether the Applicant or any person listed on Schedule A of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any self-regulatory organization, the foreign equivalent of a self-regulatory organization, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, a futures association registered under the Commodity Exchange Act or any substantially similar foreign statute or regulation, the Commission or any other "appropriate regulatory agency" (as defined in the Act), the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the Central Registration Depository, together with all relevant details, including any sanctions imposed;
- (K) a statement indicating whether any person listed on Schedule A of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any self-regulatory organization, the foreign equivalent of a self-regulatory organization, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act or any substantially equivalent foreign statute or

regulation, a futures association registered under the Commodity Exchange Act or any substantially similar foreign statute or regulation, the Commission or any other "appropriate regulatory agency", the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the Central Registration Depository, together with all relevant details, including any sanctions imposed;

- (L) a copy of any contract or agreement with another brokerdealer, a bank, a clearing entity, a service bureau or a similar entity to provide the Applicant with services regarding the execution or clearance and settlement of transactions effected on the Exchange;
- (M) if the Applicant proposes to make markets on the Exchange, a description of the source and amount of Applicant's capital to support its market making activities on the Exchange, and the source of any additional capital that may become necessary;
- (N) a description of the financial controls to be employed by the Applicant with respect to anti-money laundering compliance rules as set forth in Rule 3011;
- (O) a copy of the Applicant's written supervisory procedures with respect to the activities identified in paragraph (a)(1)(D);
- (P) a list of the persons conducting the Applicant's market making and other trading activities, and a list of the persons responsible for such persons' supervision, together with the CRD numbers;
- (Q) Reserved.
- (R) a copy of the Applicant's most recent "FOCUS Report" (Form X-17A-5) filed with the SEC pursuant to SEC Rule 17a-5 (the most current Parts I, II, and III, as applicable);
- (S) all examination reports and corresponding responses regarding the Applicant for the previous two years from the self-regulatory organizations of which it is a member;
- (T) a copy of the Exchange's Membership Agreement, duly executed by the Applicant, which includes, among other things:
 - (1) an agreement to comply with the federal securities laws, the rules and regulations thereunder, the Rules, and all rulings, orders, directions, and decisions issued and sanctions imposed under the Rules;
 - (2) an agreement to pay such dues, assessments, and other charges in the manner and amount as from time to time shall be fixed pursuant to the Rules; and

(U) such other reasonable information with respect to the Applicant as the Exchange may require.

(2) When an Application is Deemed to be Filed

The Department will deem an application to be filed on the date when it is substantially complete, meaning the date on which the Department receives from the Applicant all material documentation and information required under this Rule. The Exchange will notify the Applicant in writing when the Exchange deems the Applicant's application to be substantially complete.

(3) Incomplete Applications

(A) Lapse of Applications that are not Substantially Complete

If an application that was initiated under this Rule is not deemed to be substantially complete by the Department within 90 calendar days after an Applicant initiates it, then absent a showing of good cause by the Applicant, the Department may, at its discretion, deem the application to have lapsed without filing, and the Department will take no action in furtherance of the application. If the Department deems an application to have lapsed, then the Department shall serve a written notice of that determination on the Applicant. If an Applicant still wishes to apply for membership on the Exchange after receiving notice of a lapse in its application, then the Applicant will be required to submit a new application pursuant to these Rules and pay a new application fee for doing so, if applicable. The Department will refund fees that an Applicant has paid to the Exchange in connection with a lapsed application, in accordance with its Rules regarding fees, provided that the Exchange has not proceeded to process the application at the time it lapses. For purposes of this paragraph, the Department will deem an application to be not "substantially complete" if the Applicant fails to submit to the Department materially important information or documentation that is required or requested under these Rules.

(B) Rejection of Filed Applications that Remain or Become Incomplete After Filing

If an application that was initiated under this Rule is substantially complete and thus is deemed to be filed with the Exchange under paragraph (a)(2) of this Rule, but the application nevertheless remains or becomes incomplete with respect to any required or requested information or documentation, then the Department shall serve written notice to the Applicant of such incompleteness and describe the missing information or documentation. If the Applicant fails to submit to the Exchange the missing information or documentation within a reasonable period after it receives a notice of incompleteness, then absent a showing of good cause by the Applicant, the Department may, at its discretion, reject the application. If the Department rejects an application on the basis of incompleteness, then the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefor. The Exchange shall not refund the application fees that an Applicant has paid to the Exchange in connection with an application that the Exchange rejects. If the Applicant determines to continue to seek

membership on the Exchange, then the Applicant shall submit a new application and pay a new application fee in accordance with the Rules.

(4) Requests by the Department for Additional Documents or Information from the Applicant or from Third Parties

(A) At any time before the Department serves its decision as to an application for new membership in the Exchange, the Department may serve a written request for additional information or documentation, from the Applicant or from a third party, if the Department deems such information or documentation to be necessary to clarify, verify, or supplement the application materials. The Department may, at its discretion, request that the Applicant or the third party provide the requested information or documentation in writing or through an inperson or telephonic interview. In the written request, the Department shall afford the Applicant or the third party a reasonable period of time within which to respond to the request.

(B) In the event that the Department obtains information or documentation about an Applicant from a third party that the Department reasonably believes could adversely impact its decision on an application, then the Department shall promptly inform the Applicant in writing and provide the Applicant with a description of the information or a copy of the documentation that the Department obtained, where appropriate under the circumstances. Prior to rendering an application decision on the basis of information or documentation obtained from a third party source, the Department shall afford the Applicant with a reasonable opportunity to discuss or to otherwise address the information or documentation that the Department obtained from the third party.

(b) Special Application Procedures

(1) Special Application Procedures for Applicants that are FINRA Members

(A) An Applicant that is a FINRA member shall have the option to waive-in to become a Member and to register with the Exchange all persons associated with the Applicant whose registrations with the Applicant are approved with FINRA in categories recognized by the Exchange's Rules. For purposes of this provision, the term "waive-in" means that the Department will rely substantially upon FINRA's determination to approve the Applicant for FINRA membership when the Department evaluates the Applicant for Exchange membership.

(B) Waive-in membership that is granted pursuant to this provision shall terminate in the event that the Applicant ceases to be a FINRA member and otherwise fails to comply with Rule 1002(c).

(C) In lieu of submitting an application as set forth in paragraph (a), an Applicant may waive-in to Exchange membership as provided in subparagraph (b)(1) by filing with the Exchange a waive-in application form and an executed Exchange Membership Agreement.

(D) The Department will act upon a duly submitted application to waive-into Exchange membership under paragraph (b)(1) by serving upon the Applicant a written notification of its decision within a reasonable time frame not to exceed 20 days of submission of the application, unless the Department and the Applicant agree that the Department may issue its decision at a later date. A failure of the Department to issue a decision within this time frame shall be subject to Rule 1014(c)(3). The Department will normally grant a duly submitted application to waive-into Exchange membership, provided that the Applicant submits the required materials, the Department verifies that the Applicant is a FINRA member, and that the Department is not otherwise aware of any basis to deny or condition approval of the application, as set forth in Rule 1014. A decision issued under this provision shall have the same effectiveness as set forth in Rule 1014 and shall be subject to review as set forth in Rules 1015 and 1016.

(2) Special Application Procedures Applicable to Applicants that are Already Members of an Affiliated Exchange

(A) An Applicant that is a member of an exchange that is affiliated with the Exchange shall have the option to waive-in to become a Member of the Exchange and to register with the Exchange all persons associated with the Applicant whose registrations with the Applicant are approved with the other affiliated exchange in categories recognized by the Rules. For purposes of this provision, the term "waive-in" means that the Department will rely substantially upon an affiliated exchange's determination to approve the Applicant for exchange membership when the Department evaluates the Applicant for membership.

(B) In lieu of submitting an application as set forth in paragraph (a), an Applicant may waive-into Exchange membership as provided in subparagraph (b)(2) by filing with the Department a waive-in application form. As part of this form, the Applicant must attest to the fact that it has made no unapproved material changes to its brokerdealer business subsequent to its approval as a member of an affiliated exchange.

(C) The Department will act upon a duly submitted application to waive-into Exchange membership under paragraph (b)(2) by serving upon the Applicant a written notification of its decision within a reasonable time frame not to exceed 20 days of submission of the application, unless the Department and the Applicant agree that the Department may issue its decision at a later date. A failure of the Department to issue a decision within this time frame shall be subject to Rule 1014(c)(3). The Department will normally grant a duly submitted application to waive-into Exchange membership, provided that the Applicant submits the required materials, the Department verifies that the Applicant is a member of an exchange affiliated with the Exchange, and that the Department is not otherwise aware of any basis to deny or condition approval of the application, as set forth in Rule 1014. A decision issued under this provision shall have the same

effectiveness as set forth in Rule 1014 and shall be subject to review as set forth in Rules 1015 and 1016.

1014. Department Decision

(a) Authority of Department to Approve, Approve with Restrictions, or Deny an Application

After evaluating an application for membership on the basis of the criteria set forth in paragraph (b) below, the Department shall issue one of the following decisions:

- (1) approve the application;
- (2) approve the application, subject to one or more restrictions:
 - (A) that are reasonably designed to address a specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern; or
 - (B) that have been imposed by FINRA or by an affiliated exchange in their applicable membership determinations concerning the Applicant, in instances where the Applicant has applied for Exchange membership pursuant to Rule 1013(b); or
- (3) deny the application.

(b) Bases for Approval, Conditional Approval, or Denial

After considering the completed application, other information and documents provided by the Applicant, other information and documents obtained by the Department, and the public interest and the protection of investors, the Department shall approve an application under Rules 1013 or 1017 by an Applicant that is not, and is not required to become, a FINRA member unless the Department determines that such information or documents provide a basis for denial of membership:

- (1) The Department may deny (or condition) approval of an Applicant for the same reasons that the Commission may deny or revoke a broker or dealer registration and for those reasons required or allowed under the Act;
- (2) Without limiting the generality of the foregoing, the Department may deny (or condition) approval of an Applicant when the Applicant directly or indirectly:
 - (A) is unable to satisfactorily demonstrate its present capacity to adhere to all applicable Exchange and Commission policies, rules, and regulations, including, without limitation, those concerning recordkeeping, reporting, finance, and trading procedures;

- (B) has previously violated, and there is a reasonable likelihood such Applicant will again engage in acts or practices violative of, any applicable Exchange or Commission policies, rules and regulations, including, without limitation, those concerning record-keeping, reporting, finance and trading procedures or those rules of other self-regulatory organizations of which such Applicant is or was a member;
- (C) has engaged, and there is a reasonable likelihood such Applicant will again engage, in acts or practices inconsistent with just and equitable principles of trade;
- (D) is not in compliance with the Commission's net capital rule (17 C.F.R. 240.15c3-1), or has financial difficulties involving an amount that is more than 5% of the Applicant's net worth;
- (E) has been itself, or is the successor to an entity which has been subject to any bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years;
- (F) has engaged in an established pattern of failure to pay just debts;
- (G) does not have such licenses and registrations as are required by governmental authorities and self-regulatory organizations; or
- (H) is unable satisfactorily to demonstrate reasonably adequate systems capacity and capability.

(3) The Department will not approve an Applicant unless the Applicant is a member of another registered securities exchange or association that is not registered solely under Section 6(g) or Section 15A(k) of the Securities Exchange Act of 1934. An Applicant that will transact business with the public must be a member of FINRA.

(c) Decision

(1) Time

The Department shall serve a written decision on the membership application within a reasonable time period, not to exceed 45 days after the Applicant files and provides to the Exchange all required and requested information or documents in connection with the Applicant's application, unless the Department and the Applicant agree that the Department may issue its decision at a later date.

(2) Content

If the Department denies the application or grants the application subject to restrictions, the decision shall explain in detail the reason for denial or restriction, referencing the applicable bases in paragraph (a).

(3) Failure to Serve Decision

If the Department fails to serve a decision within the time frame set forth in subparagraph (c)(1) of this Rule, the Applicant may file a written request with the Exchange Board requesting that the Exchange Board direct the Department to serve a decision. Within seven days after the filing of such a request, the Exchange Board shall direct the Department to serve its written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the Exchange Board may grant an extension of not more than 45 days thereafter.

(d) Reserved**(e) Service and Effectiveness of Decision**

The Department shall serve its decision on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Exchange is issued under Rule 1015 or 1016, unless otherwise directed by the Exchange Review Council, the Exchange Board, or the Commission.

(f) Effectiveness of Restriction

A restriction imposed under this Rule shall remain in effect and bind the Applicant and all successors to the ownership or control of the Applicant unless:

(1) removed or modified by a decision constituting final action of the Exchange issued under Rule 1015, 1016, or 1017; or

(2) stayed by the Exchange Review Council, the Exchange Board, or the Commission.

(g) Final Action

Unless the Applicant files a written request for a review under Rule 1015, the Department's decision shall constitute final action by the Exchange.

1015. Review by Exchange Review Council**(a) Initiation of Review by Applicant**

Within 25 days after service of a decision under Rule 1014 or 1017, an Applicant may file a written request for review with the Exchange Review Council. A request for review shall state with specificity why the Applicant believes that the Department's decision is inconsistent with the bases for denial set forth in Rule 1014, or otherwise should be set aside, and state whether a hearing is requested. The Applicant simultaneously shall file a copy of the request with the Department.

(b) Transmission of Documents

Within ten days after the filing of a request for review, the Department shall:

(1) transmit to the Exchange Review Council copies of all documents that were considered in connection with the Department's decision and an index to the documents; and

(2) serve on the Applicant a copy of such documents (other than those documents originally submitted by Applicant) and a copy of the index.

(c) Membership Application Docket

The Department shall promptly record in the Exchange's membership application docket each request for review filed with the Exchange Review Council under this Rule and each material subsequent event, filing, and change in the status of a membership proceeding.

(d) Appointment of Subcommittee

The Exchange Review Council or the Review Subcommittee defined in Rule 9120 shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of two or more persons who shall be current or past members of the Exchange Review Council or former Directors.

(e) Powers of Subcommittee

If a hearing is requested, the Subcommittee shall conduct the hearing. If a hearing is not requested, the Subcommittee may serve a notice directing that a hearing be held. If a hearing is not requested or directed, the Subcommittee shall conduct its review on the basis of the record developed before the Department and any written submissions made by the Applicant or the Department in connection with the request for review.

(f) Hearing

(1) Notice

If a hearing is requested or directed, the hearing shall be held within 45 days after the filing of the request with the Exchange Review Council or service of the notice by the Subcommittee. The Exchange Review Council shall serve written notice of the date and time of the hearing to the Applicant by facsimile or overnight courier not later than 14 days before the hearing.

(2) Counsel

The Applicant and the Department may be represented by counsel at a hearing conducted pursuant to this Rule.

(3) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than five days before the hearing, the Applicant and the Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same to the Exchange Review Council. If the Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph.

(4) Transcript

The hearing shall be recorded and a transcript prepared by a court reporter. A transcript of the hearing shall be available for purchase from the court reporter at prescribed rates. The Applicant, the Department, or a witness may seek to correct the transcript. A proposed correction of the transcript shall be submitted to the Subcommittee within a reasonable period of time prescribed by the Subcommittee. Upon notice to the Applicant and the Department, the Subcommittee may direct the correction to the transcript as requested or sua sponte.

(g) Additional Information, Briefs

At any time during its consideration, the Subcommittee or the Exchange Review Council may direct the Applicant or the Department to file additional information or briefs. Any additional information or brief filed shall be provided to all parties before the Exchange Review Council renders its decision.

(h) Abandonment of Request for Review

If an Applicant fails to specify the grounds for its request for review under Rule 1015(a)(1), appear at a hearing for which it has notice, or file information or briefs as directed, the Exchange Review Council or the Review Subcommittee may dismiss the request for review as abandoned, and the decision of the Department shall become the final action of the Exchange. Upon a showing of good cause, the Exchange Review Council or the Review Subcommittee may withdraw a dismissal entered pursuant to this paragraph.

(i) Subcommittee Recommendation

The Subcommittee shall present a recommended decision in writing to the Exchange Review Council within 60 days after the date of the hearing held pursuant to paragraph (f), and not later than seven days before the meeting of the Exchange Review Council at which the membership proceeding shall be considered.

(j) Decision**(1) Proposed Written Decision**

After considering all matters presented in the review and the Subcommittee's recommended written decision, the Exchange Review Council may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions. The Exchange Review Council shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents

The decision shall include:

- (A) a description of the Department's decision, including its rationale;
- (B) a description of the principal issues raised in the review;
- (C) a summary of the evidence on each issue; and
- (D) a statement whether the Department's decision is affirmed, modified, or reversed, and a rationale therefor that references the bases for denial in Rule 1014.

(3) Issuance of Decision After Expiration of Call for Review Periods

The Exchange Review Council shall provide its proposed written decision to the Exchange Board. The Exchange Board may call the membership proceeding for review pursuant to Rule 1016. If the Exchange Board does not call the membership proceeding for review, the proposed written decision of the Exchange Review Council shall become final. The Exchange Review Council shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that the final written decision will be served within 15 days after such date. The Exchange Review Council shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of Nasdaq for purposes of SEC Rule 19d-3, unless the Exchange Review Council remands the membership proceeding.

(4) Failure to Issue Decision

If the Exchange Review Council fails to serve its final written decision within the time prescribed in subparagraph (3), the Applicant may file a written request with the Exchange Board requesting that the Exchange Board direct the Exchange Review Council to serve its decision immediately or to show good cause for an extension of time. Within seven days after the filing of such a request, the Board shall direct the Exchange Review Council to serve its written decision immediately or to show good cause for an

extension of time. If the Exchange Review Council shows good cause for an extension of time, the Exchange Board may extend the 15-day time limit by not more than 15 days.

(k) Ex Parte Communications

- (1) The prohibitions against ex parte communications shall become effective when Exchange staff has knowledge that an Applicant intends to file a written request for review by the Exchange Review Council under Rule 1015.
- (2) Unless on notice and opportunity for an Applicant and Interested Staff to participate, or to the extent required for the disposition of ex parte matters as authorized by the Exchange's Rules:
 - (A) an Applicant, a counsel or representative of an Applicant, or an Interested Staff shall not make or knowingly cause to be made an ex parte communication relevant to the merits of a membership proceeding under the Rule 1010 Series to a Director, a member of the Exchange Review Council or a Subcommittee thereof, or an Exchange employee who is participating or advising in a decision of such a person with respect to that proceeding; and
 - (B) a Director, a member of the Exchange Review Council or a Subcommittee thereof, or an Exchange employee who is participating or advising in the decision of such a person with respect to a membership proceeding shall not make or knowingly cause to be made to an Applicant, a counsel or representative of the Applicant, or an Interested Staff an ex parte communication relevant to the merits of that proceeding.
- (3) A Director, a member of the Exchange Review Council or a Subcommittee thereof, or an Exchange employee participating or advising in the decision of such a person, who receives, makes, or knowingly causes to be made a communication prohibited by this paragraph shall place in the record of the membership proceeding:
 - (A) all such written communications;
 - (B) memoranda stating the substance of all such oral communications; and
 - (C) all written responses and memoranda stating the substance of all oral responses to all such communications.

(l) Recusal or Disqualification

A Director or a member of the Exchange Review Council or a Subcommittee thereof shall not participate in a matter governed by the Rule 1010 Series as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In such a case, the person shall recuse himself or shall be disqualified as follows:

- (1) The Chair of the Exchange Board of Directors shall have authority to direct the disqualification of a Director, and a majority of the Directors of the Exchange Board excluding the Chair shall have authority to direct the disqualification of the Chair of the Exchange Board.
- (2) The Chair of the Exchange Review Council shall have authority to direct the disqualification of a member of the Exchange Review Council or a member of a Subcommittee appointed pursuant to Rule 1015, and the Vice Chair of the Exchange Review Council shall have authority to direct the disqualification of the Chair of the Exchange Review Council.

1016. Discretionary Review by the Exchange Board

(a) Call for Review by Director

A Director may call a membership proceeding for review by the Exchange Board if the call for review is made within the period prescribed in paragraph (b).

(b) 15 Day Period; Waiver

A Director shall make his or her call for review at the next meeting of the Exchange Board that is at least 15 days after the date on which the Exchange Board receives the proposed written decision of the Exchange Review Council. By unanimous vote of the Exchange Board, the Nasdaq Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the Exchange Board then in office, the Exchange Board may, during the 15 day period, vote to extend the period to more than 15 days.

(c) Review At Next Meeting

If a Director calls a membership proceeding for review within the time prescribed in paragraph (b), the Exchange Board shall review the membership proceeding not later than the next meeting of the Exchange Board. The Exchange Board may order the Applicant and the Department to file briefs in connection with review proceedings pursuant to this paragraph.

(d) Decision of the Exchange Board, Including Remand

After review, the Exchange Board may affirm, modify, or reverse the proposed written decision of the Exchange Review Council. Alternatively, the Exchange Board may remand the membership proceeding with instructions. The Exchange Board shall prepare a written decision that includes all of the elements described in Rule 1015(j)(2).

(e) Issuance of Decision

The Exchange Board shall serve its written decision on the Applicant within 15 days after the meeting at which it conducted its review. The decision shall constitute the final action

of Exchange for purposes of SEC Rule 19d-3, unless the Exchange Board remands the membership proceeding.

1017. Application for Approval of Change in Ownership, Control, or Material Business Operations

(a) Events Requiring Application

A Member shall file an application for approval of any of the following changes to its ownership, control, or business operations, except that the Department will not consider a change listed below to require its approval if an exchange affiliated with the Exchange or a Member's Designated Examining Authority has already approved the change in accordance with its respective rules, the Member provides written evidence to the Department of such prior approval, and the nature, terms, or conditions of the proposed change have not altered materially since such approvals occurred:

- (1) a merger of the Member with another Member;
- (2) a direct or indirect acquisition by the Member of another Member;
- (3) direct or indirect acquisitions or transfers of 25% or more in the aggregate of the Member's assets or any asset, business or line of operation that generates revenues comprising 25% or more in the aggregate of the Member's earnings measured on a rolling 36-month basis;
- (4) a change in the equity ownership or partnership capital of the Member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital; or
- (5) a material change in business operations, which includes, but is not limited to, the following changes
 - (A) removing or modifying a membership restriction;
 - (B) acting as a dealer or a market maker for the first time;
 - (C) adding business activities that require a higher minimum net capital under SEC Rule 15c3-1; or
 - (D) adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term contained in the Rule 1000 Series.

(b) Filing and Content of Application

- (1) The Member shall file the application with the Department.

(2) If the application seeks approval of a change in ownership or control or a material change in the business operations of the Member, then the application shall:

(A) describe in detail the proposed change in ownership, control, or material business operations;

(B) attach a business plan, pro forma financials, an organizational chart, and written supervisory procedures reflecting the proposed change; and

(C) if the application requests approval of a change in ownership or control, the application also shall include the names of the new owners, their percentage of ownership, and the sources of their funding for the purchase and recapitalization of the member.

(3) If the application requests the removal or modification of a membership [agreement]restriction, the application also shall:

(A) present facts showing that the circumstances that gave rise to the restriction have changed; and

(B) state with specificity why the restriction should be modified or removed in light of the applicable bases for denial or standards for approval set forth in Rule 1014 or 1017 and the articulated rationale for the imposition of the restriction.

(4) If the application requests approval of an increase in Associated Persons involved in sales, offices, or markets made, the application shall set forth the increases in such areas during the preceding 12 months.

(c) When Applications Shall or May Be Filed

(1) A Member shall file an application for approval of a change in ownership or control at least 30 days prior to such change.

(2) A Member may file an application to remove or modify a membership restriction at any time. An existing restriction shall remain in effect during the pendency of the proceeding.

(3) A Member may file an application for approval of a material change in business operations, other than the modification or removal of a restriction, at any time, but the Member may not effect such change until the conclusion of the proceeding, unless the Department and the Member otherwise agree.

(d) When an Application is Deemed to Be Filed

The Department will deem an application to be filed on the date when it is substantially complete, meaning the date on which the Department receives from the Applicant all

material documentation and information required under this Rule. The Department will notify the Applicant in writing when the Department deems the Applicant's application to be substantially complete.

(e) Incomplete Applications

As set forth in Rule 1013(a)(3), the Department may treat an application filed under this Rule as having lapsed or it may reject such an application, except that the Department may treat an application as having lapsed if it is not substantially complete for 30 days or more after the Applicant initiates it.

(f) Requests by the Department for Additional Documents or Information from the Applicant or from Third Parties

At any time before the Department serves its decision on an application filed under this Rule, the Department may request additional information or documentation from the Applicant or from a third party in accordance with Rule 1013(a)(4).

(g) Department Decision

The Department shall render a decision on an application filed under this Rule in accordance with Rule 1014, except as follows:

- (1) In rendering a decision on an application submitted under this Rule that requests the modification or removal of a membership restriction, the Department shall consider whether maintenance of the restriction is appropriate in light of:
 - (A) the applicable bases for denial or standards for approval set forth in Rule 1014;
 - (B) the circumstances that gave rise to the imposition of the restriction;
 - (C) the Applicant's operations since the restriction was imposed;
 - (D) any change in ownership or control or supervisors and principals; and
 - (E) any new evidence submitted in connection with the application.
- (2) The Department shall serve a written decision on an application filed under this Rule in accordance with Rule 1013(c).
- (3) Notwithstanding anything in this Rule 1017 to the contrary, in the event that a proposed change in ownership, control, or business operations by a Member requires such Member to become a member of FINRA, the Department shall not be required to serve a written decision under this Rule until 10 business days after the Member becomes a FINRA member.

(h) Service and Effectiveness of Decision

The Department shall serve its decision on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Exchange is issued under Rule 1015 or 1016, unless otherwise directed by the Exchange Review Council, the Exchange Board, or the Commission.

(i) Request for Review; Final Action

An Applicant may file a written request for review of the Department's decision with the Exchange Review Council pursuant to Rule 1015. The procedures set forth in Rule 1015 shall apply to such review, and the Exchange Review Council's decision shall be subject to discretionary review by the Exchange Board pursuant to Rule 1016. If the Applicant does not file a request for a review, the Department's decision shall constitute final action by the Exchange.

(j) Removal or Modification of Restriction on Department's Initiative

The Department shall modify or remove a restriction on its own initiative if the Department determines such action is appropriate in light of the considerations set forth in paragraph (g)(1). The Department shall notify the member in writing of the Department's determination and inform the member that it may apply for further modification or removal of a restriction by filing an application under paragraph (a).

(k) Reserved**1018. Resignation, Reinstatement, Termination, and Transfer of Membership****(a) Resignation of Exchange Members**

Membership in the Exchange may be voluntarily terminated only by formal resignation. Resignations of Members must be filed via electronic process or such other process as the Exchange may prescribe. Any Member may resign from the Exchange at any time. Such resignation shall not take effect until all indebtedness due the Exchange from such Member shall have been paid in full and so long as any complaint or action is pending against the Member under the Rules. The Exchange, however, may in its discretion declare a resignation effective at any time.

(b) Transfer and Termination of Membership

(1) Except as provided hereinafter, no Member may transfer its membership or any right arising therefrom; the membership of a corporation, partnership, or any other business organization that is a Member shall terminate upon its liquidation, dissolution, or winding up; and the membership of a sole proprietorship that is a Member shall terminate at death, provided that all obligations of membership under the Rules have been fulfilled.

(2) The consolidation, reorganization, merger, change of name, or similar change in any corporate Member shall not terminate the membership of such corporate Member, provided that the Exchange Member or surviving corporation, if any, shall be deemed a successor to the business of the corporate Member, and the Member or the surviving organization shall continue in the securities business, and shall possess the qualifications for membership in the Exchange. The death, change of name, withdrawal of any partner, the addition of any new partner, reorganization, consolidation, or any change in the legal structure of a partnership Member shall not terminate the membership of such partnership Member, provided that the Member or surviving organization, if any, shall be deemed a successor to the business of the partnership Member, and the Member or surviving organization shall possess the qualifications for membership in the Exchange. If the business of any predecessor Member is to be carried on by an organization deemed to be a successor organization by the Exchange, the membership of such predecessor Member shall be extended to the successor organization subject to the notice and application requirements of the Rules and the right of the Exchange to place restrictions on the successor organization pursuant to the Rules; otherwise, any surviving organization shall be required to satisfy all of the membership application requirements of the Exchange's Rules.

(c) Reinstatement of Membership

Any membership or registration suspended or canceled under the Rules may be reinstated by the Exchange upon such terms and conditions as are permitted under the Act and the Rules; provided, however, that any applicant for reinstatement of membership or registration shall possess the qualifications required for membership or registration in the Exchange.

1019. Application to Commission for Review

A person aggrieved by final action of the Exchange under the Rule 1010 Series may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing of an application for review shall not stay the effectiveness of a decision constituting final action of the Exchange, unless the Commission otherwise orders.

EXHIBIT 3B



BROKER-DEALER MEMBERSHIP APPLICATION
The Nasdaq Stock Market (“NQX”), Nasdaq BX (“BX”), Nasdaq PHLX (“PHLX”)
(Collectively “Nasdaq”)

A. Applicant Profile		
Full legal name of Applicant Organization (must be a registered broker dealer with the Securities and Exchange Commission):		
Date:	CRD No.	SEC No. 8-
Main office address:		
Main phone:	Type of Organization	LLC Corporation Partnership
Name of individual completing application:		
Email Address:	Phone:	
Application Type		
Initial Nasdaq Application	Amendment (<i>adding SRO or trading platform</i>)	
Full Membership - Applicant is seeking membership to a Nasdaq SRO for the first time. Refer to required supplemental material in Section <u>M</u>	Waive-In Membership - Applicant must be approved on at least one Nasdaq SRO or FINRA NOTE: FINRA members applying to Nasdaq for the first time are eligible to waive-in on NQX and BX. <u>NQX and BX</u> [Nasdaq Stock Market] rules allow waive-in based on approved membership with FINRA and Nasdaq affiliated exchanges including ISE, GEMX and MRX.	
Indicate which Nasdaq SRO(s) Applicant is seeking membership on (check all that apply):		
The Nasdaq Stock Market Equity Options	Nasdaq BX Equity Options	Nasdaq PHLX Equity Options

Indicate Nasdaq SRO(s) on which Applicant is an approved member, if applicable:		
The Nasdaq Stock Market Equity Options	Nasdaq BX Equity Options	Nasdaq PHLX Equity Options
Nasdaq ISE	Nasdaq GEMX	Nasdaq MRX

If Applicant is applying to PHLX, will PHLX be the Designated Examining Authority (“DEA”)?

Yes ~ Must provide **ALL** required supplemental material with this application as outlined in Sections **M** and **N**

No ~ Provide the SRO assigned as DEA for Applicant Organization

B. Nature of Intended Activity (Check all that apply)

OPTIONS		EQUITY
On-Floor Participants (PHLX Only) Specialist Registered Options Trader (“ROT”) Streaming Quote Trader (“SQT”) Floor Broker	Off-Floor Participants Order Entry Market Maker Remote Specialist (PHLX only)	Equity Trading Market Maker Order Entry

C. Supervision

Provide the name and CRD number of the associated person who will be responsible for the proposed trading activity on Nasdaq.

Name:	CRD No.
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D. Clearing Information

National Securities Clearing Corporation (“NSCC”) Clearing	The Options Clearing Corporation (“OCC”) Clearing
Nasdaq requires all Members to provide an NSCC account number for purposes of direct debit pursuant to exchange rules. Provide an NSCC account number which can be utilized for purposes of this requirement.	All options participants must provide an executed clearing letter of guarantee. (found in document library)

Self-Clearing NSCC Account No.: _____ Agreement with clearing agent NSCC Account No.: _____ Name of broker dealer acting as clearing agent: _____ _____	Self-Clearing OCC Account No.: _____ Agreement with clearing agent OCC Account No.: _____ Name of broker dealer acting as clearing agent: _____ _____
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E. Executive Representative Designation

All Nasdaq members are required to designate an executive representative who will be the sole person entitled to exercise such member’s voting and designation rights set forth in exchange rules. Therefore, Applicant organization certifies that the below-named individual is qualified to act as its executive representative.

Executive Representative:	Title:
Email:	Phone:

F. Compliance Officer

Provide the name of the individual within your organization that is responsible for compliance.

Compliance Officer:	Title:
Email:	Phone:

G. Billing Information

Provide a billing contact to be designated for receipt of monthly invoices via email.

Billing Contact:	Title:
Email:	Phone:

H. Emergency Management

At least two individuals must be designated who would serve as 24/7 contacts in the event that an emergency arises outside of normal business hours. Please provide all information requested for both individuals.

Primary Contact:	Secondary Contact:
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Title:	Title:
Email:	Email:
Business Phone:	Business Phone:
Cell:	Cell:
I. Statutory Disqualification Disclosure	
Pursuant to the Securities Exchange Act of 1934, Nasdaq may deny or condition trading privileges or bar an individual from becoming associated with a member, who is subject to a statutory disqualification. The term, statutory disqualification, is defined under section 3(a)(39)(F) of the Act.	
The Applicant organization does NOT have any person(s) associated with or employed by the Applicant organization that may be subject to statutory disqualification.	
The Applicant organization DOES have person(s) associated with or employed by the Applicant organization that may be subject to statutory disqualification. Attach the following information for each individual: <ul style="list-style-type: none"> a. Name and individual CRD number b. Description of responsibilities within the organization c. All documents relating to the disqualification d. Explanation of action taken or approval by another SRO regarding the individual 	
J. Affiliates	
Does Applicant have any affiliates conducting securities transactions that are not registered with the Securities and Exchange Commission? Yes No	
If yes, has this arrangement been reviewed in relation to a previously filed Nasdaq member application? Yes No - Provide additional information with respect to unregistered affiliate	
K. Qualifying Permit Holder Designation (PHLX Applicants Only See PHLX Rules 908 and 921)	
PHLX applicants must designate a qualifying permit holder who must be an officer or partner associated with the organization. Applicant certifies that the below named individual will act as its qualifying permit holder. Please also provide a PHLX Individual Membership Application for the qualifying permit holder.	
Qualifying Permit Holder:	Title:
Date of Birth:	Individual CRD No.
Phone:	Email:

L. Supplemental Material	
All applicants (waive-in and full) must provide the following documents with this application:	
Executed Nasdaq Exchange Membership Agreement	
Fully-executed Nasdaq U.S. Services Agreement, unless previously provided (found in document library)	
A copy of the Applicant’s most recent FOCUS Report	
If applicant is seeking options market maker status Information barrier procedures, if applicable List identifying all accounts to be used for market maker activity	
Non-refundable application fee as follows: \$350 – PHLX (Application fee does not apply to Applicants applying to PHLX for PSX only participation) \$2,000 – NQX \$2,000 – BX (Application fee does not apply to Applicants applying to BX for BX Options only participation)	
<u>WAIVE-IN ATTESTATION:</u> An applicant that is an approved member of FINRA or one or more Nasdaq Affiliated Exchange(s) shall have the option to apply for membership through an expedited process pursuant to NQX and BX Rule 1013(a)(5) and PHLX Rule 910(f)(3). Applicants who are eligible for this expedited review must execute the below attestation and submit the relevant supplemental material requested in Section L above.	
I hereby certify that _____ (Applicant) is operating as an approved member of FINRA NQX BX PHLX ISE GEMX MRX and that there have been no material changes of business since that application that have not been approved by the appropriate SRO and that the information provided remains complete and accurate with no substantial change to the business operations of Applicant.	
Authorized Applicant Signature:	Date:
Print Name:	Title:
M. Required Supplemental Material	
Applicants not eligible for the waive-in expedited review process pursuant to Nasdaq Rules must also include the following with this application:	
A copy of Applicant’s current Form BD, if not otherwise available to the Exchange electronically through the Central Registration Depository (CRD)	
An original Exchange approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f-2 and for whom a fingerprint card has not been filed with another SRO, if such fingerprints are not otherwise available electronically to the Exchange through CRD	
Summary of Applicant’s business plan addressing type of business intended to be conducted on Nasdaq	
Evidence of established clearing arrangement	

Most recent audited financial statement and a description of any material changes in the Applicant's financial condition since the date of the statement
Organizational chart identifying the Applicant's supervisory structure by associated person. This chart must identify all of Applicant's associated persons and should include names, titles, licenses/registrations and CRD numbers
Letters of attestation for any officer/director that will not be involved in the day to day management of the business and affairs of the firm
Branch Office Disclosure Form (Non-FINRA member applicants only) (found in document library)
If applicant shares office space, provide a description of business operations conducted, blueprints, identification of common areas, communication lines and information barriers specific to shared space
Applicant's Written Supervisory Procedures ("WSP") Manual including Anti-Money Laundering, Business Continuity Plan and Risk procedures pursuant to SEC 15c3-5
Completed WSP Checklist for NQX and BX full applicants only (found in document library)
Copy of any decision or order by a federal or state authority or SRO taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person
A statement indicating whether the Applicant or any person on Schedule A or B of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any self-regulatory organization, the foreign equivalent of a self-regulatory organization, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act (the "Act") or any substantially equivalent foreign statute or regulation, a futures association registered under the Act or any equivalent foreign statute or regulation, the Commission or any other "appropriate regulatory agency" (as defined in the Act), the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the Applicant or any person on Schedule A or B of the Applicant's Form BD and activity that has not been reported to the CRD, together with all relevant details, including any sanctions imposed
A copy of any contract or agreement with another broker-dealer, a bank, a clearing entity, a service bureau or a similar entity to provide the Applicant with Services regarding the execution or clearance and settlement of transactions effected on the Exchange
All examination reports and corresponding responses regarding the Applicant for the previous two years
A copy of the Exchange's Membership Agreement, duly executed by the Applicant
Certificate of Insurance (Rule 652) (PHLX Trading Floor Only)
<p>Additionally, if application is seeking market maker status:</p> <p>A description of the source and amount of capital to support its market making activities and the source of any additional capital that may become necessary</p> <p>A list of persons conducting the Applicant's market making activities, a list of the persons responsible for supervising these persons along with CRD numbers</p>

<p>Appropriate formation documents as follows:</p> <p><u>Corporation</u>; include executed Corporate Exhibits</p> <p><u>Partnership</u>; include an executed copy of the firm's Partnership Agreement</p> <p><u>Limited Liability Company</u>; include Operating Agreement and Articles of Organization or Certificate of Formation</p>
<p>N. Additional Supplemental Material (PHLX DEA Applicants)</p>
<p>Applicants for which PHLX will be the <u>Designated Examining Authority</u> must also submit the following:</p>
<p>Designation of Accountant Form and Auditor Engagement Letter pursuant to SEC Rule 17a-5(f)</p>
<p>Confirmation of required funds into a verifiable account of the firm, or if an existing firm, a FOCUS Filing or net capital computation with supporting documents for Allowable Assets</p>
<p>Verification of error account, Floor Broker Error Account Notification Form, if applicable (Form available upon request)</p>
<p>Evidence of Fidelity Bond coverage pursuant to PHLX Rule 705</p>
<p>Confirmation of U4 registrations for all off-floor traders, director / owner of the firm</p>
<p>If the firm has a Joint Back Office ("JBO") Arrangement with its clearing firm, provide a copy of the agreement.</p> <p>The firm must employ or have access to a qualified Series 27 Financial and Operations Principal ("FINOP")</p>
<p>Notification of Applicant's intent to use Electronic Storage Media ("ESM") for maintenance and archiving records pursuant to SEA Rule 17a-4(f), if applicable</p>
<p>O. Application Filing Instructions</p>
<p>Please be sure to include <u>all relevant supplemental material with your application</u>. Failure to include information may result in processing delays. Applications are deemed confidential and handled in a secure environment. Applicants should be prepared to provide such other reasonable information with respect to this application as Nasdaq may require. Questions may be directed to Nasdaq Membership at +1 215 496 5159 or +1 215 496 5322.</p> <p>Applications and supplemental material should be submitted by email to: membership@nasdaq.com.</p>

**The Nasdaq Stock Market LLC (“NQX”)
 The Nasdaq Options Market LLC (“NOM”)
 Nasdaq BX, Inc. (“BX”)
 Nasdaq PHLX LLC (“PHLX”)
 (Collectively “Nasdaq”)
 Membership Agreement**

Broker Dealer	CRD Number:
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In connection with this, and any subsequent Nasdaq membership application, and in the event that this application is approved, the Applicant hereby agrees to abide by the terms and conditions set forth below.

The Applicant undertakes to (1) engage only in those business activities permissible pursuant to its membership agreement(s) with FINRA, respecting a FINRA member, and the rules of Nasdaq and any other Self-Regulatory Organization of which the Applicant is a member; (2) obtain the prior approval of Nasdaq pursuant to Nasdaq Rules before removing or modifying any restrictions imposed on permissible business activities or before effecting any material change in business operations; and (3) file a written notice and application with Nasdaq at least 30 days prior to effecting a change in the ownership or control of the Applicant in circumstances where required by Nasdaq Rules.

The Applicant also agrees:

1. To comply with the federal securities laws, the rules and regulations thereunder, the Nasdaq By-Laws and Rules and all rulings, orders, directions and decisions issued and sanctions imposed under the Nasdaq Rules;
2. To pay such dues, assessments and other charges in the manner and amount as from time to time shall be fixed pursuant to the Nasdaq Rules;
3. That this Agreement has been executed on behalf of, and with the authority of, the above-named Applicant. The Undersigned and Applicant represent that the information and statements contained within the application and other information filed are current, true and complete.

The Undersigned and the Applicant further represent that to the extent that any information submitted is not amended, such information is currently accurate and complete and that all information contained in the Applicant’s Uniform Application for Broker-Dealer Registration (Form BD) will be kept current and accurate by proper amendment of the Form BD as changes occur. Applicant further represents that the registrations for Associated Persons registered with Nasdaq will be kept current by proper amendment of Form U4 & Form U5.

By:

Print name _____

Title _____

Signature _____

Date _____

EXHIBIT 5

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

Rules of Nasdaq BX

* * * * *

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

Series 1000 of the Rules of the Nasdaq Stock Market, LLC (“Nasdaq”), as such rules may be in effect from time to time (the “Nasdaq Rule 1000 Series”), are hereby incorporated by reference into this Nasdaq BX Rule 1000 Series (other than Nasdaq Rules 1031, 1050, 1090, 1130, 1150, 1160, and 1170), and are thus Nasdaq BX Rules and thereby applicable to Nasdaq BX Members, Associated Persons, and other persons subject to the Exchange’s jurisdiction. Nasdaq BX Members, Associated Persons, and other persons subject to the Exchange’s jurisdiction shall comply with the Nasdaq Rule 1000 Series as though such rules were fully set forth herein. All defined terms, including any variations thereof, contained in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq BX-related meaning of such term. The defined terms “Exchange” or “Nasdaq” shall be read to refer to the Nasdaq BX Exchange; “Rule” or “Exchange Rule” shall be read to refer to the Exchange Rules; the defined term “Applicant” in the Nasdaq Rule 1000 Series shall be read to refer to an Applicant to the Nasdaq BX Exchange; the defined terms “Board” or “Exchange Board” in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq BX Board of Directors; the defined term “Director” in the Nasdaq Rule 1000 Series shall be read to refer to a Director of the Board of the Nasdaq BX Exchange; the defined term “Exchange Review Council” in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq BX Exchange Review Council; the defined term “Subcommittee” in the Nasdaq Rule 1000 Series shall be read to refer to a Subcommittee of the Nasdaq BX Exchange Review Council; the defined term “Interested Staff” in the Nasdaq Rule 1000 Series shall be read to refer to Interested Staff of Nasdaq BX; the defined term “Member” in the Nasdaq Rule 1000 Series shall be read to refer to a Nasdaq BX Member; the defined term “Associated Person” shall be read to refer to a Nasdaq BX Associated Person; the defined terms “Exchange Membership Department” or “Membership Department” shall be read to refer to the Nasdaq BX Membership Department; and the defined term “Exchange Regulation Department” shall be read to refer to the Nasdaq BX Regulation Department.

Additionally, cross references in the Nasdaq Rule 1000 Series to “Rule 0120” shall refer to Nasdaq BX Rule 0120, cross references in the Nasdaq Rule 1000 Series to Rule 3010 shall refer to Nasdaq BX Rule 3010; cross references in the Nasdaq Rule 1000 Series to Rule 3011 shall refer to Nasdaq BX Rule 3011; and cross references

to “General 4, Section 1.1200 Series” shall be read to refer to the Nasdaq BX Rule 1200 Series.

[1001. FINRA Regulatory Contract

The Exchange and FINRA are parties to the FINRA Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions described in the Rule 1000 Series and the Rule 1200 Series on behalf of the Exchange. Equity Rules that refer to the Regulation Department, Regulation Department 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.

Notwithstanding the fact that the Exchange has entered into the FINRA Regulatory Contract with FINRA to perform some of the Exchange's functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions. In addition, the Exchange has incorporated by reference certain NASD rules. Exchange members shall comply with these rules and interpretations as if such rules and interpretations were part of the Equity Rules.

FINRA is in the process of consolidating certain NASD rules into a new FINRA rulebook. If an NASD rule that is incorporated by reference in a rule of the Exchange is transferred into the FINRA rulebook, then the Exchange rule shall be construed to require Exchange members to comply with the FINRA rule corresponding to the NASD rule (regardless of whether such rule is renumbered or amended) as if such rule were part of the Rules of the Exchange.]

[1002. Qualifications of Exchange Members and Associated Persons

(a) Persons Eligible to Become Exchange Members and Associated Persons of Exchange Members.

(1) Any registered broker or dealer shall be eligible for membership in the Exchange, except such registered brokers or dealers as are excluded under paragraph (b).

(2) Any person shall be eligible to become an associated person of an Exchange member, except such persons as are excluded under paragraph (b).

(b) Ineligibility of Certain Persons for Membership or Association

(1) Subject to such exceptions as may be explicitly provided elsewhere in the Equity Rules, no registered broker or dealer shall be admitted to membership, and no Exchange member shall be continued in membership, if such broker, dealer, or Exchange member fails or ceases to satisfy the qualification requirements established by the Equity Rules, or if such broker, dealer, or Exchange member is or becomes subject to a statutory disqualification, or if such broker, dealer, or Exchange member fails to file such forms as the Exchange may require in accordance with such process as the Exchange may prescribe.

(2) Subject to such exceptions as may be explicitly provided elsewhere in the Equity Rules, no person shall become associated with an Exchange member, continue to be associated with an Exchange member, or transfer association to another Exchange member, if such person fails or ceases to satisfy the qualification requirements established by the Equity Rules, or if such person is or becomes subject to a statutory disqualification; and no broker or dealer shall be admitted to membership, and no Exchange member shall be continued in membership, if any person associated with it is ineligible to be an associated person under this subsection.

(c) Payment of Fees, Dues, Assessments, and Other Charges by Members and Associated Persons

(1) Fees, dues, assessments, and other charges shall be called and payable by members and associated persons as determined by the Exchange from time to time.

(2) Each Exchange member or associated person shall promptly furnish all information or reports requested by the Exchange in connection with the determination of the amount of fees, dues, assessments, or other charges owed.

(d) Reinstatement of Membership or Registration. Any membership or registration suspended or canceled under the Equity Rules may be reinstated by the Exchange upon such terms and conditions as are permitted under the Act and the Equity Rules; provided, however, that any applicant for reinstatement of membership or registration shall possess the qualifications required for membership or registration in the Exchange.

(e) Membership in a Registered Securities Association or Another Registered Exchange. As a condition to maintaining membership in the Exchange, members shall at all times maintain membership in a registered securities association that is not registered solely under Section 15A(k) of the Securities Exchange Act of 1934, or another registered exchange that is not registered solely under Section 6(g) of the Securities Exchange Act of 1934. Exchange members that transact business with customers shall at all times be members of FINRA.

(f) Transition Rules for Members of the Exchange Prior to its Acquisition by Nasdaq

(1) A registered broker-dealer that was a member organization in good standing of the Exchange on the date immediately prior to the acquisition of the Exchange by Nasdaq, Inc. (the "Nasdaq Acquisition") shall be eligible for continued membership in the Exchange following the Nasdaq Acquisition if such member organization satisfies the requirements for continued membership under the Rule 1000 Series. Such member organizations shall be required to sign a revised membership agreement in the form adopted by the Exchange.

(2) A person registered with the Exchange as an associated person of a broker-dealer in a category of registration recognized under the Rule 1000 Series shall be eligible for

continued registration with the Exchange following the Nasdaq Acquisition if such person satisfies the requirements for continued registration under the Rule 1000 Series.]

[IM-1002-1. Filing of Misleading Information as to Membership or Registration

No member or person associated with a member shall file with the Exchange information with respect to membership or registration which is incomplete or inaccurate so as to be misleading, or which could in any way tend to mislead, or fail to correct such filing after notice thereof.]

[IM-1002-4. Branch Offices and Offices of Supervisory Jurisdiction

Each member is under a duty to insure that its membership application with the Exchange is kept current at all times by supplementary amendments to its original application and that any offices other than the main office are properly designated and registered, if required, with the Exchange.

Each member must designate to the Exchange those offices of supervisory jurisdiction, including the main office, and must register those offices which are deemed to be branch offices in accordance with the standards set forth in Equity Rule 3010.

Exchange members that are also FINRA members shall be deemed to have complied with the provisions of Equity IM-1002-4 relating to designation of offices of supervisory jurisdiction and branch offices if they are in compliance with NASD IM-1000-4 and Article IV, Section 8 of the NASD By-Laws. Exchange Members that are FINRA members shall comply with NASD IM-1000-4 and Article IV, Section 8 of the NASD By-Laws as if such Rules were part of the Rules of the Exchange. Therefore, Exchange members are complying with the provisions of Equity IM-1002-4 relating to designation of offices or supervisory jurisdiction and branch offices by complying with NASD IM-1000-4 and Article IV, Section 8 of the NASD By-Laws as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Equity IM-1002-4 are being performed by FINRA on behalf of the Exchange.

FINRA is in the process of consolidating certain NASD rules into a new FINRA rulebook. If the provisions of NASD IM-1000-4 or Article IV, Section 8 of the NASD By-Laws are transferred into the FINRA rulebook, then Equity Rule IM-1002-4 shall be construed to require Exchange members to comply with the FINRA rule corresponding to NASD IM-1000-4 or Article IV, Section 8 of the NASD By-Laws (regardless of whether such rules are renumbered or amended) as if such rules were part of the Rules of the Exchange.

Exchange members that are not FINRA members shall designate offices of supervisory jurisdiction and branch offices by submitting to the Exchange a written filing in such form as the Exchange may prescribe.]

[1010. Membership Proceedings]

1011. Definitions

Unless otherwise provided, terms used in the Rule 1000 Series and the Rule 1200 Series shall have the meaning as defined in Rule 0120.

(a) "Applicant"

The term "Applicant" means a person that applies for membership in the Exchange under Rule 1013 or a member that files an application for approval of a change in ownership, control, or business operations under Rule 1017.

(b) "Associated Person"

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.

(c) "Department"

The term "Department" means the Membership Department located within the Exchange's Regulation Department.

(d) "Director"

The term "Director" means a member of the Exchange Board.

(e) "Interested Staff"

The term "Interested Staff" means an employee who directly participates in a decision under Rule 1014 or 1017, an employee who directly supervises an employee with respect to such decision, an employee who conducted an investigation or examination of a member that files an application under Rule 1017, and the head of the Department.

(f) "investment banking or securities business"

The term "investment banking or securities business" means the business, carried on by a broker or dealer, of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others.

(g) "material change in business operations"

The term "material change in business operations" includes, but is not limited to:

(1) removing or modifying a membership agreement restriction;

(2)(A) acting as a dealer for the first time; or

(B) market making for the first time on Nasdaq BX; provided, however, that market making for the first time on Nasdaq BX will not be considered a material change in business operations if the member's market making has previously been approved by FINRA under NASD Rule 1017 or Nasdaq under Nasdaq Rule 1017;

(3) adding business activities that require a higher minimum net capital under SEC Rule 15c3-1; and

(4) adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term contained in this rule.

(h) "Exchange Board"

The term "Exchange Board" means the Board of Directors of the Exchange.

(i) "principal place of business"

The term "principal place of business" means the executive office from which the sole proprietor or the officers, partners, or managers of the Applicant direct, control, and coordinate the activities of the Applicant, unless the Department determines that the principal place of business is where: (1) the largest number of Associated Persons of the Applicant are located; or (2) the books and records necessary to provide information and data to operate the business and comply with applicable rules are located.

(j) "registered broker or dealer"

The term "registered broker or dealer" means any registered broker or dealer, as defined in Section 3(a)(48) of the Act, that is registered with the Commission under the Act.

(k) "Representative"

The term "Representative" shall have the meaning assigned to it in Rule 1220(b)(1). All Representatives of Exchange Members are required to be registered with the Exchange, and Representatives that are so registered are referred to herein as "Registered Representatives."

(l) "sales practice event"

The term "sales practice event" means any customer complaint, arbitration, or civil litigation that has been reported to the Central Registration Depository, currently is

required to be reported to the Central Registration Depository, or otherwise has been reported to the Exchange.

(m) "Subcommittee"

The term "Subcommittee" means a subcommittee of the Exchange Review Council that is constituted pursuant to Rule 1015 to conduct a review of a Department decision issued under the Rule 1010 Series.

(n) "statutory disqualification"

The term "statutory disqualification" shall have the meaning set forth in Section 3(a)(39) of the Act.

(o) "Proprietary Trading Firm"

The term "proprietary trading firm" means an Applicant with the following characteristics:

(1) the Applicant is not required by Section 15(b)(8) of the Act to become a FINRA member but is a member of another registered securities exchange not registered solely under Section 6(g) of the Act;

(2) all funds used or proposed to be used by the Applicant for trading are the Applicant's own capital, traded through the Applicant's own accounts;

(3) the Applicant does not, and will not have "customers," as that term is defined in Equity Rule 0120(g); and

(4) all Principals and Representatives of the Applicant acting or to be acting in the capacity of a trader must be owners of, employees of, or contractors to the Applicant.]

[1012. General Provisions

(a) Filing by Applicant or Service by the Exchange

(1) An Applicant may file an application or any document or information requested under the Equity Rule 1010 Series by first-class mail, overnight courier, or hand delivery. If the Department and the Applicant agree, the Applicant also may file a requested document or information by facsimile.

(2) The Exchange shall serve a notice or decision issued under the Rule 1010 Series by first-class mail on the Applicant or its counsel, unless a Rule specifies a different method of service.

(3) Service by the Exchange or filing by an Applicant shall be deemed complete as follows:

(A) Service or filing by first-class mail shall be deemed complete on the date of postmark;

(B) Service or filing by overnight courier shall be deemed complete on the date of delivery to the overnight courier as specified in the airbill;

(C) Service or filing by hand delivery shall be deemed complete on the date of receipt as evidenced by a date stamp; and

(D) Service or filing by facsimile shall be deemed complete on the date specified in the document and on the written confirmation of transmission.

(b) Lapse of Application

(1) Absent a showing of good cause, an application filed under Rule 1013 or 1017 shall lapse if an Applicant fails to:

(A) respond fully within 15 business days after service of an initial or subsequent written request for information or documents under Rule 1013, within 30 days after service of an initial or subsequent written request for information or documents under Rule 1017, or within such other time period agreed to by the Department and the Applicant;

(B) appear at or otherwise participate in a scheduled membership interview pursuant to Rule 1013(b) or 1017(f), if required; or

(C) file an executed membership agreement under Rule 1014(d) or 1017(g)(4) within 25 days after service of the agreement, or within such other period agreed to by the Department and the Applicant.

(2) If an Applicant wishes to continue to seek membership or approval of a change in ownership, control, or business operations, then the Applicant shall be required to submit a new application under Rule 1013 or 1017, respectively, and any required fee. The Exchange shall not refund any fee for a lapsed application.

(c) Ex Parte Communications

(1) The prohibitions against ex parte communications shall become effective when Exchange staff has knowledge that an Applicant intends to file a written request for review by the Exchange Review Council under Rule 1015.

(2) Unless on notice and opportunity for an Applicant and Interested Staff to participate, or to the extent required for the disposition of ex parte matters as authorized by the Equity Rules:

(A) an Applicant, a counsel or representative of an Applicant, or an Interested Staff shall not make or knowingly cause to be made an ex parte communication relevant to the

merits of a membership proceeding under the Rule 1010 Series to a Director, a member of the Exchange Review Council or a Subcommittee thereof, or an Exchange employee who is participating or advising in a decision of such a person with respect to that proceeding; and

(B) a Director, a member of the Exchange Review Council or a Subcommittee thereof, or an Exchange employee who is participating or advising in the decision of such a person with respect to a membership proceeding shall not make or knowingly cause to be made to an Applicant, a counsel or representative of the Applicant, or an Interested Staff an ex parte communication relevant to the merits of that proceeding.

(3) A Director, a member of the Exchange Review Council or a Subcommittee thereof, or an Exchange employee participating or advising in the decision of such a person, who receives, makes, or knowingly causes to be made a communication prohibited by this paragraph shall place in the record of the membership proceeding:

(A) all such written communications;

(B) memoranda stating the substance of all such oral communications; and

(C) all written responses and memoranda stating the substance of all oral responses to all such communications.

(d) Recusal or Disqualification

A Director or a member of the Exchange Review Council or a Subcommittee thereof shall not participate in a matter governed by the Rule 1010 Series as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In such a case, the person shall recuse himself or shall be disqualified as follows:

(1) The Chair of the Exchange Board shall have authority to direct the disqualification of a Director, and a majority of the Directors of the Exchange Board excluding the Chair shall have authority to direct the disqualification of the Chair of the Exchange Board.

(2) The Chair of the Exchange Review Council shall have authority to direct the disqualification of a member of the Exchange Review Council or a member of a Subcommittee appointed pursuant to Rule 1015, and the Vice Chair of the Exchange Review Council shall have authority to direct the disqualification of the Chair of the Exchange Review Council.

(e) Computation of Time

(1) Calendar Day

In the Rule 1010 Series, "day" means calendar day, unless otherwise specified.

(2) Formula

In computing a period of time under the Rule 1010 Series, the day of the act, event, default, or lapse from which the period of time designated begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall be excluded from the computation when the period prescribed is ten days or less or when the term "business day" is used.

(f) Similarity of Membership Names

(1) No person or firm shall be admitted to or continued in membership in the Exchange if such person or firm has a name that is identical to the name of another Exchange member appearing in the membership role of the Exchange or a name so similar to any such name as to tend to confuse or mislead.

(2) No Exchange member may change its name without prior approval of the Exchange.

(g) Resignation of Exchange Members

Membership in the Exchange may be voluntarily terminated only by formal resignation. Resignations of Exchange members must be filed via electronic process or such other process as the Exchange may prescribe and addressed to the Exchange. Any Exchange member may resign from the Exchange at any time. Such resignation shall not take effect until 30 days after receipt thereof by the Exchange and until all indebtedness due the Exchange from such Exchange member shall have been paid in full and so long as any complaint or action is pending against the Exchange member under the Rules of the Exchange. The Exchange, however, may in its discretion declare a resignation effective at any time.

(h) Reserved**(i) Transfer and Termination of Membership**

(1) Except as provided hereinafter, no member of the Exchange may transfer its membership or any right arising therefrom; the membership of a corporation, partnership, or any other business organization that is a member of the Exchange shall terminate upon its liquidation, dissolution, or winding up; and the membership of a sole proprietorship that is an Exchange member shall terminate at death, provided that all obligations of membership under the Rules of the Exchange have been fulfilled.

(2) The consolidation, reorganization, merger, change of name, or similar change in any corporate member of the Exchange shall not terminate the membership of such corporate member, provided that the Exchange member or surviving corporation, if any, shall be deemed a successor to the business of the corporate Exchange member, and the Exchange

member or the surviving organization shall continue in the investment banking or securities business, and shall possess the qualifications for membership in the Exchange. The death, change of name, withdrawal of any partner, the addition of any new partner, reorganization, consolidation, or any change in the legal structure of a partnership member of the Exchange shall not terminate the membership of such partnership member, provided that the Exchange member or surviving organization, if any, shall be deemed a successor to the business of the partnership member, and the Exchange member or surviving organization shall possess the qualifications for membership in the Exchange. If the business of any predecessor Exchange member is to be carried on by an organization deemed to be a successor organization by the Exchange, the membership of such predecessor Exchange member shall be extended to the successor organization subject to the notice and application requirements of the Equity Rules and the right of the Exchange to place restrictions on the successor organization pursuant to the Equity Rules; otherwise, any surviving organization shall be required to satisfy all of the membership application requirements of the Equity Rules.

(j) Registration of Branch Offices.

(1) Each branch office of a member of the Exchange shall be registered with and listed upon the membership roll of the Exchange, and shall pay such dues, assessments, and other charges as shall be fixed from time to time under the Equity Rules.

(2) Each member of the Exchange shall promptly advise the Exchange via electronic process or such other process as the Exchange may prescribe of the opening, closing, relocation, change in designated supervisor, or change in designated activities of any branch office of such Exchange member not later than 30 days after the effective date of such change.

(A) Exchange members that are also FINRA members shall be deemed to have complied with Equity Rule 1012(j) if they are in compliance with NASD IM-1000-4 and Article IV, Section 8 of the NASD By-Laws. Exchange Members that are FINRA members shall comply with NASD IM-1000-4 and Article IV, Section 8 of the NASD By-Laws as if such Rule were part of the Rules of the Exchange. The Exchange and FINRA are parties to the Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. Therefore, Exchange members are complying with Equity Rule 1012(j) by complying with NASD IM-1000-4 and Article IV, Section 8 of the NASD By-Laws as written, including, for example, filing requirements and notifications. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under Equity Rule 1012(j) are being performed by FINRA on behalf of the Exchange.

FINRA is in the process of consolidating certain NASD rules into a new FINRA rulebook. If the provisions of NASD IM-1000-4 or Article IV, Section 8 of the NASD By-Laws are transferred into the FINRA rulebook, then Equity Rule 1012(j) shall be construed to require Exchange members to comply with the FINRA rule corresponding to NASD IM-1000-4 or Article IV, Section 8 of the NASD By-Laws (regardless of whether

such rules are renumbered or amended) as if such rules were part of the Rules of the Exchange.

(B) Exchange members that are not FINRA members shall promptly advise the Exchange of the opening, closing, relocation, change in designated supervisor, or change in designated activities of any branch office of such Exchange member by submitting a written filing to the Exchange in such form as the Exchange may prescribe.]

[1013. New Member Application

(a) Filing of Application

(1) Where to File; Contents

An Applicant for Exchange membership shall file its application with the Department in accordance with this Rule. An Applicant shall submit an application that includes:

(A) a copy of the Applicant's current Form BD;

(B) an original Exchange-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f-2 and for whom a fingerprint card has not been filed with another self-regulatory organization;

(C) a check for such fee as may be required under the Equity Rules;

(D) a description of the Applicant's proposed trading activities on the Exchange, such as the types of securities it will trade, whether it will be a market maker, an order entry firm, and/or engage in block trading activities, and the extent to which the Applicant is conducting such activities as a member of other SRO(s);

(E) a copy of the Applicant's most recent audited financial statements and a description of any material changes in the Applicant's financial condition since the date of the financial statements;

(F) an organizational chart;

(G) the intended location of the Applicant's principal place of business and all other offices, if any, whether or not such offices would be required to be registered under the Equity Rules, and the names of the persons who will be in charge of each office;

(H) a description of the communications and operational systems the Applicant will employ to conduct business and the plans and procedures the Applicant will employ to ensure business continuity, including: system capacity to handle the anticipated level of usage; contingency plans in the event of systems or other technological or communications problems or failures; system redundancies; disaster recovery plans; and system security;

(I) a copy of any decision or order by a federal or state authority or self-regulatory organization taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person;

(J) a statement indicating whether the Applicant is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any self-regulatory organization, the foreign equivalent of a self-regulatory organization, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, a futures association registered under the Commodity Exchange Act or any substantially similar foreign statute or regulation, the Commission or any other "appropriate regulatory agency" (as defined in the Act), the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the Central Registration Depository, together with all relevant details, including any sanctions imposed;

(K) a statement indicating whether any person listed on Schedule A of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any self-regulatory organization, the foreign equivalent of a self-regulatory organization, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, a futures association registered under the Commodity Exchange Act or any substantially similar foreign statute or regulation, the Commission or any other "appropriate regulatory agency", the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the Applicant's activities that has not been reported to the Central Registration Depository, together with all relevant details, including any sanctions imposed;

(L) a copy of any contract or agreement with another broker-dealer, a bank, a clearing entity, a service bureau or a similar entity to provide the Applicant with services regarding the execution or clearance and settlement of transactions effected on the Exchange;

(M) if the Applicant proposes to make markets on the Exchange, a description of the source and amount of Applicant's capital to support its market making activities on the Exchange, and the source of any additional capital that may become necessary;

(N) a description of the financial controls to be employed by the Applicant with respect to Equity Rule 3011;

(O) a copy of the Applicant's written supervisory procedures with respect to the activities identified in paragraph (a)(1)(D);

(P) a list of the persons conducting the Applicant's market making and other trading activities, and a list of the persons responsible for such persons' supervision, together with the CRD number (if applicable) or a copy of Form U-4 for each such person;

(Q) if not previously provided to FINRA, a FINRA Entitlement Program Agreement and Terms of Use and an Account Administration Entitlement Form;

(R) a copy of the Applicant's most recent "FOCUS Report" (Form X-17A-5) filed with the SEC pursuant to SEC Rule 17a-5 (the most current Parts I, II, and III, as applicable);

(S) all examination reports and corresponding responses regarding the Applicant for the previous two years from the self-regulatory organizations of which it is a member;

(T) an agreement to comply with the federal securities laws, the rules and regulations thereunder, the Rules of the Exchange, and all rulings, orders, directions, and decisions issued and sanctions imposed under the Rules of the Exchange;

(U) an agreement to pay such dues, assessments, and other charges in the manner and amount as from time to time shall be fixed pursuant to the Rules of the Exchange; and

(V) such other reasonable information with respect to the applicant as the Exchange may require.

Each Applicant and Exchange member shall ensure that its membership application with the Exchange is kept current at all times by supplementary amendments via electronic process or such other process as the Exchange may prescribe. Such amendments to the application shall be filed with the Exchange not later than 15 business days after the applicant or the Exchange member knew or should have known of the facts or circumstances giving rise to the need for the amendment. The Applicant shall promptly notify the Department in writing of any material adverse change in its financial condition.

(2) Uniform Registration Forms

Upon approval of the Applicant's Account Administrator Entitlement Form, the Applicant shall submit its Forms U4 for each Associated Person who is required to be registered under the Rules, any amendments to its Forms BD or U4, and any Form U5 electronically via Web CRD.

(3) Rejection of Application That Is Not Substantially Complete

If the Department determines within 15 business days after the filing of an application that the application is not substantially complete, the Department may reject the application and deem it not to have been filed. In such case, within the 15 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefor. The Exchange shall refund the application fees, if any, in accordance with the provisions of the Equity Rules governing such fees. If the Applicant determines to continue to seek membership, the Applicant shall submit a new application and any required fee under this Rule.

(4) Additional Documents Or Information

Within 15 business days after the filing of an application, the Department shall serve an initial request for any additional information or documents necessary to render a decision on the application. The Department may serve subsequent requests for additional information or documents at any time during the membership application process.

Unless otherwise agreed by the Department and the Applicant, the Applicant shall file any additional information and documents with the Department within 15 business days after service of the Department's request.

(5) Applicants That Are Members of an Association or Another Exchange

(A) Applicants for BX membership that are also simultaneously applying for FINRA membership may file one application with FINRA in compliance with the NASD Rule 1010 Series; however, the Exchange will not take action on applicants that are members of another exchange until the applicant is an active member of FINRA.

(B) Applicants that are members of another registered national securities exchange or association must submit a complete application form containing all of the required items of information listed in Rule 1013(a)(1).

(C) An applicant that is an approved FINRA, Nasdaq or Nasdaq PHLX LLC ("PHLX") member shall have the option to apply to become a member of the Exchange and to register with the Exchange all associated persons of the firm whose registrations with the firm are approved with FINRA, Nasdaq or PHLX in categories recognized by the Rules of the Exchange through an expedited process by submitting a Waive-in Membership Application Form and a BX Membership Agreement.

(b) Membership Interview**(1) Optional Interview**

Before the Department serves its decision on an application for new membership in the Exchange, the Department may conduct a membership interview with a representative or representatives of the Applicant if the Department determines that an interview is necessary to clarify aspects of an application.

(2) Service of Notice

At least seven days before a membership interview, the Department shall serve on the Applicant a written notice that specifies the date and time of the interview and the representative or representatives of the Applicant who are required to participate in the interview. The Department shall serve the notice by facsimile or overnight courier. The Applicant and the Department may agree to a shorter or longer period for notice or a different method of service under this subparagraph.

(3) Time

Unless the Department directs otherwise for good cause shown, any membership interview shall be scheduled to occur within 60 days after the filing of an application or within 15 business days after the filing of all additional information or documents requested, whichever is later.

(4) Place

The membership interview shall be conducted in a location specified by the Exchange.

(5) Review of Standards for Admission

During any membership interview, the Department shall review the application and the bases for denial of membership with the Applicant's representative or representatives.

(6) Information From Other Sources

During any membership interview, the Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the Department intends to base its decision under Rule 1014. If the Department does not conduct a membership interview, receives such information or document after the membership interview, or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant. The Applicant may submit such materials as it may deem relevant with respect to such information or document at any time prior to the service of a decision under Rule 1014.]

[1014. Department Decision

(a) Bases for Denial of Membership

After considering the completed application, other information and documents provided by the Applicant, other information and documents obtained by the Department, and the public interest and the protection of investors, the Department shall approve an application under Rules 1013 or 1017 by an Applicant that is not, and is not required to become, a FINRA member unless the Department determines that such information or documents provide a basis for denial of membership:

(1) The Department may deny (or condition) approval of an Applicant for the same reasons that the Securities and Exchange Commission may deny or revoke a broker or dealer registration and for those reasons required or allowed under the Act;

(2) Without limiting the generality of the foregoing, the Department may deny (or condition) approval of an Applicant when the Applicant directly or indirectly:

(A) is unable to satisfactorily demonstrate its present capacity to adhere to all applicable Exchange and Commission policies, rules, and regulations, including, without limitation, those concerning recordkeeping, reporting, finance, and trading procedures;

(B) has previously violated, and there is a reasonable likelihood such Applicant will again engage in acts or practices violative of, any applicable Exchange or Commission policies, rules and regulations, including, without limitation, those concerning record-keeping, reporting, finance and trading procedures or those rules of other self-regulatory organizations of which such Applicant is or was a member;

(C) has engaged, and there is a reasonable likelihood such Applicant will again engage, in acts or practices inconsistent with just and equitable principles of trade;

(D) is not in compliance with the SEC's net capital rule (17 C.F.R. 240.15c3-1), or has financial difficulties involving an amount that is more than 5% of the Applicant's net worth;

(E) has been itself, or is the successor to an entity which has been subject to any bankruptcy proceeding, receivership or arrangement for the benefit of creditors within the past three years;

(F) has engaged in an established pattern of failure to pay just debts;

(G) does not have such licenses and registrations as are required by governmental authorities and self-regulatory organizations; or

(H) is unable satisfactorily to demonstrate reasonably adequate systems capacity and capability.

(3) The Department will not approve an Applicant unless the Applicant is a member of another registered securities exchange or association that is not registered solely under Section 6(g) or Section 15A(k) of the Securities Exchange Act of 1934. An Applicant that will transact business with the public must be a member of FINRA.

(b) Granting or Denying Application

(1) Unless the Department determines that there is a basis for denying (or conditioning) approval of the application under the bases for denial in paragraph (a), the Department shall approve the application for membership. If the Department does not approve the application, the Department shall:

(A) grant the application subject to one or more restrictions reasonably designed to address a specific financial, operational, supervisory, disciplinary, investor protection, or other regulatory concern; or

(B) deny the application.

(c) Decision**(1) Time**

The Department shall serve a written decision on the membership application within 15 business days after the conclusion of the membership interview (if any) or after the filing of all required information or documents, whichever is later.

(2) Content

If the Department denies the application or grants the application subject to restrictions, the decision shall explain in detail the reason for denial or restriction, referencing the applicable bases in paragraph (a).

(3) Failure to Serve Decision

If the Department fails to serve a decision within 90 days after the filing of an application (or 120 days if the Department has opted to conduct a membership interview) or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the Exchange Board requesting that the Exchange Board direct the Department to serve a decision. Within seven days after the filing of such a request, the Exchange Board shall direct the Department to serve its written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the Exchange Board may extend the 90-day (or 120-day) time limit by not more than 45 days.

(d) Submission of Membership Agreement

If the Department grants an application, with or without restriction, the Applicant's approval for membership shall be contingent upon the Applicant's filing of an executed written membership agreement, satisfactory to the Department, undertaking to:

- (1) abide by any restriction specified in the Department's decision; and
- (2) obtain the Department's approval of a change in ownership, control, or business operations pursuant to Rule 1017, including the modification or removal of a membership agreement restriction.

The Applicant shall not waive the right to file a written request for review under Rule 1015 by executing a membership agreement under this paragraph.

(e) Service and Effectiveness of Decision

The Department shall serve its decision and the membership agreement on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall

remain in effect during the pendency of any review until a decision constituting final action of the Exchange is issued under Rule 1015 or 1016, unless otherwise directed by the Exchange Review Council, the Exchange Board, or the Commission.

(f) Effectiveness of Restriction

A restriction imposed under this Rule shall remain in effect and bind the Applicant and all successors to the ownership or control of the Applicant unless:

(1) removed or modified by a decision constituting final action of the Exchange issued under Rule 1015, 1016, or 1017; or

(2) stayed by the Exchange Review Council, the Exchange Board, or the Commission.

(g) Final Action

Unless the Applicant files a written request for a review under Rule 1015, the Department's decision shall constitute final action by the Exchange.]

[1015. Review by the Exchange Review Council

(a) Initiation of Review by Applicant

Within 25 days after service of a decision under Rule 1014 or 1017, an Applicant may file a written request for review with the Exchange Review Council. A request for review shall state with specificity why the Applicant believes that the Department's decision is inconsistent with the bases for denial set forth in Rule 1014, or otherwise should be set aside, and state whether a hearing is requested. The Applicant simultaneously shall file by first-class mail a copy of the request with the Department.

(b) Transmission of Documents

Within ten days after the filing of a request for review, the Department shall:

(1) transmit to the Exchange Review Council copies of all documents that were considered in connection with the Department's decision and an index to the documents; and

(2) serve on the Applicant a copy of such documents (other than those documents originally submitted by Applicant) and a copy of the index.

(c) Membership Application Docket

The Department shall promptly record in the Exchange's membership application docket each request for review filed with the Exchange Review Council under this Rule and each material subsequent event, filing, and change in the status of a membership proceeding.

(d) Appointment of Subcommittee

The Exchange Review Council or the Review Subcommittee defined in Rule 9120 shall appoint a Subcommittee to participate in the review. The Subcommittee shall be composed of two or more persons who shall be current or past members of the Exchange Review Council or former Directors.

(e) Powers of Subcommittee

If a hearing is requested, the Subcommittee shall conduct the hearing. If a hearing is not requested, the Subcommittee may serve a notice directing that a hearing be held. If a hearing is not requested or directed, the Subcommittee shall conduct its review on the basis of the record developed before the Department and any written submissions made by the Applicant or the Department in connection with the request for review.

(f) Hearing**(1) Notice**

If a hearing is requested or directed, the hearing shall be held within 45 days after the filing of the request with the Exchange Review Council or service of the notice by the Subcommittee. The Exchange Review Council shall serve written notice of the date and time of the hearing to the Applicant by facsimile or overnight courier not later than 14 days before the hearing.

(2) Counsel

The Applicant and the Department may be represented by counsel at a hearing conducted pursuant to this Rule.

(3) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule. Not later than five days before the hearing, the Applicant and the Department shall exchange copies of their proposed hearing exhibits and witness lists and provide copies of the same to the Exchange Review Council. If the Applicant or the Department fails to provide copies of its proposed hearing exhibits or witness list within such time, the Subcommittee shall exclude the evidence or witnesses from the proceeding, unless the Subcommittee determines that good cause is shown for failure to comply with the production date set forth in this subparagraph.

(4) Transcript

The hearing shall be recorded and a transcript prepared by a court reporter. A transcript of the hearing shall be available for purchase from the court reporter at prescribed rates. The Applicant, the Department, or a witness may seek to correct the transcript. A

proposed correction of the transcript shall be submitted to the Subcommittee within a reasonable period of time prescribed by the Subcommittee. Upon notice to the Applicant and the Department, the Subcommittee may direct the correction to the transcript as requested or sua sponte.

(g) Additional Information, Briefs

At any time during its consideration, the Subcommittee or the Exchange Review Council may direct the Applicant or the Department to file additional information or briefs. Any additional information or brief filed shall be provided to all parties before the Exchange Review Council renders its decision.

(h) Abandonment of Request for Review

If an Applicant fails to specify the grounds for its request for review under Rule 1015(a)(1), appear at a hearing for which it has notice, or file information or briefs as directed, the Exchange Review Council or the Review Subcommittee may dismiss the request for review as abandoned, and the decision of the Department shall become the final action of the Exchange. Upon a showing of good cause, the Exchange Review Council or the Review Subcommittee may withdraw a dismissal entered pursuant to this paragraph.

(i) Subcommittee Recommendation

The Subcommittee shall present a recommended decision in writing to the Exchange Review Council within 60 days after the date of the hearing held pursuant to paragraph (f), and not later than seven days before the meeting of the Exchange Review Council at which the membership proceeding shall be considered.

(j) Decision

(1) Proposed Written Decision

After considering all matters presented in the review and the Subcommittee's recommended written decision, the Exchange Review Council may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions. The Exchange Review Council shall prepare a proposed written decision pursuant to subparagraph (2).

(2) Contents

The decision shall include:

- (A)** a description of the Department's decision, including its rationale;
- (B)** a description of the principal issues raised in the review;

(C) a summary of the evidence on each issue; and

(D) a statement whether the Department's decision is affirmed, modified, or reversed, and a rationale therefor that references the bases for denial in Rule 1014.

(3) Issuance of Decision After Expiration of Call for Review Periods

The Exchange Review Council shall provide its proposed written decision to the Exchange Board. The Exchange Board may call the membership proceeding for review pursuant to Rule 1016. If the Exchange Board does not call the membership proceeding for review, the proposed written decision of the Exchange Review Council shall become final. The Exchange Review Council shall serve the Applicant with a written notice specifying the date on which the call for review period expired and stating that the final written decision will be served within 15 days after such date. The Exchange Review Council shall serve its final written decision within 15 days after the date on which the call for review period expired. The decision shall constitute the final action of the Exchange for purposes of SEC Rule 19d-3, unless the Exchange Review Council remands the membership proceeding.

(4) Failure to Issue Decision

If the Exchange Review Council fails to serve its final written decision within the time prescribed in subparagraph (3), the Applicant may file a written request with the Exchange Board requesting that the Exchange Board direct the Exchange Review Council to serve its decision immediately or to show good cause for an extension of time. Within seven days after the filing of such a request, the Board shall direct the Exchange Review Council to serve its written decision immediately or to show good cause for an extension of time. If the Exchange Review Council shows good cause for an extension of time, the Exchange Board may extend the 15-day time limit by not more than 15 days.]

[1016. Discretionary Review by the Exchange Board

(a) Call for Review by Director

A Director may call a membership proceeding for review by the Exchange Board if the call for review is made within the period prescribed in paragraph (b).

(b) 15 Day Period; Waiver

A Director shall make his or her call for review at the next meeting of the Exchange Board that is at least 15 days after the date on which the Exchange Board receives the proposed written decision of the Exchange Review Council. By unanimous vote of the Exchange Board, the Exchange Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the Exchange Board then in office, the Exchange Board may, during the 15 day period, vote to extend the period to more than 15 days.

(c) Review At Next Meeting

If a Director calls a membership proceeding for review within the time prescribed in paragraph (b), the Exchange Board shall review the membership proceeding not later than the next meeting of the Exchange Board. The Exchange Board may order the Applicant and the Department to file briefs in connection with review proceedings pursuant to this paragraph.

(d) Decision of the Exchange Board, Including Remand

After review, the Exchange Board may affirm, modify, or reverse the proposed written decision of the Exchange Review Council. Alternatively, the Exchange Board may remand the membership proceeding with instructions. The Exchange Board shall prepare a written decision that includes all of the elements described in Rule 1015(j)(2).

(e) Issuance of Decision

The Exchange Board shall serve its written decision on the Applicant within 15 days after the meeting at which it conducted its review. The decision shall constitute the final action of the Exchange for purposes of SEC Rule 19d-3, unless the Exchange Board remands the membership proceeding.]

[1017. Application for Approval of Change in Ownership, Control, or Business Operations

(a) Events Requiring Application

A member shall file an application for approval of any of the following changes to its ownership, control, or business operations:

- (1)** a merger of the member with another member, unless both are members of the New York Stock Exchange, Inc. or the surviving entity will continue to be a member of the New York Stock Exchange, Inc.;
- (2)** a direct or indirect acquisition by the member of another member, unless the acquiring member is a member of the New York Stock Exchange, Inc.;
- (3)** direct or indirect acquisitions or transfers of 25% or more in the aggregate of the member's assets or any asset, business or line of operation that generates revenues comprising 25% or more in the aggregate of the member's earnings measured on a rolling 36-month basis, unless both the seller and acquirer are members of the New York Stock Exchange, Inc.;
- (4)** a change in the equity ownership or partnership capital of the member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital; or
- (5)** a material change in business operations as defined in Rule 1011.

(b) Filing and Content of Application

(1) The member shall file the application with the Department.

(2) The application shall describe in detail the change in ownership, control, or business operations and include a business plan, pro forma financials, an organizational chart, and written supervisory procedures reflecting the change.

(A) If the application requests approval of a change in ownership or control, the application also shall include the names of the new owners, their percentage of ownership, and the sources of their funding for the purchase and recapitalization of the member.

(B) If the application requests the removal or modification of a membership agreement restriction, the application also shall:

(i) present facts showing that the circumstances that gave rise to the restriction have changed; and

(ii) state with specificity why the restriction should be modified or removed in light of the applicable bases for denial or standards for approval set forth in Rule 1014 or 1017 and the articulated rationale for the imposition of the restriction.

(C) If the application requests approval of an increase in Associated Persons involved in sales, offices, or markets made, the application shall set forth the increases in such areas during the preceding 12 months.

(c) Effecting Change and Imposition of Interim Restrictions

(1) A member shall file an application for approval of a change in ownership or control at least 30 days prior to such change. A member may effect a change in ownership or control prior to the conclusion of the proceeding, but the Department may place new interim restrictions on the member based on the applicable bases for denial or standards for approval in Rule 1014 or 1017, pending final Department action.

(2) A member may file an application to remove or modify a membership agreement restriction at any time. An existing restriction shall remain in effect during the pendency of the proceeding.

(3) A member may file an application for approval of a material change in business operations, other than the modification or removal of a restriction, at any time, but the member may not effect such change until the conclusion of the proceeding, unless the Department and the member otherwise agree.

(d) Rejection Of Application That Is Not Substantially Complete

If the Department determines within 30 days after the filing of an application that the application is not substantially complete, the Department may reject the application and deem it not to have been filed. In such case, within the 30 day period, the Department shall serve a written notice on the Applicant of the Department's determination and the reasons therefor. If the Applicant determines to continue to apply for approval of a change in ownership, control, or business operations, the Applicant shall submit a new application under this Rule.

(e) Request for Additional Documents and Information

Within 30 days after the filing of an application, the Department shall serve a request for any additional information or documents necessary to render a decision on the application. The Department may request additional information or documents at any time during the application process. Unless otherwise agreed to by the Department and the Applicant, the Applicant shall file such additional information or documents with the Department within 30 days after the Department's request.

(f) Membership Interview

(1) The Department may require the Applicant to participate in a membership interview within 30 days after the filing of the application, or if the Department requests additional information or documents, within 30 days after the filing of the additional information or documents by the Applicant.

(2) At least seven days before the membership interview, the Department shall serve on the Applicant a written notice that specifies the date and time of the interview and persons who are required to participate in the interview. The Department shall serve the notice by facsimile or overnight courier. The Applicant and the Department may agree to a shorter or longer period for notice or a different method of service.

(3) The membership interview shall be conducted in a location specified by the Exchange.

(4) During the membership interview, the Department shall review the application and the considerations for the Department's decision set forth in paragraph (g)(1) with the Applicant's representative or representatives. The Department shall provide to the Applicant's representative or representatives any information or document that the Department has obtained from the Central Registration Depository or a source other than the Applicant and upon which the Department intends to base its decision under paragraph (g). If the Department receives such information or document after the membership interview or decides to base its decision on such information after the membership interview, the Department shall promptly serve the information or document and an explanation thereof on the Applicant.

(g) Department Decision

(1) The Department shall consider the application, the membership interview, other information and documents provided by the Applicant or obtained by the Department, the public interest, and the protection of investors.

(A) In rendering a decision on an application submitted under Rule 1017(a) by an Exchange member that is not, and is not required to become, a member of FINRA, the Department shall approve the application unless the Department determines that there is a basis for denying (or conditioning) approval of the Applicant under the bases for denial in Rule 1014(a).

(B) In rendering a decision on an application submitted under Rule 1017(a) by an Exchange member that is also a member of FINRA, the Department shall consider whether the Applicant and its Associated Persons meet each of the standards in NASD Rule 1014(a). For purposes of this rule:

(i) the provisions of NASD Rule 1014(a) shall apply to Exchange members as if such Rule were part of the Equity Rules;

(ii) references to "NASD Rules" shall be construed as references to the "Equity Rules";

(iii) the reference to "Rule 1013(a)(2)(E)(xii)" shall be construed as a reference to "NASD Rule 1013(a)(1)(F)(xii)";

(iv) the reference to "information filed under Rule 1013(b)(5)" shall be construed as a reference to "the most up-to-date financial information available to the Department";

(v) references to "NASD" or "FINRA" shall be construed as references to "the Exchange";

(vi) the reference to "Notice to Members 97-19" shall be construed as a reference to "NASD Notice to Members 97-19 as incorporated by reference into the Equity Rules by IM-3010"; and

(vii) where the Department determines that the Applicant or its Associated Person are the subject of any of the events set forth in NASD Rule 1014(a)(3)(A) and (C) through (E), a presumption exists that the application should be denied. The Applicant may overcome the presumption by demonstrating that it can meet each of the standards in NASD Rule 1014(a), notwithstanding the existence of any of the events set forth in Rule NASD 1014(a)(3)(A) and (C) through (E).

FINRA is in the process of consolidating certain NASD rules into a new FINRA rulebook. If the provisions of NASD Rule 1014(a) are transferred into the FINRA rulebook, then Equity Rule 1017 shall be construed to require Exchange members and persons associated with a member to comply with the FINRA rule corresponding to

NASD Rule 1014(a) (regardless of whether such rule is renumbered or amended) as if such rule were part of the Rules of the Exchange.

(C) In rendering a decision on an application for approval of a change in ownership or control, or an application for approval of a material change in business operations that does not involve modification or removal of a membership agreement restriction, the Department shall determine (i) if there would be a basis for denying (or conditioning) approval of the Applicant under the bases for denial in Rule 1014(a) upon approval of the application in the case of an Exchange member that is not, and is not required to become, a member of FINRA, and (ii) if the Applicant would continue to meet the standards in NASD Rule 1014(a) upon approval of the application in the case of an Exchange member that is a member of FINRA.

(D) In rendering a decision on an application requesting the modification or removal of a membership agreement restriction, the Department shall consider whether maintenance of the restriction is appropriate in light of:

(i) the applicable bases for denial or standards for approval set forth in Rules 1014 and 1017;

(ii) the circumstances that gave rise to the imposition of the restriction;

(iii) the Applicant's operations since the restriction was imposed;

(iv) any change in ownership or control or supervisors and principals; and

(v) any new evidence submitted in connection with the application.

(2) The Department shall serve a written decision on the application within 30 days after the conclusion of the membership interview or the filing of additional information or documents, whichever is later. If the Department does not require the Applicant to participate in a membership interview or request additional information or documents, the Department shall serve a written decision within 45 days after the filing of the application under paragraph (a). The decision shall state whether the application is granted or denied in whole or in part, and shall provide a rationale for the Department's decision, referencing the applicable bases or standards in Rules 1014 or 1017.

(3) If the Department fails to serve a decision within 180 days after filing of an application or such later date as the Department and the Applicant have agreed in writing, the Applicant may file a written request with the Exchange Board requesting that the Exchange Board direct the Department to issue a decision. Within seven days after the filing of such a request, the Exchange Board shall direct the Department to issue a written decision immediately or to show good cause for an extension of time. If the Department shows good cause for an extension of time, the Exchange Board may extend the time limit for issuing a decision by not more than 30 days.

(4) Notwithstanding anything in this Rule 1017 to the contrary, in the event that a proposed change in ownership, control, or business operations by an Exchange member requires such member to become a member of FINRA, the Department shall not be required to serve a written decision under this rule until 10 business days after the Exchange member becomes a FINRA member.

(5) If the Department approves an application under this Rule in whole or part, the Department may require an Applicant to file an executed membership agreement.

(h) Service and Effectiveness of Decision

The Department shall serve its decision on the Applicant in accordance with Rule 1012. The decision shall become effective upon service and shall remain in effect during the pendency of any review until a decision constituting final action of the Exchange is issued under Rule 1015 or 1016, unless otherwise directed by the Exchange Review Council, the Exchange Board, or the Commission.

(i) Request for Review; Final Action

An Applicant may file a written request for review of the Department's decision with the Exchange Review Council pursuant to Rule 1015. The procedures set forth in Rule 1015 shall apply to such review, and the Exchange Review Council's decision shall be subject to discretionary review by the Exchange Board pursuant to Rule 1016. If the Applicant does not file a request for a review, the Department's decision shall constitute final action by the Exchange.

(j) Removal or Modification of Restriction on Department's Initiative

The Department shall modify or remove a restriction on its own initiative if the Department determines such action is appropriate in light of the considerations set forth in paragraph (g)(1). The Department shall notify the member in writing of the Department's determination and inform the member that it may apply for further modification or removal of a restriction by filing an application under paragraph (a).

(k) Lapse or Denial of Application for Approval of Change in Ownership

If an application for approval of a change in ownership lapses, or is denied and all appeals are exhausted or waived, the member shall, no more than 60 days after the lapse or exhaustion or waiver of appeal:

- (1) submit a new application;
- (2) unwind the transaction; or
- (3) file a Form BDW.

For the protection of investors, the Department may shorten the 60-day period. For good cause shown by the member, the Department may lengthen the 60-day period. The Department shall serve written notice on the Applicant of any change in the 60-day period and the reasons therefor. During the 60-day or other imposed period, the Department may continue to place interim restrictions on the member for the protection of investors.]

[1018. Reserved]

[1019. Application to Commission for Review

A person aggrieved by final action of the Exchange under the Equity Rule 1010 Series may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing of an application for review shall not stay the effectiveness of a decision constituting final action of the Exchange, unless the Commission otherwise orders.]

1031. No change

1050. No change.

1090. No change.

1130. No change.

1150. No change.

1160. No change.

1170. No change.

1200.-1250. No change.

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