

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 90	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2018 - * 24	Amendment No. (req. for Amendments *)
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Filing by Nasdaq GEMX, LLC
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 align its existing investigatory and disciplinary processes and related rules with the investigatory and disciplinary processes and associated rules of Nasdaq BX, Inc.

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 07/12/2018 Executive Vice President and General Counsel

By Edward S. Knight

(Name *)

edward.knight@nasdaq.com

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

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

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Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

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

Exhibit 5 - Proposed Rule Text

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

Partial Amendment

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

1. Text of Proposed Rule Change

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

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1 and 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 February 1, 2017. 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 M. 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 proposes to adopt new investigatory, disciplinary, and adjudicatory processes that are substantially the same as those of its sister exchange, BX. Specifically, the Exchange proposes to establish new Chapters 80 and 90 of its Rules³ and then incorporate by reference into those Chapters the BX Rule 8000 and 9000 Series,⁴ which set forth and govern the BX investigatory, disciplinary, and adjudicative processes.⁵ The Exchange also proposes to amend its By-Laws to establish a new body to review disciplinary and certain other matters (the "Exchange Review Council") that is similar to the exchange review council that BX utilizes for such purposes.⁶ These proposals, when coupled with certain changes to the Exchange's other Rules, including Rules that govern appeals of the Exchange's membership and other decisions, will render the Exchange's investigative, disciplinary, and adjudicatory processes substantially the same as those, not only of BX, but also of other Nasdaq, Inc. exchanges.⁷ The proposal change will also

³ The Exchange proposes to add Chapters 23-79 and Chapters 81-89 to its Rules, but reserve such Chapters for future use.

⁴ Citation herein to rules of the proposed Chapters 80 and 90 will be preceded by the term "BX Rule" to reflect incorporation of the BX Rule 8000 and 9000 Series. References to current rules will be preceded by the term "Existing Rule."

⁵ The Exchange proposes to separately request an exemption from the rule filing requirements of Section 19(b) of the Act for changes to Chapters 80 and 90 to the extent such rules are effected solely by virtue of a change to the BX Rule 8000 and 9000 Series.

⁶ As discussed below, the Exchange Review Council will assume responsibilities that presently reside with the Business Conduct Committee (the "BCC"). The Exchange also proposes to eliminate the BCC.

⁷ The Exchange notes that the BX Rule 8000 and 9000 Series are substantially similar to corresponding rules of The Nasdaq Stock Market, LLC ("Nasdaq") and Nasdaq PHLX, LLC ("Phlx"). Moreover, the Exchange notes that Nasdaq ISE,

further harmonize the work that the Financial Industry Regulatory Authority (“FINRA”) conducts for all these exchanges.

The Exchange’s current investigatory, disciplinary, and adjudicatory processes are set forth in Chapters 15-17 of its Rules. Chapters 15-17 of the Exchange’s Rules, in turn, incorporate by reference the investigatory, disciplinary, and adjudicatory processes of Nasdaq ISE, LLC (“Nasdaq ISE”) that are set forth in the corresponding chapters of the Nasdaq ISE rulebook. As part of a parallel Nasdaq ISE filing that also proposes to adopt the investigatory, disciplinary, and adjudicatory processes and rules of BX (and incorporate them by reference into new chapters 80 and 90 of the Nasdaq ISE rules), Nasdaq ISE proposes to eliminate chapters 15 and 17 of its rules, and to largely eliminate chapter 16.⁸ These proposed changes to ISE chapters 15-17 will apply automatically to Chapters 15-17 of the Exchange’s Rules. Accordingly, reference should be made to SR-ISE-2018-59 for a detailed explanation of the proposed changes to Chapters 15-17 and the purposes of those changes. Likewise, reference should be made to SR-ISE-2018-59 for a detailed discussion of the BX Rule 8000 and 9000 Series, which will largely replace Chapters 15-17 for both Nasdaq ISE and the Exchange. Lastly, reference should be made to SR-ISE-2018-59 for a discussion of proposed changes to certain other ISE rules that

LLC and Nasdaq MRX, LLC will propose similar changes to their respective investigatory, disciplinary, and adjudicatory processes and associated rules that will render them substantially similar to those of BX.

⁸ See SR-ISE-2018-59. Nasdaq ISE proposes to retain Rule 1600, which sets forth the general jurisdiction of the Exchange with respect to disciplinary matters. It also proposes to retain Existing Rule 1614(a), which sets forth its authority to impose fines of up to \$2,500 for violations of the Exchange’s Minor Rule Violation Plan (“MRVP”) and up to \$5,000 for minor rule violations (other than those subject to an MRVP). Nasdaq ISE also proposes to retain Existing Rule 1614(d) (to be renumbered as Rule 1614(b)), which sets forth the Exchange’s schedule of MRVP violations and minor rule violations and their associated fines.

the Exchange also incorporates by reference and that are relevant to the Exchange's adoption of its new investigatory, disciplinary, and adjudicatory processes.⁹

The following is a discussion of proposed changes that are specific to the Rules of the Exchange and that are not otherwise addressed in or accomplished by the corresponding Nasdaq ISE filing. These changes include: (1) the elimination of the Exchange's BCC and its replacement with the Exchange Review Council; and (2) changes to Exchange Rules that are necessary to accommodate the new investigatory, disciplinary, and adjudicatory processes and rules and to harmonize those processes and rules with those of BX.

Elimination of the Business Conduct Committee and Establishment of the Exchange Review Council

The Exchange presently utilizes the BCC to help it enforce its Rules with respect to its members ("Members") and persons associated with its members ("Associated Persons"). The BCC is a committee, established by the Board of Directors,¹⁰ whose enforcement jurisdiction includes the following: (1) ordering investigations of possible Rule violations; (2) considering letters of consent in expedited disciplinary actions; (3) making its members available to serve on Hearing Panels that adjudicate formal disciplinary proceedings; (4) imposing sanctions on Members or Associated Persons in disciplinary proceedings; (5) reviewing Exchange actions involving minor rule violations; (6) appointing panels to conduct hearings and reviews of Exchange actions that deny membership or Member association privileges; and (7) generally overseeing all

⁹ The proposed changes involve Nasdaq ISE Rules 410, 413(b)(1), 1000, 1406, and 1800.

¹⁰ See Resolution of the Board of Directors of the ISE Gemini Delegating Authority, dated July 30, 2013.

matters relating to the conduct of disciplinary hearings and hearings for review of Exchange decisions, and providing the Exchange with advice for improving disciplinary procedures.¹¹

The Exchange proposes to retire the BCC¹² and to amend its By-Laws to establish in its place the Exchange Review Council. The amended By-Laws that the Exchange proposes to adopt in this regard are substantially the same as those that BX adopted to establish the BX Exchange Review Council.¹³ Thus, the By-Laws provide for the Exchange Review Council to have the same general structure and powers as does the BX Exchange Review Council.¹⁴ The proposed By-Laws will authorize the Exchange

¹¹ See GEMX Business Conduct Committee Charter, as amended, May 1, 2003.

¹² In a February 4, 2016 resolution, the Exchange Board delegated its authority to the President of the Exchange to establish a BCC to, among other things, conduct disciplinary hearings under Chapter 16 of the Existing Rules and conduct other hearings and reviews as set forth in Chapter 17 of the Existing Rules. On February 1, 2017, the Board passed a resolution that both revoked the President's authority to establish a BCC and authorized the establishment of an Exchange Review Council, effective upon the date when this rule filing becomes operative.

¹³ The BX by-laws differ from the proposed Exchange By-Laws because the BX by-laws have a different numbering convention from the Exchange's By-Laws and, in various places, the BX by-laws refer to a Listing and Hearing Review Council, which has no analogue with respect to the Exchange.

¹⁴ The BX by-laws do not describe in detail the process of the proceedings over which the BX Exchange Review Council presides. However, Section 7.9 of the BX by-laws state that a quorum of three BX Exchange Review Council members is necessary to adjudicate appeals of determinations made under BX Rules 4612 (appeal of denial of registration as an Equities Market Maker), 4619 (review of denial of an excused withdrawal of Equities Market Maker quotation), 4620 (appeal of denial of reinstatement of Equities Market Maker that accidentally withdraws), 11890 (appeal of clearly erroneous transaction determination), and BX Options Chapter V, Section 6 (appeal of obvious error determination). See BX by-laws, Article VII, Section 9. The Exchange's Rules do not have analogues to BX Rules 4612, 4620, and 11890 and, as such, the corresponding provision of the Exchange's proposed By-Laws (Article VII, Section 9) provides only that a quorum of three Exchange Review Council members is necessary for it to adjudicate appeals involving determinations made under Rules 720 (appeal of

Review Council to adjudicate disciplinary actions and approve settlements thereof as well as make recommendations to the Board on certain policy matters and rule changes. Such policy functions of the Exchange Review Council render its jurisdiction broader than that of the BCC.

Specifically, proposed Article VI, Section 1 of the proposed By-Laws provides that the Exchange Review Council may be authorized to act for the Board with respect to: an appeal or review of a disciplinary proceeding, a statutory disqualification proceeding, or a membership proceeding; a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; the exercise of exemptive authority; and such other proceedings or actions as may be authorized by the Exchange rules. The Exchange Review Council also may consider and make recommendations to the Board on policy and rule changes relating to business and sales practices of Exchange Members and Associated Persons and enforcement policies, including policies with respect to fines and other sanctions. It may advise the Board on regulatory proposals and industry initiatives relating to quotations, execution, trade reporting, and trading practices and it may advise the Board in its administration of programs and systems for the surveillance and enforcement of rules governing Exchange Members' conduct and trading activities in the Exchange.

Proposed Article VI, Section 2 states that the Exchange Review Council would consist of no fewer than eight and no more than 12 members. The Exchange Review

obvious error determination), 720A (appeal of determinations of erroneous trades due to system malfunctions and disruptions), and 804 (review of denial of an excused withdrawal of market maker quotation).

Council must include a number of Member Representative members¹⁵ that is equal to at least 20% of the total number of members of the Exchange Review Council. The number of Non-Industry members,¹⁶ including at least three Public members,¹⁷ shall equal or exceed the sum of the number of Industry members¹⁸ and Member Representative members. As soon as practicable, following the appointment of members, the Exchange Review Council shall elect a Chair from among its members. The Chair shall have such powers and duties as may be determined from time to time by the Exchange Review Council. The Board, by resolution adopted by a majority of Directors then in office, may remove the Chair from such position at any time for refusal, failure, neglect, or inability to discharge the duties of Chair. No more than 50% of the members of the Exchange Review Council shall be engaged in market making activity or employed by an Exchange Member firm whose revenues from market making activity exceed 10 percent of its total revenues.

Proposed Article VI, Section 3 requires the Exchange's Secretary to collect from each nominee for the office of member of the Exchange Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry, Member Representative, Non-Industry, or Public member. The Secretary must also certify to the Nominating Committee or the Member Nominating Committee¹⁹ (as applicable) each nominee's

¹⁵ See n.20, infra.

¹⁶ See id.

¹⁷ See id.

¹⁸ See id.

¹⁹ The terms "Nominating Committee" and "Member Nominating Committee" are defined in Exchange By-Laws, Article I.

qualifications and classification. After appointment to the Exchange Review Council, each member must update such information at least annually and upon request of the Exchange's Secretary, and must report immediately to the Secretary any change in such information.

Proposed Article VI, Section 4 provides that Exchange Review Council members shall serve three-year terms, or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason by death, resignation, removal, disqualification, or other reason. Members are term limited out after two consecutive terms. Proposed Article VI, Section 5 sets forth the procedures for resigning as a member of the Exchange Review Council and provides that an Exchange Review Council member may resign at any time upon written notice to the Board. Under proposed Article VI, Section 6, any member of the Exchange Review Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.

Under proposed Article VI, Section 7, an Exchange Review Council member would be disqualified and removed immediately upon a determination by the Board, by a majority vote, (a) that the member no longer satisfies the classification (Industry, Member Representative, Non-Industry, or Public) for which the member was elected; and (b) that the member's continued service as such would violate the compositional requirements of the Exchange Review Council set forth in Article VI, Section 2. If the term of office of an Exchange Review Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the Exchange Review Council shall not be

deemed to be in violation of Article VI, Section 2 by virtue of such vacancy. Proposed Article VI, Section 8 contains provisions for the filling of vacancies on the Exchange Review Council and states that if a position on the Exchange Review Council becomes vacant, the Nominating Committee or the Member Nominating Committee (as applicable) shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Article VI, Section 2 to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

Proposed Article VI, Section 9 provides that a quorum of the Exchange Review Council will consist of a majority of its members, including not less than 50% of its Non-Industry members and one Member Representative member. Proposed Article VI, Section 10 contains provisions related to the meetings of the Exchange Review Council.

Under proposed Article VI, Section 11, the Exchange Review Council is required to establish a Review Subcommittee to determine whether disciplinary and membership proceedings decisions should be called for review by the Exchange Review Council under the disciplinary and membership rules to be proposed for the Exchange. The Review Subcommittee shall be composed of no fewer than two and no more than four members of the Exchange Review Council. The number of Non-Industry members of the Review Subcommittee shall equal or exceed the sum of the number of Industry members and Member Representative members of the Review Subcommittee, and the subcommittee must include at least one Member Representative member. At all meetings of the Review Subcommittee, a quorum for the transaction of business shall consist of not less than 50 percent of the members of the Review Subcommittee, including not less than

50 percent of the Non-Industry members of the Review Subcommittee and one Member Representative member of the Review Subcommittee.²⁰

The BX Rules implement the foregoing responsibilities of the Exchange Review Council by establishing various procedures to govern its reviews. As the Exchange describes in further detail below, the Exchange proposes to transfer to the Exchange Review Council (or panels thereof) certain responsibilities currently vested in other Exchange committees or the Board. For example, pursuant to Existing Rule 720, an Obvious Error Panel (“OEP”) is presently responsible for reviewing determinations regarding obvious and catastrophic errors. Pursuant to Existing Rule 720A, a “Review Panel” is responsible for reviewing determinations to nullify or adjust transactions that arise from system disruptions and malfunctions. The Exchange is proposing to eliminate the OEP and the Review Panel and to transfer their responsibilities to a panel of the new Exchange Review Council, which corresponds to the practice of BX. Subject to Chapter 90, the Exchange also proposes to transfer responsibility to the Exchange Review Council to review denials or conditions imposed upon those that seek to become or

²⁰ In addition to adding Article VI to the By-Laws, the Exchange proposes to make changes to other articles of the By-Laws to accommodate the existence of the Exchange Review Council. For example, the Exchange proposes to amend Article I, which defines the terms that the Exchange uses in the By-Laws, to provide that the terms “Industry member,” “Member representative member,” “Non-industry member,” and “Public member” mean, in part, members of the Exchange Review Council. The Exchange also proposes to amend Article III, Section 6, to add a new subsection (a) that directs the Board to appoint an Exchange Review Council, as provided in Article VI. It also proposes to amend Article III, Section 6(b) to state that the Nominating Committee and the Member Nominating Committee of the Board shall have responsibility for nominating members of the Exchange Review Council. Finally, the Exchange proposes to amend Sections 7 and 8 of Article III, which deal with Director conflicts-of-interest/self-interested transactions and Director compensation, respectively, to ensure that the restrictions and benefits that these provisions provide apply to Exchange Review Council members.

remain a Member of the Exchange or become or remain associated with a Member of the Exchange, as set forth in Existing Rule 303.²¹ In addition, the Exchange proposes to amend Existing Rule 804 to provide for the Exchange Review Council to review determinations regarding temporary withdrawals of quotations, which are not reviewable under the Existing Rules. The Exchange notes that BX vests in its Exchange Review Council responsibility for reviewing similar types of matters.²²

Other Conforming Rule Changes

The Exchange proposes to amend or delete certain other Existing Rules, which are either not needed, duplicated elsewhere, or reference the deleted Existing Rules. Below is a description of the specific changes the Exchange proposes to make to its Existing Rules.

Existing Rule 100 provides definitions for purposes of the Existing Rules. The Exchange is proposing to amend this Existing Rule to include definitions for several new terms. For example, the proposed Rules will define the new term “Code of Procedure” as the procedural rules contained in Chapter 90. The Exchange also defines the new term “Exchange Review Council,” which is largely copied from BX Rule 0120(m). The Exchange notes that item (6) of the new definition differs from the BX item (6) in that it cites the analogous rules of the Exchange, which have different rule numbers. Finally, the Exchange proposes to amend the definition of “SEC” so that it also includes the word “Commission.”

²¹ The Exchange notes that it proposes to establish procedures in Existing Rule 303 to govern the review by the Exchange Review Council of adverse membership and association determinations. The Exchange proposes to base these procedures upon those set forth BX Rules 1015 and 1016.

²² See Securities Exchange Act Release No. 72149 (May 12, 2014), 79 FR 28564 (May 16, 2014) (SR-BX-2014-024).

Existing Rule 206 concerns the consequences of a Member's or an Associated Person's failure to pay dues, fees and other charges. The Exchange proposes to delete this Existing Rule in favor of BX Rule 9553, which is more comprehensive than the Existing Rule and differs from it in several respects. Existing Rule 206 provides that instances of nonpayment shall be reported to the Exchange's Chief Executive Officer and President when they are 30 days past due, and that the Chief Executive Officer and President thereafter shall provide reasonable notice to the delinquent Member that continued non-payment will result in suspension of trading privileges. An Associated Person that fails to pay may be suspended from association with a Member. By contrast, BX Rule 9553 states that the Exchange's Regulation Department, within an unspecified period of time period after the onset of a delinquency, may issue a written notice to the delinquent Member or Associated Person that failure to comply within 21 days of service of the notice will result in suspension or cancellation of membership or suspension or bar of association with a Member, as applicable. BX Rule 9553 also provides for detailed provisions for serving such notice, a provision for requesting a hearing with respect to such a notice, a provision declaring the effectiveness of such notices (21 days after service) when no hearing is requested, and a means to request termination of a suspension, which may be granted for good cause shown.

Existing Rule 303 sets forth circumstances in which the Exchange may deny or condition approval of membership applications or applications to associate with Members. Existing Rule 303(c) also sets forth circumstances in which the Exchange may determine not to permit a Member or Associated Person from continuing their membership or association with a Member, including because they become subject to

statutory disqualification under the Act. Existing Rule 303(f) furthermore permits a Member or Associated Person that becomes subject to statutory disqualification under the Act to apply to the Exchange to continue as a Member or as an Associated Person, within 30 days of becoming subject to the statutory disqualification. Existing Rule 303(g) states that, subject to the summary suspension rules in Chapter 15, any applicant for membership or association with a Member whose application is denied or conditioned or who is not permitted to continue as a Member or Associated Person may appeal such determinations under Chapter 17 of the Existing Rules.

The Exchange proposes to modify Existing Rule 303(f) so that it refers to new and more robust procedures, set forth in the BX Rule 9520 series, by which a Member or an Associated Person may obtain relief from disqualification or ineligibility determinations (BX Rule 9522).

The Exchange also proposes to amend Existing Rule 303(g), which states that subject to Chapter 15, the BCC may review, in part, Exchange determinations to deny membership or association with a Member pursuant to Chapter 17 of the Existing Rules. The Exchange proposes to re-assign responsibility for these reviews from the BCC to the Exchange Review Council and replace the review process presently set forth in Chapter 17 of the Existing Rules with processes that are substantially the same as those set forth in BX Rules 1015 and 1016. Specifically, the proposed amendments to Exchange Rule 303(g) state that, subject to Chapter 90, the Exchange Review Council will have jurisdiction to review these decisions. Proposed Rule 303(g) states that anyone whose application for membership on the Exchange, association with an Exchange Member, or whose continuing membership or association is denied or conditioned by the Exchange's

Membership Department, may file a written request for review by the Exchange Review Council within 25 days after service of the Exchange's decision.²³ The request must state specifically why the applicant believes that the Membership Department's decision is inconsistent with the permissible bases for denial set forth in Rule 303, or otherwise should be set aside and state whether a hearing is requested.²⁴ The request will be heard by a Subcommittee appointed by the Exchange Review Council or the Review Subcommittee composed of two or more persons who are either current or past members of the Council or former Directors of the Exchange.²⁵ If a hearing is requested or directed, it must be held within 45 days after the request for review is filed with the Exchange or service of the notice by the Subcommittee.²⁶ Applicants and the Membership Department may be represented by counsel at the hearing and formal rules of evidence will not apply during the hearing.²⁷ The Subcommittee must present a recommended decision in writing to the Exchange Review Council within 60 days after the date of the hearing, and not later than seven days before the meeting of the Exchange

²³ See proposed Rule 303(g)(1). The Exchange notes that the deadline for filing petitions for BCC review of an Exchange action under Existing Rule 1701(a) is 30 days from the date of such action.

The Existing Rules pertaining to membership do not reference or define the terms "Membership Department" or "Department." As part of this proposal, the Exchange proposes to amend Rule 303(g) to specify that the Exchange's Membership Department – rather than simply the "Exchange" – makes determinations as to whether to grant, deny, or conditionally grant applications for membership or association or to continue as a Member or an Associated Person.

²⁴ See proposed Rule 303(g)(1).

²⁵ See proposed Rule 303(g)(4). The Exchange notes that Existing Rule 1702 provides for review by a BCC panel composed of two or more of its members.

²⁶ See proposed Rule 303(g)(6)(A).

²⁷ See proposed Rule 303(g)(6)(B) & (C). Unlike Existing Rule 1703, proposed Rule 303(g) does not provide for intervention in proceedings by interested non-parties.

Review Council at which the proceeding shall be considered.²⁸ The Exchange Review Council must issue a proposed written decision that affirms, modifies, or reverses the Membership Department's decision, or remands the proceedings with instructions and provide the proposed decision to the Exchange Board.²⁹ If the Exchange Board does not call the decision for review, it shall become final. If the Exchange Review Council does not serve its final written decision within the time period prescribed by Rule 303(g)(10)(C), then the Applicant may file a written request with the Exchange Board for the Board to direct the Exchange Review Council to issue its decision immediately or show good cause why it needs additional time to issue its decision.³⁰ Proposed Rule 303(h), which mirrors BX Rule 1016, grants the Exchange Board discretion, at the request of a Director, to review decisions of the Exchange Review Council.³¹

Existing Rule 307(b) requires Members to file with the Exchange and keep current their addresses at which notices may be served. The Exchange proposes to amend this Existing Rule to incorporate the language set forth in BX Rule 1160. Rather than merely requiring Members to provide the Exchange with their current address, the proposed amendment more broadly requires Members to report to the Exchange, through the FINRA Contact System, all of their contact information, including their mailing addresses, email addresses, facsimile numbers, and other information. It also requires members to update such contact information in the FINRA System within 30 days of any

²⁸ See proposed Rule 303(g)(9).

²⁹ See proposed Rule 303(g)(10)(A).

³⁰ See proposed Rule 303(g)(10)(D).

³¹ Unlike Existing Rule 1704, proposed Rule 303(h) does not authorize the applicant or the President of the Exchange to request that the Board review the decision of the Exchange Review Council.

changes thereto, and to generally verify that such information remains accurate within 17 business days after the end of each calendar year. This proposed amendment to the Existing Rule will ensure that the Exchange has available to it multiple means of contacting its Members, including for purposes of serving the notices specified in the BX Rule 9550 series by email or by facsimile. The Exchange proposes, in its introduction to Chapter 90, to state that cross references in the BX Rule 9000 Series to BX Rule 1160 should be read instead to refer to Exchange Rule 307(b), as modified herein.

To maintain consistency with the BX Rules, the Exchange also proposes to eliminate Existing Rule 307(d), which requires Members to maintain a current copy of the Exchange's governing documents and Rules in an accessible place and make them available for examination by customers, and to replace it with BX Rule 8110, which is materially equivalent.

Existing Rule 308 requires a Member to notify the Exchange upon its adoption of a plan of liquidation or dissolution. The Existing Rule also provides that upon receipt of such notice, the Member's trading privileges may be suspended in accordance with Chapter 15 of the Existing Rules. The Exchange proposes to replace this reference to Chapter 15 with a reference to BX Rule 9558. Again, no analogue to this proposal exists in the BX rules insofar as those rules do not expressly address suspensions for such reasons or reviews of suspension determinations. Nevertheless, the Exchange believes that the process set forth in BX Rule 9558 is most appropriate for reviewing suspension determinations in these circumstances given that they already apply in circumstances where a Member is experiencing extreme financial or operating difficulty such that the

Exchange determines that the Member cannot safely continue to do business on the Exchange.

The Supplementary Material to Existing Rule 306 concerns the Exchange's authority to waive the applicable qualification examination requirements and accept other standards as evidence of an applicant's qualifications for registration. The Exchange is amending this Rule to specify that such requests are handled pursuant to the BX Rule 9600 Series process. The BX Rule 9600 Series concerns the procedures for requesting exemptions, and the appeal of adverse decisions regarding an exemptive request. The Exchange notes that the proposed revisions will render the text of the Supplementary Material to Existing Rule 306 consistent with BX Rule 1070(d).

Existing Rule 720 concerns obvious and catastrophic errors. Existing Rule 720(k) currently references the OEP as the body responsible for reviewing determinations made by Options Exchange Officials pursuant to the Rule and it sets forth procedures to govern OEP review proceedings. In light of the fact that the OEP's responsibilities will be incorporated into those of the Exchange Review Council,³² the amendments to the Rule remove references to the OEP and replaces them with references to a panel of the Exchange Review Council. The amended Rule also includes language grafted from the BX Rules prescribing the composition of panels convened for purposes of these reviews.³³

Existing Rule 720A also provides for reviews by a "Review Panel" of decisions nullifying or adjusting transactions arising out of system disruptions or malfunctions. The Exchange proposes to eliminate the Review Panel in the Exchange's Rules and

³² See proposed Rule 100(a)(21A).

³³ See BX Options Rules Ch. V, Sec. 6(l).

transfer its responsibility to a panel of the Exchange Review Council. The new Rule also includes language grafted from the BX Rules prescribing the composition of Exchange Review Council panels convened for purposes of these reviews.³⁴

Existing Rule 804 permits a Primary Market Maker to apply to the Exchange to withdraw temporarily from its Primary Market Maker status in an options class. The Existing Rule does not presently authorize reviews of Exchange determinations to deny requests for temporary withdrawals or to impose conditions on the reentry of quotations. However, BX Rule 4619(f) does provide for such reviews. To provide consistency, the Exchange proposes to amend Existing Rule 804(f) to state that the Exchange Review Council will have authority conduct such reviews.

As discussed above, Chapter 16 of the Exchange's Rules incorporates by reference Chapter 16 of the ISE rules. However, Chapter 16 of the Exchange's Rules contains an introductory paragraph that references the incorporation by reference and provides instructions for cross-references. The Exchange proposes to delete the last line of this introductory paragraph, which specifies that a reference in the ISE Rule 1615 to Nasdaq ISE's contract with FINRA shall be read to refer to the Exchange's contract with FINRA. The Exchange proposes to delete this sentence because Nasdaq ISE is proposing to delete its Rule 1615, such that this sentence will no longer be necessary. The Exchange also proposes to change the title of Chapter 16 from "Discipline" to "Disciplinary Jurisdiction and Minor Rule Violation Fines" so that it conforms to the new

³⁴See id.

title of Chapter 16 of the Nasdaq ISE Rules and to the content of that Chapter that Nasdaq ISE proposes to revise.³⁵

Proposed Introductory Paragraphs to Chapters 80 and 90

The Exchange proposes to include introductory paragraphs to both Chapters 80 and 90 which state that they incorporate by reference the BX Rule 8000 and 9000 Series, respectively, and that such BX 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 BX Rule 8000 and 9000 Series to other BX rules should be read to refer instead to the Exchange Rules, and references to defined BX terms shall be read to refer to the Exchange-related meanings of those terms. For example, references in both the BX Rule 8000 and 9000 Series to the following defined terms shall be read to refer to the Exchange-specific meanings of those terms: "Exchange" or "Nasdaq BX" shall be read to refer to the Exchange; "Rule" or "BX Rule" shall be read to refer to the Exchange Rules; "Board" or "Exchange Board" shall be read to refer to the Exchange Board of Directors; "Member" shall be read to refer to an Exchange Member; "Associated Person" shall be read to refer to an Exchange Associated Person; "BX Regulatory Department" or "Regulation Department" shall be read to refer to the Exchange's Regulatory Department; "BX Regulation" shall be read to refer to Exchange Regulation; "Chief Regulatory Officer" shall be read to refer to the Chief Regulatory Officer of the Exchange; and "Equity Rule" shall be read to refer to an Exchange Rule.

³⁵ See SR-ISE-2018-59.

Additionally, the proposed introduction to Chapter 80 states that cross references in the BX Rule 8000 Series to the term “Rule 0120” shall be read to refer to Exchange Rule 100 and cross references in the BX Rule 8000 Series to “Rule 1015” shall be read to refer to Exchange Rule 303. Similarly, the proposed introduction to Chapter 90 states that cross-references in the BX Rule 9000 Series to the following terms shall be read to refer to the following Exchange Rules: “Rule 0120” shall be read to refer to Exchange Rule 100; “Rule 1013” shall be read to refer to Exchange Rules 302 and 307; “Rule 1070” shall be read to refer to the Supplementary Material to Exchange Rule 306; “Rule 1160” shall be read to refer to Exchange Rule 307(b); “Equity Rule 2110” shall be read to refer to Exchange Rule 400; “Equity Rule 2120” shall be read to refer to Exchange Rule 405; “Rule 2140” shall be read to refer to Exchange Rule 309; “Equity Rule 2150” shall be read to refer to Exchange Rules Chapter 6; “Rule 2170” shall be read to refer to Exchange Rule 403; “Rule 4110A” shall be read to refer to Exchange Rules Chapter 13; “Rule 4120A” shall be read to refer to Exchange Rules Chapter 13; “Rule 10000 Series” shall be read to refer to Exchange Rules Chapter 18; and “Chapter III, Section 16” shall be read to refer to Exchange Rule 403.

Finally, the introduction to Chapter 90 states that BX IM-9216 in the BX Rules shall not apply to the Exchange, its Members, Associated Persons, or other persons subject to the jurisdiction of the Exchange and that instead, references to BX IM-9216 shall be read to refer to Exchange Rule 1614(b). Similarly, the introduction states that the procedures set forth in BX Rule 9216(b) and 9143(e)(3), which govern the handling of violations of rules subject to the MRVP (“MRVP violations”) and the issuance of MRVP violation letters, shall also apply to the Exchange’s handling of other violations of

Rules listed in Rule 1614(b) that are not subject to the MRVP (“minor rule violations”) and the issuance of minor rule violation letters, except that the Exchange shall promptly report any final disciplinary action to the Commission, in accordance with SEC Rule 19d-1(c)(1). These proposed references are necessary to account for Nasdaq ISE’s proposed revisions to Chapter 16 of its rules, which will retain the Exchange’s existing authority to impose fines of up to \$2,500 for MRVP violations and up to \$5,000 for minor rule violations, as well as the Exchange’s existing fine schedule for such violations, which will be set forth in Rule 1614(b).

Conclusion

The changes proposed herein will allow the Exchange to harmonize its investigatory and disciplinary processes with the processes of BX, thus providing a uniform process for the investigation and discipline of Members and Associated Persons across all of the Nasdaq, Inc. exchanges, as administered by FINRA pursuant to Regulatory Services Agreements. Harmonizing the investigatory and disciplinary processes of all of the Nasdaq, Inc. exchanges will bring efficiency to FINRA’s administration of its responsibilities under the RSAs because the process it must follow are nearly identical, and are all based on the process that FINRA follows. Harmonized processes will bring consistency to investigations and adjudication of rule violations, and will reduce the number of disciplinary processes and requirements with which Members and Associated Persons, as well as their counsel, must be familiar.

The Exchange believes that the new investigatory and disciplinary processes are substantially similar to the existing 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 process will benefit all parties as it provides greater detail and specificity than the retired Rules, and that it is consequently more transparent.

The Exchange intends to announce the operative date of the new Rules at least 30 days in advance via a regulatory alert.³⁶ To facilitate an orderly transition from the Existing Rules to the new Rules, the Exchange is proposing to apply the Existing Rules to all Letters of Consent³⁷ that the Chief Regulatory Officer of the Exchange has approved and which are pending approval of the BCC prior to the operative date. The Exchange also will apply the Existing Rules to any matter for which, prior to the operative date, the Exchange has provided notice to a subject of its determination to impose an MRVP violation fine or a minor rule violation fine whereby the subject may yet or has contested the determination pursuant to Existing Rule 1614(a). In terms of formal disciplinary matters, any matter that has been approved for the issuance of a statement of charges³⁸ by the CRO will continue under the Existing Rules. Moreover, any appeal of a matter that is pending before an OEP pursuant to Existing Rule 720, a Review Panel pursuant to Existing Rule 720A, or the BCC pursuant to Existing Rule 303 will continue under the Existing Rules. As a consequence of this transition process, the Exchange will retain the

³⁶ The Exchange notes that the proposed changes will not become operative unless and until the Commission approves the Exchange's request, which it has filed pursuant to Section 36 of the Exchange Act and SEC Rule 0-12 thereunder, for an exemption from the rule filing requirements of Section 19(b) of the Exchange Act as to changes to Chapters 80 and 90 that are effected solely by virtue of a change to the BX Rule 8000 or 9000 Series.

³⁷ A "Letter of Consent" is a means by which the Exchange may consensually address a violation of its Rules without resort to the formal disciplinary process. See Existing Rule 1603.

³⁸ A "statement of charges" is formal disciplinary complaint. See Existing Rule 1604.

BCC, the OEP, the Review Panel, and the existing processes during the transition period until such time that there are no longer any matters proceeding under the Existing Rules. To facilitate this transition process, the Exchange will retain a transitional Rulebook that will contain the Exchange's Rules as they are at the time of 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 and there are no longer any Members, Associated Persons, or other persons subject to the existing disciplinary processes, the Exchange will remove the transitional Rulebook from its public rules website.

The Exchange furthermore notes that it expects the transition from the BCC to the Exchange Review Council to be smooth given that it expects to nominate the existing (and shared) membership of the BX, Nasdaq, and Phlx Review Councils to also become members of the Exchange Review Council.³⁹ The Exchange does not expect that any existing members of the BCC will be nominated to become members of the Exchange Review Council; however, the Exchange will ensure that, in advance of the operative day, the members of the Exchange Review Council will familiarize themselves with the Rules and procedures of the Exchange so that they will be prepared to fulfill their responsibilities.

³⁹ The Exchange anticipates that the members of the Exchange Review Council will serve in a manner that is consistent with their tenures on the Nasdaq, BX, and Phlx review councils. That is, to the extent that the tenure of a member of these other review councils is due to expire on a particular date, then the same expiration date will apply to that member's tenure on the Exchange Review Council. All terms for members on the Exchange Review Council will comply with Article VI, Section 4 of the proposed By-Laws.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,⁴⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴¹ 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange also believes that the proposal is consistent with Section 6(b)(6) of the Act,⁴² which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or the rules of the Exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

First, the Exchange's proposals are consistent with the Act to make miscellaneous changes to the Existing Rules to account for the adoption of the BX Rule 8000 and 9000 Series and the replacement of the BCC with the Exchange Review Council. For example, subject to Chapter 90, proposed changes to Rule 303 re-assign responsibility to the Exchange Review Council to review decisions of the Exchange's Membership Department to deny or condition applications for membership and association with Exchange Members and to deny or condition continuing membership or association. The proposal also establishes a new process by which the Exchange Review Council will

⁴⁰ 15 U.S.C. 78f(b).

⁴¹ 15 U.S.C. 78f(b)(5).

⁴² 15 U.S.C. 78f(b)(6).

adjudicate such reviews. The Exchange believes that these proposed changes to the Existing Rules are consistent with the Act because the new adjudicatory processes that the Exchange proposes to adopt in place of its existing processes are substantially similar to those that BX already utilizes. Moreover, the Exchange believes that the proposed processes will facilitate prompt, appropriate, and fair adjudications, consistent with the Act.

Second, the Exchange's proposals are consistent with the Act to make minor updates, corrections, and conforming amendments to the Exchange's Rules because they are necessary to ensure that the Exchange's cross-references and terminology remain current and accurate.

Third, the proposed rule change is necessary to ensure that the Exchange maintains a disciplinary process, in accordance with Section 6(b)(5) and (6) of the Act,⁴³ once Nasdaq ISE deletes its disciplinary rules from chapters 15-17 of the Nasdaq ISE rulebook, which the Exchange presently incorporates by reference. The proposed rule change will also ensure that going forward, the Exchange's disciplinary rules will continue to exist in harmony with those of Nasdaq ISE. As noted earlier, Nasdaq ISE is similarly proposing to incorporate by reference the BX Rule 8000 and 9000 Series into new chapters 80 and 90 of its rulebook as to well make similar conforming changes to its other rules.

The Exchange believes that harmonizing its investigative, disciplinary, and adjudicatory processes with those of BX will reduce the burden on Members and Associated Persons that are also members of BX, Nasdaq, Phlx, and/or FINRA. The

⁴³ 15 U.S.C. 78f(b)(5)-(6).

Exchange notes that all of its Members are also members of BX, Nasdaq, Phlx, and/or FINRA. BX, Nasdaq, Phlx, and FINRA already have in place investigative, disciplinary, and adjudicatory processes that are the same or similar to those that the Exchange proposes to incorporate by reference.

As discussed above, the Exchange believes that the proposed Rules will benefit all parties involved in the Exchange's disciplinary and adjudicatory processes as they will include greater detail and specificity than do the Existing Rules. The proposal will render the Exchange's investigatory, disciplinary, and adjudicatory processes more transparent than the Existing Rules.

The Exchange also believes that adopting an Exchange Review Council is consistent with the Act because the Council's mandate is to, among other things, ensure consistent and fair application of the Exchange rules pertaining to discipline of Members and Associated Persons. The Exchange Review Council will be a body appointed by the Exchange Board of Directors and composed of representatives of the securities industry as well as persons from outside the securities industry. The broad membership of the new Exchange Review Council will ensure that the decisions and guidance it provides will be fair and balanced. The Exchange Review Council will be similar in structure and function to the BX exchange review council. In addition to reviewing appeals of disciplinary actions, the Exchange Review Council will also have jurisdiction to review membership decisions (proposed Rule 303), and appeals regarding limitations placed on Members or their employees that are subject to a statutory disqualification (BX Rule 9524). Additionally, the Exchange Review Council may consider and make recommendations to the Board on policy and rule changes relating to business and sales

practices of Exchange Members and Associated Persons, and enforcement policies, including policies with respect to fines and other sanctions. Thus, the Exchange Review Council will provide the Exchange and market participants with a fair and impartial body overseeing disciplinary matters, as well as the rules and policies concerning the disciplinary process. For these reasons, the Exchange believes that adoption of the Exchange Review Council is consistent with the Act.

The Exchange believes that eliminating the BCC, the OEP (as provided for under Existing Rule 720), and the Review Panel (as provided for under Existing Rule 720A) is consistent with Sections 6(b)(5) and 6(b)(6) of the Act,⁴⁴ because the Exchange Review Council and the New Hearing Panels will assume the responsibilities of the BCC and the Panels. In particular, the functions of the current Hearing Panels of the BCC (“Current Hearing Panels”) – which include adjudicating disciplinary actions – will be handled by new Hearing Panels, which FINRA’s Office of Hearing Officers (“OHO”) shall convene (“New Hearing Panels”).⁴⁵ Going forward, the BCC’s (and the CRO’s) responsibility for approving settlements will be assumed by the Exchange Review Council and, in certain instances, FINRA’s Office of Disciplinary Affairs (the “ODA”).⁴⁶ The BCC’s responsibilities for hearing appeals of Exchange decisions on membership or association with a Member will be assumed by the Exchange Review Council. The responsibilities

⁴⁴ Id.

⁴⁵ The OHO is an office within FINRA that is independent of the FINRA enforcement function and not involved in investigating or litigating cases.

⁴⁶ Pursuant to BX Rule 9270, proposed settlements must be submitted to and accepted by the Exchange Review Council, except that proposed settlements involving an affiliate of the Exchange must be reviewed by the ODA. Like the OHO, the ODA is an office within FINRA that is independent of the FINRA enforcement function and not involved in investigating or litigating cases.

of the OEP and the Review Panel to hear appeals of Exchange determinations to nullify or adjust transactions that involve obvious errors or that result from system disruptions and malfunctions also will be assumed by the Exchange Review Council. The Exchange believes that the proposal will provide for the Exchange Review Council, the New Hearing Panels, and the ODA to execute the responsibilities of the BCC and the Panels in a manner that the Commission, within the context of the BX Rules, has already deemed to be consistent with the Act.⁴⁷ For example, the Exchange proposes to replace its existing process for handling appeals of membership decisions, as set forth in Existing Rule 303 and Chapter 17, with a process that BX already employs in BX Rules 1015 and 1016. Moreover, Exchange Members and Associated Persons will already be familiar with the proposed responsibilities and procedures of the Exchange Review Council, the New Hearing Panels, and the ODA from their experiences as members of BX and other SROs whose rules provide for similar assignments of responsibilities and processes.

The Exchange believes that its proposal furthers the objectives of Section 6(b)(7) of the Act⁴⁸ in that it is designed to provide a fair procedure for the disciplining of Members and Associated Persons, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a Member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a Member thereof. Specifically, the Exchange believes that the proposed investigatory, disciplinary, and adjudicatory

⁴⁷ See Securities Exchange Act Release No. 34-59154 (Dec. 23, 2008), 73 FR 80468 (Dec. 31, 2008) (SR-BSE-2008-048).

⁴⁸ 15 U.S.C. 78f(b)(7).

processes are consistent with Section 6(b)(7) of the Act⁴⁹ because they are based on the existing processes used by BX. The BX processes are well-established as consistent with the Act.⁵⁰

Last, the Exchange believes that its proposal to phase-in the implementation of the new investigatory, disciplinary, and adjudicatory processes is consistent with Section 6(b)(7)⁵¹ of the Act because both the current and proposed processes are consistent with the Act, providing fair procedures for investigating, disciplining, and adjudicating the rights of Members and Associated Persons. The Exchange is proposing to provide advanced notice of the implementation date of the new processes, and will apply the new processes to new matters that are initiated on or after that implementation date. Any matters initiated prior to the implementation date will be completed using the current processes. As a consequence, the Exchange will delete the applicable portions of Chapters 15-17 from the Exchange's Rulebook, but it will maintain a transitional Rulebook on the Exchange's public rules website (<http://http://nasdaqgemx.cchwallstreet.com/>), which will contain the Exchange Rules as they are at the time of filing this rule change.⁵² These transitional Rules will apply exclusively to the matters initiated prior to the implementation date. Upon conclusion of the last 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

⁴⁹ Id.

⁵⁰ See n.46, supra.

⁵¹ 15 U.S.C. 78f(b)(7).

⁵² The posting of the transitional rules on the public rules website will make it clear what disciplinary proceedings are governed by the transitional rules (i.e., matters initiated prior to the implementation date).

fair, orderly, and transparent manner.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change is not intended to address competitive issues, but it should reduce burdens on Members, and Associated Persons. Specifically and as described in detail above, the Exchange believes that this change will bring efficiency and consistency in application of the investigative, disciplinary, and adjudicatory processes, thereby reducing the burden on Members and Associated Persons who are also members of BX and the other Nasdaq, Inc. Exchanges.

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

Written comments were neither solicited nor 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)⁵³ of the Act and Rule 19b-4(f)(6) thereunder⁵⁴ in that it effects a change 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

⁵³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵⁴ 17 CFR 240.19b-4(f)(6).

Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that, because the proposed rule change provides investigative, disciplinary, and adjudicatory processes that are well-established as fair and designed to protect investors and the public interest, and because the proposed changes are based on the current Rules of BX, the proposed rule change does not affect the protection of investors or the public interest. Moreover, because the substantially similar processes are used by BX, Nasdaq, Phlx, the New York Stock Exchange LLC (“NYSE”),⁵⁵ NYSE American LLC (“NYSE American”),⁵⁶ and FINRA, the Exchange does not believe that the changes will be impactful to competition whatsoever but will reduce the burden of complying with different disciplinary processes experienced by Members that are also members of FINRA, BX, Nasdaq, Phlx, and/or other exchanges. All Exchange members are also members of BX, Nasdaq, Phlx, and/or FINRA, and as a consequence, they are already subject to very similar processes to those that the Exchange proposes to adopt.⁵⁷ To the extent that Members are not necessarily familiar with the new processes, the Exchange is providing a transition period in applying the

⁵⁵ In 2013, NYSE adopted rules governing investigations, the discipline of its members, the sanctions that it may impose upon them, cease and desist authority, and other procedural rules, which were modeled on the rules of FINRA. See Securities Exchange Act Release No. 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013)(SR-NYSE-2013-02).

⁵⁶ In 2016, NYSE American (formerly known as NYSE MKT LLC) adopted rules concerning investigations, discipline, sanctions, as well as other procedural rules, modeled on the rules of NYSE. See Securities Exchange Act Release No. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016)(SR-NYSEMKT-2016-30).

⁵⁷ Moreover, a large number of market participants that are members of FINRA, NYSE and/or NYSE American and that are not Members of the Exchange are familiar with the process. Thus, the process is widely used in the U.S. securities markets.

proposed new investigatory, disciplinary, and adjudicatory processes, which will allow such Members to become familiar with these processes. The transition period will allow those subject to the Exchange's investigatory, disciplinary, and adjudicative processes to assess and manage the proposed changes by providing a clear demarcation between what matters would be subject to the current processes and the new processes. As such, the proposed transition to the new processes will be fair and transparent, and should be considered non-controversial by Members and Associated Persons.

The Exchange also believes that the proposed changes to the Exchange's By-Laws and Existing Rules are non-controversial. The BX Rule 8000 and 9000 Series have already been deemed to be consistent with the Act,⁵⁸ and thus incorporation of these Rules will not affect the protection of investors or the public interest, nor does it raise new or novel issues. Proposed changes to the Existing Rules that will assign responsibility to the Exchange Review Council to review determinations as to clearly erroneous transactions (Existing Rule 720), erroneous trades due to system disruptions and malfunctions (Existing Rule 720A), membership determinations (Existing Rule 303), and denials of excused withdrawals of quotations by primary market makers (Existing Rule 804) are noncontroversial because these assignments of responsibility will be familiar to Members who are also BX members and/or members of the other Nasdaq, Inc. Exchanges whose respective exchange review councils have similar responsibilities. To the extent that the Exchange proposes additional changes to the Existing Rules, these changes are noncontroversial as they merely seek to conform the Existing Rules, cross-references, and definitions to the BX Rules and processes.

⁵⁸ See n.46, supra.

The Exchange Review Council, like the BX review council, will function as an appellate body charged with the review of disciplinary, statutory disqualification and membership proceedings. Consequently, members of the Exchange Review Council will be called upon to preside over matters, apply Exchange Rules and render decisions that represent disposition of the matter for the parties. Because the role of the Exchange Review Council is based on the role of the BX review council, adoption of the Exchange Review Council does not raise new or novel issues.

The Exchange also notes that it expects to nominate the existing (and shared) membership of the BX, Nasdaq, and Phlx review councils to become members of the Exchange Review Council and, as such, the Exchange expects that the members of the Exchange Review Council will be familiar with their responsibilities and with the investigatory, disciplinary, and adjudicatory procedures set forth in the BX Rules. The Exchange does not expect that any existing members of the BCC will be nominated to become members of the Exchange Review Council; however, the Exchange will ensure that, in advance of the operative day, the members of the Exchange Review Council will familiarize themselves with the Rules and procedures of the Exchange so that they will be prepared to fulfill their responsibilities.

Moreover, the Exchange believes that the proposed elimination of the BCC, the Obvious Error Panel (Existing Rule 720), and the Review Panel (Existing Rule 720A) is noncontroversial because all of the functions of the BCC and those two Panels will be handled by the Exchange Review Council, the ODA, or the New Hearing Panels. Although the processes for these other bodies for handling these functions may differ from the current processes in some respects, as described above, the new processes will

provide for the former responsibilities of the BCC and the Panels to be handled in a manner that mirrors the BX rules, which in turn are well-established and recognized as providing a fair and effective system of disciplining members and for protecting investors and the public interest.

The Exchange notes that the proposed rule change is necessary to ensure that the Exchange maintains a disciplinary process, in accordance with Section 6(b)(5) and (6) of the Act,⁵⁹ once Nasdaq ISE deletes its disciplinary rules from chapters 15-17 of the Nasdaq ISE rulebook, which the Exchange presently incorporates by reference. The proposed rule change will also ensure that going forward, the Exchange's disciplinary rules will continue to exist in harmony with those of Nasdaq ISE.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4.⁶⁰

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

⁵⁹ 15 U.S.C. 78f(b)(5)-(6).

⁶⁰ 17 CFR 240.19b-4(f)(6)(iii).

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

The proposed rule change is based on Article VII of the BX By-Laws and the BX Code of Procedure under the BX Rule 8000 and 9000 Series. The proposed rule change also is substantially similar to SR-ISE-2018-59.

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

Exhibit 1. Notice of proposed rule change for publication in the Federal Register.

Exhibit 5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-GEMX-2018-24)

July __, 2018

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

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 12, 2018, Nasdaq GEMX, LLC (“GEMX” 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 align its existing investigatory and disciplinary processes and related rules with the investigatory and disciplinary processes and associated rules of Nasdaq BX, Inc. (“BX”).

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqgemx.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 proposes to adopt new investigatory, disciplinary, and adjudicatory processes that are substantially the same as those of its sister exchange, BX. Specifically, the Exchange proposes to establish new Chapters 80 and 90 of its Rules³ and then incorporate by reference into those Chapters the BX Rule 8000 and 9000 Series,⁴ which set forth and govern the BX investigatory, disciplinary, and adjudicative processes.⁵ The Exchange also proposes to amend its By-Laws to establish a new body to review disciplinary and certain other matters (the "Exchange Review Council") that is similar to

³ The Exchange proposes to add Chapters 23-79 and Chapters 81-89 to its Rules, but reserve such Chapters for future use.

⁴ Citation herein to rules of the proposed Chapters 80 and 90 will be preceded by the term "BX Rule" to reflect incorporation of the BX Rule 8000 and 9000 Series. References to current rules will be preceded by the term "Existing Rule."

⁵ The Exchange proposes to separately request an exemption from the rule filing requirements of Section 19(b) of the Act for changes to Chapters 80 and 90 to the extent such rules are effected solely by virtue of a change to the BX Rule 8000 and 9000 Series.

the exchange review council that BX utilizes for such purposes.⁶ These proposals, when coupled with certain changes to the Exchange's other Rules, including Rules that govern appeals of the Exchange's membership and other decisions, will render the Exchange's investigative, disciplinary, and adjudicatory processes substantially the same as those, not only of BX, but also of other Nasdaq, Inc. exchanges.⁷ The proposal change will also further harmonize the work that the Financial Industry Regulatory Authority ("FINRA") conducts for all these exchanges.

The Exchange's current investigatory, disciplinary, and adjudicatory processes are set forth in Chapters 15-17 of its Rules. Chapters 15-17 of the Exchange's Rules, in turn, incorporate by reference the investigatory, disciplinary, and adjudicatory processes of Nasdaq ISE, LLC ("Nasdaq ISE") that are set forth in the corresponding chapters of the Nasdaq ISE rulebook. As part of a parallel Nasdaq ISE filing that also proposes to adopt the investigatory, disciplinary, and adjudicatory processes and rules of BX (and incorporate them by reference into new chapters 80 and 90 of the Nasdaq ISE rules), Nasdaq ISE proposes to eliminate chapters 15 and 17 of its rules, and to largely eliminate chapter 16.⁸ These proposed changes to ISE chapters 15-17 will apply automatically to

⁶ As discussed below, the Exchange Review Council will assume responsibilities that presently reside with the Business Conduct Committee (the "BCC"). The Exchange also proposes to eliminate the BCC.

⁷ The Exchange notes that the BX Rule 8000 and 9000 Series are substantially similar to corresponding rules of The Nasdaq Stock Market, LLC ("Nasdaq") and Nasdaq PHLX, LLC ("Phlx"). Moreover, the Exchange notes that Nasdaq ISE, LLC and Nasdaq MRX, LLC will propose similar changes to their respective investigatory, disciplinary, and adjudicatory processes and associated rules that will render them substantially similar to those of BX.

⁸ See SR-ISE-2018-59. Nasdaq ISE proposes to retain Rule 1600, which sets forth the general jurisdiction of the Exchange with respect to disciplinary matters. It

Chapters 15-17 of the Exchange's Rules. Accordingly, reference should be made to SR-ISE-2018-59 for a detailed explanation of the proposed changes to Chapters 15-17 and the purposes of those changes. Likewise, reference should be made to SR-ISE-2018-59 for a detailed discussion of the BX Rule 8000 and 9000 Series, which will largely replace Chapters 15-17 for both Nasdaq ISE and the Exchange. Lastly, reference should be made to SR-ISE-2018-59 for a discussion of proposed changes to certain other ISE rules that the Exchange also incorporates by reference and that are relevant to the Exchange's adoption of its new investigatory, disciplinary, and adjudicatory processes.⁹

The following is a discussion of proposed changes that are specific to the Rules of the Exchange and that are not otherwise addressed in or accomplished by the corresponding Nasdaq ISE filing. These changes include: (1) the elimination of the Exchange's BCC and its replacement with the Exchange Review Council; and (2) changes to Exchange Rules that are necessary to accommodate the new investigatory, disciplinary, and adjudicatory processes and rules and to harmonize those processes and rules with those of BX.

Elimination of the Business Conduct Committee and Establishment of the Exchange Review Council

The Exchange presently utilizes the BCC to help it enforce its Rules with respect to its members ("Members") and persons associated with its members ("Associated

also proposes to retain Existing Rule 1614(a), which sets forth its authority to impose fines of up to \$2,500 for violations of the Exchange's Minor Rule Violation Plan ("MRVP") and up to \$5,000 for minor rule violations (other than those subject to an MRVP). Nasdaq ISE also proposes to retain Existing Rule 1614(d) (to be renumbered as Rule 1614(b)), which sets forth the Exchange's schedule of MRVP violations and minor rule violations and their associated fines.

⁹ The proposed changes involve Nasdaq ISE Rules 410, 413(b)(1), 1000, 1406, and 1800.

Persons”). The BCC is a committee, established by the Board of Directors,¹⁰ whose enforcement jurisdiction includes the following: (1) ordering investigations of possible Rule violations; (2) considering letters of consent in expedited disciplinary actions; (3) making its members available to serve on Hearing Panels that adjudicate formal disciplinary proceedings; (4) imposing sanctions on Members or Associated Persons in disciplinary proceedings; (5) reviewing Exchange actions involving minor rule violations; (6) appointing panels to conduct hearings and reviews of Exchange actions that deny membership or Member association privileges; and (7) generally overseeing all matters relating to the conduct of disciplinary hearings and hearings for review of Exchange decisions, and providing the Exchange with advice for improving disciplinary procedures.¹¹

The Exchange proposes to retire the BCC¹² and to amend its By-Laws to establish in its place the Exchange Review Council. The amended By-Laws that the Exchange proposes to adopt in this regard are substantially the same as those that BX adopted to establish the BX Exchange Review Council.¹³ Thus, the By-Laws provide for the

¹⁰ See Resolution of the Board of Directors of the ISE Gemini Delegating Authority, dated July 30, 2013.

¹¹ See GEMX Business Conduct Committee Charter, as amended, May 1, 2003.

¹² In a February 4, 2016 resolution, the Exchange Board delegated its authority to the President of the Exchange to establish a BCC to, among other things, conduct disciplinary hearings under Chapter 16 of the Existing Rules and conduct other hearings and reviews as set forth in Chapter 17 of the Existing Rules. On February 1, 2017, the Board passed a resolution that both revoked the President’s authority to establish a BCC and authorized the establishment of an Exchange Review Council, effective upon the date when this rule filing becomes operative.

¹³ The BX by-laws differ from the proposed Exchange By-Laws because the BX by-laws have a different numbering convention from the Exchange’s By-Laws and,

Exchange Review Council to have the same general structure and powers as does the BX Exchange Review Council.¹⁴ The proposed By-Laws will authorize the Exchange Review Council to adjudicate disciplinary actions and approve settlements thereof as well as make recommendations to the Board on certain policy matters and rule changes. Such policy functions of the Exchange Review Council render its jurisdiction broader than that of the BCC.

Specifically, proposed Article VI, Section 1 of the proposed By-Laws provides that the Exchange Review Council may be authorized to act for the Board with respect to: an appeal or review of a disciplinary proceeding, a statutory disqualification proceeding, or a membership proceeding; a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; the exercise of exemptive authority; and such other proceedings or actions as may be authorized by the Exchange

in various places, the BX by-laws refer to a Listing and Hearing Review Council, which has no analogue with respect to the Exchange.

¹⁴ The BX by-laws do not describe in detail the process of the proceedings over which the BX Exchange Review Council presides. However, Section 7.9 of the BX by-laws state that a quorum of three BX Exchange Review Council members is necessary to adjudicate appeals of determinations made under BX Rules 4612 (appeal of denial of registration as an Equities Market Maker), 4619 (review of denial of an excused withdrawal of Equities Market Maker quotation), 4620 (appeal of denial of reinstatement of Equities Market Maker that accidentally withdraws), 11890 (appeal of clearly erroneous transaction determination), and BX Options Chapter V, Section 6 (appeal of obvious error determination). See BX by-laws, Article VII, Section 9. The Exchange's Rules do not have analogues to BX Rules 4612, 4620, and 11890 and, as such, the corresponding provision of the Exchange's proposed By-Laws (Article VII, Section 9) provides only that a quorum of three Exchange Review Council members is necessary for it to adjudicate appeals involving determinations made under Rules 720 (appeal of obvious error determination), 720A (appeal of determinations of erroneous trades due to system malfunctions and disruptions), and 804 (review of denial of an excused withdrawal of market maker quotation).

rules. The Exchange Review Council also may consider and make recommendations to the Board on policy and rule changes relating to business and sales practices of Exchange Members and Associated Persons and enforcement policies, including policies with respect to fines and other sanctions. It may advise the Board on regulatory proposals and industry initiatives relating to quotations, execution, trade reporting, and trading practices and it may advise the Board in its administration of programs and systems for the surveillance and enforcement of rules governing Exchange Members' conduct and trading activities in the Exchange.

Proposed Article VI, Section 2 states that the Exchange Review Council would consist of no fewer than eight and no more than 12 members. The Exchange Review Council must include a number of Member Representative members¹⁵ that is equal to at least 20% of the total number of members of the Exchange Review Council. The number of Non-Industry members,¹⁶ including at least three Public members,¹⁷ shall equal or exceed the sum of the number of Industry members¹⁸ and Member Representative members. As soon as practicable, following the appointment of members, the Exchange Review Council shall elect a Chair from among its members. The Chair shall have such powers and duties as may be determined from time to time by the Exchange Review Council. The Board, by resolution adopted by a majority of Directors then in office, may remove the Chair from such position at any time for refusal, failure, neglect, or inability

¹⁵ See n.20, infra.

¹⁶ See id.

¹⁷ See id.

¹⁸ See id.

to discharge the duties of Chair. No more than 50% of the members of the Exchange Review Council shall be engaged in market making activity or employed by an Exchange Member firm whose revenues from market making activity exceed 10 percent of its total revenues.

Proposed Article VI, Section 3 requires the Exchange's Secretary to collect from each nominee for the office of member of the Exchange Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry, Member Representative, Non-Industry, or Public member. The Secretary must also certify to the Nominating Committee or the Member Nominating Committee¹⁹ (as applicable) each nominee's qualifications and classification. After appointment to the Exchange Review Council, each member must update such information at least annually and upon request of the Exchange's Secretary, and must report immediately to the Secretary any change in such information.

Proposed Article VI, Section 4 provides that Exchange Review Council members shall serve three-year terms, or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason by death, resignation, removal, disqualification, or other reason. Members are term limited out after two consecutive terms. Proposed Article VI, Section 5 sets forth the procedures for resigning as a member of the Exchange Review Council and provides that an Exchange Review Council member may resign at any time upon written notice to the Board. Under proposed

¹⁹ The terms "Nominating Committee" and "Member Nominating Committee" are defined in Exchange By-Laws, Article I.

Article VI, Section 6, any member of the Exchange Review Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.

Under proposed Article VI, Section 7, an Exchange Review Council member would be disqualified and removed immediately upon a determination by the Board, by a majority vote, (a) that the member no longer satisfies the classification (Industry, Member Representative, Non-Industry, or Public) for which the member was elected; and (b) that the member's continued service as such would violate the compositional requirements of the Exchange Review Council set forth in Article VI, Section 2. If the term of office of an Exchange Review Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the Exchange Review Council shall not be deemed to be in violation of Article VI, Section 2 by virtue of such vacancy. Proposed Article VI, Section 8 contains provisions for the filling of vacancies on the Exchange Review Council and states that if a position on the Exchange Review Council becomes vacant, the Nominating Committee or the Member Nominating Committee (as applicable) shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Article VI, Section 2 to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

Proposed Article VI, Section 9 provides that a quorum of the Exchange Review Council will consist of a majority of its members, including not less than 50% of its Non-Industry members and one Member Representative member. Proposed Article VI,

Section 10 contains provisions related to the meetings of the Exchange Review Council.

Under proposed Article VI, Section 11, the Exchange Review Council is required to establish a Review Subcommittee to determine whether disciplinary and membership proceedings decisions should be called for review by the Exchange Review Council under the disciplinary and membership rules to be proposed for the Exchange. The Review Subcommittee shall be composed of no fewer than two and no more than four members of the Exchange Review Council. The number of Non-Industry members of the Review Subcommittee shall equal or exceed the sum of the number of Industry members and Member Representative members of the Review Subcommittee, and the subcommittee must include at least one Member Representative member. At all meetings of the Review Subcommittee, a quorum for the transaction of business shall consist of not less than 50 percent of the members of the Review Subcommittee, including not less than 50 percent of the Non-Industry members of the Review Subcommittee and one Member Representative member of the Review Subcommittee.²⁰

²⁰ In addition to adding Article VI to the By-Laws, the Exchange proposes to make changes to other articles of the By-Laws to accommodate the existence of the Exchange Review Council. For example, the Exchange proposes to amend Article I, which defines the terms that the Exchange uses in the By-Laws, to provide that the terms “Industry member,” “Member representative member,” “Non-industry member,” and “Public member” mean, in part, members of the Exchange Review Council. The Exchange also proposes to amend Article III, Section 6, to add a new subsection (a) that directs the Board to appoint an Exchange Review Council, as provided in Article VI. It also proposes to amend Article III, Section 6(b) to state that the Nominating Committee and the Member Nominating Committee of the Board shall have responsibility for nominating members of the Exchange Review Council. Finally, the Exchange proposes to amend Sections 7 and 8 of Article III, which deal with Director conflicts-of-interest/self-interested transactions and Director compensation, respectively, to ensure that the restrictions and benefits that these provisions provide apply to Exchange Review Council members.

The BX Rules implement the foregoing responsibilities of the Exchange Review Council by establishing various procedures to govern its reviews. As the Exchange describes in further detail below, the Exchange proposes to transfer to the Exchange Review Council (or panels thereof) certain responsibilities currently vested in other Exchange committees or the Board. For example, pursuant to Existing Rule 720, an Obvious Error Panel (“OEP”) is presently responsible for reviewing determinations regarding obvious and catastrophic errors. Pursuant to Existing Rule 720A, a “Review Panel” is responsible for reviewing determinations to nullify or adjust transactions that arise from system disruptions and malfunctions. The Exchange is proposing to eliminate the OEP and the Review Panel and to transfer their responsibilities to a panel of the new Exchange Review Council, which corresponds to the practice of BX. Subject to Chapter 90, the Exchange also proposes to transfer responsibility to the Exchange Review Council to review denials or conditions imposed upon those that seek to become or remain a Member of the Exchange or become or remain associated with a Member of the Exchange, as set forth in Existing Rule 303.²¹ In addition, the Exchange proposes to amend Existing Rule 804 to provide for the Exchange Review Council to review determinations regarding temporary withdrawals of quotations, which are not reviewable under the Existing Rules. The Exchange notes that BX vests in its Exchange Review Council responsibility for reviewing similar types of matters.²²

²¹ The Exchange notes that it proposes to establish procedures in Existing Rule 303 to govern the review by the Exchange Review Council of adverse membership and association determinations. The Exchange proposes to base these procedures upon those set forth BX Rules 1015 and 1016.

²² See Securities Exchange Act Release No. 72149 (May 12, 2014), 79 FR 28564 (May 16, 2014) (SR-BX-2014-024).

Other Conforming Rule Changes

The Exchange proposes to amend or delete certain other Existing Rules, which are either not needed, duplicated elsewhere, or reference the deleted Existing Rules. Below is a description of the specific changes the Exchange proposes to make to its Existing Rules.

Existing Rule 100 provides definitions for purposes of the Existing Rules. The Exchange is proposing to amend this Existing Rule to include definitions for several new terms. For example, the proposed Rules will define the new term “Code of Procedure” as the procedural rules contained in Chapter 90. The Exchange also defines the new term “Exchange Review Council,” which is largely copied from BX Rule 0120(m). The Exchange notes that item (6) of the new definition differs from the BX item (6) in that it cites the analogous rules of the Exchange, which have different rule numbers. Finally, the Exchange proposes to amend the definition of “SEC” so that it also includes the word “Commission.”

Existing Rule 206 concerns the consequences of a Member’s or an Associated Person’s failure to pay dues, fees and other charges. The Exchange proposes to delete this Existing Rule in favor of BX Rule 9553, which is more comprehensive than the Existing Rule and differs from it in several respects. Existing Rule 206 provides that instances of nonpayment shall be reported to the Exchange’s Chief Executive Officer and President when they are 30 days past due, and that the Chief Executive Officer and President thereafter shall provide reasonable notice to the delinquent Member that continued non-payment will result in suspension of trading privileges. An Associated Person that fails to pay may be suspended from association with a Member. By contrast,

BX Rule 9553 states that the Exchange's Regulation Department, within an unspecified period of time period after the onset of a delinquency, may issue a written notice to the delinquent Member or Associated Person that failure to comply within 21 days of service of the notice will result in suspension or cancellation of membership or suspension or bar of association with a Member, as applicable. BX Rule 9553 also provides for detailed provisions for serving such notice, a provision for requesting a hearing with respect to such a notice, a provision declaring the effectiveness of such notices (21 days after service) when no hearing is requested, and a means to request termination of a suspension, which may be granted for good cause shown.

Existing Rule 303 sets forth circumstances in which the Exchange may deny or condition approval of membership applications or applications to associate with Members. Existing Rule 303(c) also sets forth circumstances in which the Exchange may determine not to permit a Member or Associated Person from continuing their membership or association with a Member, including because they become subject to statutory disqualification under the Act. Existing Rule 303(f) furthermore permits a Member or Associated Person that becomes subject to statutory disqualification under the Act to apply to the Exchange to continue as a Member or as an Associated Person, within 30 days of becoming subject to the statutory disqualification. Existing Rule 303(g) states that, subject to the summary suspension rules in Chapter 15, any applicant for membership or association with a Member whose application is denied or conditioned or who is not permitted to continue as a Member or Associated Person may appeal such determinations under Chapter 17 of the Existing Rules.

The Exchange proposes to modify Existing Rule 303(f) so that it refers to new and more robust procedures, set forth in the BX Rule 9520 series, by which a Member or an Associated Person may obtain relief from disqualification or ineligibility determinations (BX Rule 9522).

The Exchange also proposes to amend Existing Rule 303(g), which states that subject to Chapter 15, the BCC may review, in part, Exchange determinations to deny membership or association with a Member pursuant to Chapter 17 of the Existing Rules. The Exchange proposes to re-assign responsibility for these reviews from the BCC to the Exchange Review Council and replace the review process presently set forth in Chapter 17 of the Existing Rules with processes that are substantially the same as those set forth in BX Rules 1015 and 1016. Specifically, the proposed amendments to Exchange Rule 303(g) state that, subject to Chapter 90, the Exchange Review Council will have jurisdiction to review these decisions. Proposed Rule 303(g) states that anyone whose application for membership on the Exchange, association with an Exchange Member, or whose continuing membership or association is denied or conditioned by the Exchange's Membership Department, may file a written request for review by the Exchange Review Council within 25 days after service of the Exchange's decision.²³ The request must state

²³ See proposed Rule 303(g)(1). The Exchange notes that the deadline for filing petitions for BCC review of an Exchange action under Existing Rule 1701(a) is 30 days from the date of such action.

The Existing Rules pertaining to membership do not reference or define the terms "Membership Department" or "Department." As part of this proposal, the Exchange proposes to amend Rule 303(g) to specify that the Exchange's Membership Department – rather than simply the "Exchange" – makes determinations as to whether to grant, deny, or conditionally grant applications for membership or association or to continue as a Member or an Associated Person.

specifically why the applicant believes that the Membership Department's decision is inconsistent with the permissible bases for denial set forth in Rule 303, or otherwise should be set aside and state whether a hearing is requested.²⁴ The request will be heard by a Subcommittee appointed by the Exchange Review Council or the Review Subcommittee composed of two or more persons who are either current or past members of the Council or former Directors of the Exchange.²⁵ If a hearing is requested or directed, it must be held within 45 days after the request for review is filed with the Exchange or service of the notice by the Subcommittee.²⁶ Applicants and the Membership Department may be represented by counsel at the hearing and formal rules of evidence will not apply during the hearing.²⁷ The Subcommittee must present a recommended decision in writing to the Exchange Review Council within 60 days after the date of the hearing, and not later than seven days before the meeting of the Exchange Review Council at which the proceeding shall be considered.²⁸ The Exchange Review Council must issue a proposed written decision that affirms, modifies, or reverses the Membership Department's decision, or remands the proceedings with instructions and

²⁴ See proposed Rule 303(g)(1).

²⁵ See proposed Rule 303(g)(4). The Exchange notes that Existing Rule 1702 provides for review by a BCC panel composed of two or more of its members.

²⁶ See proposed Rule 303(g)(6)(A).

²⁷ See proposed Rule 303(g)(6)(B) & (C). Unlike Existing Rule 1703, proposed Rule 303(g) does not provide for intervention in proceedings by interested non-parties.

²⁸ See proposed Rule 303(g)(9).

provide the proposed decision to the Exchange Board.²⁹ If the Exchange Board does not call the decision for review, it shall become final. If the Exchange Review Council does not serve its final written decision within the time period prescribed by Rule 303(g)(10)(C), then the Applicant may file a written request with the Exchange Board for the Board to direct the Exchange Review Council to issue its decision immediately or show good cause why it needs additional time to issue its decision.³⁰ Proposed Rule 303(h), which mirrors BX Rule 1016, grants the Exchange Board discretion, at the request of a Director, to review decisions of the Exchange Review Council.³¹

Existing Rule 307(b) requires Members to file with the Exchange and keep current their addresses at which notices may be served. The Exchange proposes to amend this Existing Rule to incorporate the language set forth in BX Rule 1160. Rather than merely requiring Members to provide the Exchange with their current address, the proposed amendment more broadly requires Members to report to the Exchange, through the FINRA Contact System, all of their contact information, including their mailing addresses, email addresses, facsimile numbers, and other information. It also requires members to update such contact information in the FINRA System within 30 days of any changes thereto, and to generally verify that such information remains accurate within 17 business days after the end of each calendar year. This proposed amendment to the Existing Rule will ensure that the Exchange has available to it multiple means of

²⁹ See proposed Rule 303(g)(10)(A).

³⁰ See proposed Rule 303(g)(10)(D).

³¹ Unlike Existing Rule 1704, proposed Rule 303(h) does not authorize the applicant or the President of the Exchange to request that the Board review the decision of the Exchange Review Council.

contacting its Members, including for purposes of serving the notices specified in the BX Rule 9550 series by email or by facsimile. The Exchange proposes, in its introduction to Chapter 90, to state that cross references in the BX Rule 9000 Series to BX Rule 1160 should be read instead to refer to Exchange Rule 307(b), as modified herein.

To maintain consistency with the BX Rules, the Exchange also proposes to eliminate Existing Rule 307(d), which requires Members to maintain a current copy of the Exchange's governing documents and Rules in an accessible place and make them available for examination by customers, and to replace it with BX Rule 8110, which is materially equivalent.

Existing Rule 308 requires a Member to notify the Exchange upon its adoption of a plan of liquidation or dissolution. The Existing Rule also provides that upon receipt of such notice, the Member's trading privileges may be suspended in accordance with Chapter 15 of the Existing Rules. The Exchange proposes to replace this reference to Chapter 15 with a reference to BX Rule 9558. Again, no analogue to this proposal exists in the BX rules insofar as those rules do not expressly address suspensions for such reasons or reviews of suspension determinations. Nevertheless, the Exchange believes that the process set forth in BX Rule 9558 is most appropriate for reviewing suspension determinations in these circumstances given that they already apply in circumstances where a Member is experiencing extreme financial or operating difficulty such that the Exchange determines that the Member cannot safely continue to do business on the Exchange.

The Supplementary Material to Existing Rule 306 concerns the Exchange's authority to waive the applicable qualification examination requirements and accept other

standards as evidence of an applicant's qualifications for registration. The Exchange is amending this Rule to specify that such requests are handled pursuant to the BX Rule 9600 Series process. The BX Rule 9600 Series concerns the procedures for requesting exemptions, and the appeal of adverse decisions regarding an exemptive request. The Exchange notes that the proposed revisions will render the text of the Supplementary Material to Existing Rule 306 consistent with BX Rule 1070(d).

Existing Rule 720 concerns obvious and catastrophic errors. Existing Rule 720(k) currently references the OEP as the body responsible for reviewing determinations made by Options Exchange Officials pursuant to the Rule and it sets forth procedures to govern OEP review proceedings. In light of the fact that the OEP's responsibilities will be incorporated into those of the Exchange Review Council,³² the amendments to the Rule remove references to the OEP and replaces them with references to a panel of the Exchange Review Council. The amended Rule also includes language grafted from the BX Rules prescribing the composition of panels convened for purposes of these reviews.³³

Existing Rule 720A also provides for reviews by a "Review Panel" of decisions nullifying or adjusting transactions arising out of system disruptions or malfunctions. The Exchange proposes to eliminate the Review Panel in the Exchange's Rules and transfer its responsibility to a panel of the Exchange Review Council. The new Rule also

³² See proposed Rule 100(a)(21A).

³³ See BX Options Rules Ch. V, Sec. 6(l).

includes language grafted from the BX Rules prescribing the composition of Exchange Review Council panels convened for purposes of these reviews.³⁴

Existing Rule 804 permits a Primary Market Maker to apply to the Exchange to withdraw temporarily from its Primary Market Maker status in an options class. The Existing Rule does not presently authorize reviews of Exchange determinations to deny requests for temporary withdrawals or to impose conditions on the reentry of quotations. However, BX Rule 4619(f) does provide for such reviews. To provide consistency, the Exchange proposes to amend Existing Rule 804(f) to state that the Exchange Review Council will have authority conduct such reviews.

As discussed above, Chapter 16 of the Exchange's Rules incorporates by reference Chapter 16 of the ISE rules. However, Chapter 16 of the Exchange's Rules contains an introductory paragraph that references the incorporation by reference and provides instructions for cross-references. The Exchange proposes to delete the last line of this introductory paragraph, which specifies that a reference in the ISE Rule 1615 to Nasdaq ISE's contract with FINRA shall be read to refer to the Exchange's contract with FINRA. The Exchange proposes to delete this sentence because Nasdaq ISE is proposing to delete its Rule 1615, such that this sentence will no longer be necessary. The Exchange also proposes to change the title of Chapter 16 from "Discipline" to "Disciplinary Jurisdiction and Minor Rule Violation Fines" so that it conforms to the new title of Chapter 16 of the Nasdaq ISE Rules and to the content of that Chapter that Nasdaq ISE proposes to revise.³⁵

³⁴ See id.

³⁵ See SR-ISE-2018-59.

Proposed Introductory Paragraphs to Chapters 80 and 90

The Exchange proposes to include introductory paragraphs to both Chapters 80 and 90 which state that they incorporate by reference the BX Rule 8000 and 9000 Series, respectively, and that such BX 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 BX Rule 8000 and 9000 Series to other BX rules should be read to refer instead to the Exchange Rules, and references to defined BX terms shall be read to refer to the Exchange-related meanings of those terms. For example, references in both the BX Rule 8000 and 9000 Series to the following defined terms shall be read to refer to the Exchange-specific meanings of those terms: "Exchange" or "Nasdaq BX" shall be read to refer to the Exchange; "Rule" or "BX Rule" shall be read to refer to the Exchange Rules; "Board" or "Exchange Board" shall be read to refer to the Exchange Board of Directors; "Member" shall be read to refer to an Exchange Member; "Associated Person" shall be read to refer to an Exchange Associated Person; "BX Regulatory Department" or "Regulation Department" shall be read to refer to the Exchange's Regulatory Department; "BX Regulation" shall be read to refer to Exchange Regulation; "Chief Regulatory Officer" shall be read to refer to the Chief Regulatory Officer of the Exchange; and "Equity Rule" shall be read to refer to an Exchange Rule.

Additionally, the proposed introduction to Chapter 80 states that cross references in the BX Rule 8000 Series to the term "Rule 0120" shall be read to refer to Exchange Rule 100 and cross references in the BX Rule 8000 Series to "Rule 1015" shall be read to refer to Exchange Rule 303. Similarly, the proposed introduction to Chapter 90 states

that cross-references in the BX Rule 9000 Series to the following terms shall be read to refer to the following Exchange Rules: “Rule 0120” shall be read to refer to Exchange Rule 100; “Rule 1013” shall be read to refer to Exchange Rules 302 and 307; “Rule 1070” shall be read to refer to the Supplementary Material to Exchange Rule 306; “Rule 1160” shall be read to refer to Exchange Rule 307(b); “Equity Rule 2110” shall be read to refer to Exchange Rule 400; “Equity Rule 2120” shall be read to refer to Exchange Rule 405; “Rule 2140” shall be read to refer to Exchange Rule 309; “Equity Rule 2150” shall be read to refer to Exchange Rules Chapter 6; “Rule 2170” shall be read to refer to Exchange Rule 403; “Rule 4110A” shall be read to refer to Exchange Rules Chapter 13; “Rule 4120A” shall be read to refer to Exchange Rules Chapter 13; “Rule 10000 Series” shall be read to refer to Exchange Rules Chapter 18; and “Chapter III, Section 16” shall be read to refer to Exchange Rule 403.

Finally, the introduction to Chapter 90 states that BX IM-9216 in the BX Rules shall not apply to the Exchange, its Members, Associated Persons, or other persons subject to the jurisdiction of the Exchange and that instead, references to BX IM-9216 shall be read to refer to Exchange Rule 1614(b). Similarly, the introduction states that the procedures set forth in BX Rule 9216(b) and 9143(e)(3), which govern the handling of violations of rules subject to the MRVP (“MRVP violations”) and the issuance of MRVP violation letters, shall also apply to the Exchange’s handling of other violations of Rules listed in Rule 1614(b) that are not subject to the MRVP (“minor rule violations”) and the issuance of minor rule violation letters, except that the Exchange shall promptly report any final disciplinary action to the Commission, in accordance with SEC Rule 19d-1(c)(1). These proposed references are necessary to account for Nasdaq ISE’s proposed

revisions to Chapter 16 of its rules, which will retain the Exchange's existing authority to impose fines of up to \$2,500 for MRVP violations and up to \$5,000 for minor rule violations, as well as the Exchange's existing fine schedule for such violations, which will be set forth in Rule 1614(b).

Conclusion

The changes proposed herein will allow the Exchange to harmonize its investigatory and disciplinary processes with the processes of BX, thus providing a uniform process for the investigation and discipline of Members and Associated Persons across all of the Nasdaq, Inc. exchanges, as administered by FINRA pursuant to Regulatory Services Agreements. Harmonizing the investigatory and disciplinary processes of all of the Nasdaq, Inc. exchanges will bring efficiency to FINRA's administration of its responsibilities under the RSAs because the process it must follow are nearly identical, and are all based on the process that FINRA follows. Harmonized processes will bring consistency to investigations and adjudication of rule violations, and will reduce the number of disciplinary processes and requirements with which Members and Associated Persons, as well as their counsel, must be familiar.

The Exchange believes that the new investigatory and disciplinary processes are substantially similar to the existing 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 process will benefit all parties as it provides greater detail and specificity than the retired Rules, and that it is consequently more transparent.

The Exchange intends to announce the operative date of the new Rules at least 30 days in advance via a regulatory alert.³⁶ To facilitate an orderly transition from the Existing Rules to the new Rules, the Exchange is proposing to apply the Existing Rules to all Letters of Consent³⁷ that the Chief Regulatory Officer of the Exchange has approved and which are pending approval of the BCC prior to the operative date. The Exchange also will apply the Existing Rules to any matter for which, prior to the operative date, the Exchange has provided notice to a subject of its determination to impose an MRVP violation fine or a minor rule violation fine whereby the subject may yet or has contested the determination pursuant to Existing Rule 1614(a). In terms of formal disciplinary matters, any matter that has been approved for the issuance of a statement of charges³⁸ by the CRO will continue under the Existing Rules. Moreover, any appeal of a matter that is pending before an OEP pursuant to Existing Rule 720, a Review Panel pursuant to Existing Rule 720A, or the BCC pursuant to Existing Rule 303 will continue under the Existing Rules. As a consequence of this transition process, the Exchange will retain the BCC, the OEP, the Review Panel, and the existing processes during the transition period until such time that there are no longer any matters proceeding under the Existing Rules.

³⁶ The Exchange notes that the proposed changes will not become operative unless and until the Commission approves the Exchange's request, which it has filed pursuant to Section 36 of the Exchange Act and SEC Rule 0-12 thereunder, for an exemption from the rule filing requirements of Section 19(b) of the Exchange Act as to changes to Chapters 80 and 90 that are effected solely by virtue of a change to the BX Rule 8000 or 9000 Series.

³⁷ A "Letter of Consent" is a means by which the Exchange may consensually address a violation of its Rules without resort to the formal disciplinary process. See Existing Rule 1603.

³⁸ A "statement of charges" is formal disciplinary complaint. See Existing Rule 1604.

To facilitate this transition process, the Exchange will retain a transitional Rulebook that will contain the Exchange's Rules as they are at the time of 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 and there are no longer any Members, Associated Persons, or other persons subject to the existing disciplinary processes, the Exchange will remove the transitional Rulebook from its public rules website.

The Exchange furthermore notes that it expects the transition from the BCC to the Exchange Review Council to be smooth given that it expects to nominate the existing (and shared) membership of the BX, Nasdaq, and Phlx Review Councils to also become members of the Exchange Review Council.³⁹ The Exchange does not expect that any existing members of the BCC will be nominated to become members of the Exchange Review Council; however, the Exchange will ensure that, in advance of the operative day, the members of the Exchange Review Council will familiarize themselves with the Rules and procedures of the Exchange so that they will be prepared to fulfill their responsibilities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the

³⁹ The Exchange anticipates that the members of the Exchange Review Council will serve in a manner that is consistent with their tenures on the Nasdaq, BX, and Phlx review councils. That is, to the extent that the tenure of a member of these other review councils is due to expire on a particular date, then the same expiration date will apply to that member's tenure on the Exchange Review Council. All terms for members on the Exchange Review Council will comply with Article VI, Section 4 of the proposed By-Laws.

Act,⁴⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁴¹ 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange also believes that the proposal is consistent with Section 6(b)(6) of the Act,⁴² which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or the rules of the Exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

First, the Exchange's proposals are consistent with the Act to make miscellaneous changes to the Existing Rules to account for the adoption of the BX Rule 8000 and 9000 Series and the replacement of the BCC with the Exchange Review Council. For example, subject to Chapter 90, proposed changes to Rule 303 re-assign responsibility to the Exchange Review Council to review decisions of the Exchange's Membership Department to deny or condition applications for membership and association with Exchange Members and to deny or condition continuing membership or association. The proposal also establishes a new process by which the Exchange Review Council will adjudicate such reviews. The Exchange believes that these proposed changes to the

⁴⁰ 15 U.S.C. 78f(b).

⁴¹ 15 U.S.C. 78f(b)(5).

⁴² 15 U.S.C. 78f(b)(6).

Existing Rules are consistent with the Act because the new adjudicatory processes that the Exchange proposes to adopt in place of its existing processes are substantially similar to those that BX already utilizes. Moreover, the Exchange believes that the proposed processes will facilitate prompt, appropriate, and fair adjudications, consistent with the Act.

Second, the Exchange's proposals are consistent with the Act to make minor updates, corrections, and conforming amendments to the Exchange's Rules because they are necessary to ensure that the Exchange's cross-references and terminology remain current and accurate.

Third, the proposed rule change is necessary to ensure that the Exchange maintains a disciplinary process, in accordance with Section 6(b)(5) and (6) of the Act,⁴³ once Nasdaq ISE deletes its disciplinary rules from chapters 15-17 of the Nasdaq ISE rulebook, which the Exchange presently incorporates by reference. The proposed rule change will also ensure that going forward, the Exchange's disciplinary rules will continue to exist in harmony with those of Nasdaq ISE. As noted earlier, Nasdaq ISE is similarly proposing to incorporate by reference the BX Rule 8000 and 9000 Series into new chapters 80 and 90 of its rulebook as to well make similar conforming changes to its other rules.

The Exchange believes that harmonizing its investigative, disciplinary, and adjudicatory processes with those of BX will reduce the burden on Members and Associated Persons that are also members of BX, Nasdaq, Phlx, and/or FINRA. The Exchange notes that all of its Members are also members of BX, Nasdaq, Phlx, and/or

⁴³ 15 U.S.C. 78f(b)(5)-(6).

FINRA, BX, Nasdaq, Phlx, and FINRA already have in place investigative, disciplinary, and adjudicatory processes that are the same or similar to those that the Exchange proposes to incorporate by reference.

As discussed above, the Exchange believes that the proposed Rules will benefit all parties involved in the Exchange's disciplinary and adjudicatory processes as they will include greater detail and specificity than do the Existing Rules. The proposal will render the Exchange's investigatory, disciplinary, and adjudicatory processes more transparent than the Existing Rules.

The Exchange also believes that adopting an Exchange Review Council is consistent with the Act because the Council's mandate is to, among other things, ensure consistent and fair application of the Exchange rules pertaining to discipline of Members and Associated Persons. The Exchange Review Council will be a body appointed by the Exchange Board of Directors and composed of representatives of the securities industry as well as persons from outside the securities industry. The broad membership of the new Exchange Review Council will ensure that the decisions and guidance it provides will be fair and balanced. The Exchange Review Council will be similar in structure and function to the BX exchange review council. In addition to reviewing appeals of disciplinary actions, the Exchange Review Council will also have jurisdiction to review membership decisions (proposed Rule 303), and appeals regarding limitations placed on Members or their employees that are subject to a statutory disqualification (BX Rule 9524). Additionally, the Exchange Review Council may consider and make recommendations to the Board on policy and rule changes relating to business and sales practices of Exchange Members and Associated Persons, and enforcement policies,

including policies with respect to fines and other sanctions. Thus, the Exchange Review Council will provide the Exchange and market participants with a fair and impartial body overseeing disciplinary matters, as well as the rules and policies concerning the disciplinary process. For these reasons, the Exchange believes that adoption of the Exchange Review Council is consistent with the Act.

The Exchange believes that eliminating the BCC, the OEP (as provided for under Existing Rule 720), and the Review Panel (as provided for under Existing Rule 720A) is consistent with Sections 6(b)(5) and 6(b)(6) of the Act,⁴⁴ because the Exchange Review Council and the New Hearing Panels will assume the responsibilities of the BCC and the Panels. In particular, the functions of the current Hearing Panels of the BCC (“Current Hearing Panels”) – which include adjudicating disciplinary actions – will be handled by new Hearing Panels, which FINRA’s Office of Hearing Officers (“OHO”) shall convene (“New Hearing Panels”).⁴⁵ Going forward, the BCC’s (and the CRO’s) responsibility for approving settlements will be assumed by the Exchange Review Council and, in certain instances, FINRA’s Office of Disciplinary Affairs (the “ODA”).⁴⁶ The BCC’s responsibilities for hearing appeals of Exchange decisions on membership or association with a Member will be assumed by the Exchange Review Council. The responsibilities

⁴⁴ Id.

⁴⁵ The OHO is an office within FINRA that is independent of the FINRA enforcement function and not involved in investigating or litigating cases.

⁴⁶ Pursuant to BX Rule 9270, proposed settlements must be submitted to and accepted by the Exchange Review Council, except that proposed settlements involving an affiliate of the Exchange must be reviewed by the ODA. Like the OHO, the ODA is an office within FINRA that is independent of the FINRA enforcement function and not involved in investigating or litigating cases.

of the OEP and the Review Panel to hear appeals of Exchange determinations to nullify or adjust transactions that involve obvious errors or that result from system disruptions and malfunctions also will be assumed by the Exchange Review Council. The Exchange believes that the proposal will provide for the Exchange Review Council, the New Hearing Panels, and the ODA to execute the responsibilities of the BCC and the Panels in a manner that the Commission, within the context of the BX Rules, has already deemed to be consistent with the Act.⁴⁷ For example, the Exchange proposes to replace its existing process for handling appeals of membership decisions, as set forth in Existing Rule 303 and Chapter 17, with a process that BX already employs in BX Rules 1015 and 1016. Moreover, Exchange Members and Associated Persons will already be familiar with the proposed responsibilities and procedures of the Exchange Review Council, the New Hearing Panels, and the ODA from their experiences as members of BX and other SROs whose rules provide for similar assignments of responsibilities and processes.

The Exchange believes that its proposal furthers the objectives of Section 6(b)(7) of the Act⁴⁸ in that it is designed to provide a fair procedure for the disciplining of Members and Associated Persons, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a Member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a Member thereof. Specifically, the Exchange believes that the proposed investigatory, disciplinary, and adjudicatory

⁴⁷ See Securities Exchange Act Release No. 34-59154 (Dec. 23, 2008), 73 FR 80468 (Dec. 31, 2008) (SR-BSE-2008-048).

⁴⁸ 15 U.S.C. 78f(b)(7).

processes are consistent with Section 6(b)(7) of the Act⁴⁹ because they are based on the existing processes used by BX. The BX processes are well-established as consistent with the Act.⁵⁰

Last, the Exchange believes that its proposal to phase-in the implementation of the new investigatory, disciplinary, and adjudicatory processes is consistent with Section 6(b)(7)⁵¹ of the Act because both the current and proposed processes are consistent with the Act, providing fair procedures for investigating, disciplining, and adjudicating the rights of Members and Associated Persons. The Exchange is proposing to provide advanced notice of the implementation date of the new processes, and will apply the new processes to new matters that are initiated on or after that implementation date. Any matters initiated prior to the implementation date will be completed using the current processes. As a consequence, the Exchange will delete the applicable portions of Chapters 15-17 from the Exchange's Rulebook, but it will maintain a transitional Rulebook on the Exchange's public rules website (<http://http://nasdaqgemx.cchwallstreet.com/>), which will contain the Exchange Rules as they are at the time of filing this rule change.⁵² These transitional Rules will apply exclusively to the matters initiated prior to the implementation date. Upon conclusion of the last matter to which the transitional rules apply, the Exchange will remove the defunct

⁴⁹ Id.

⁵⁰ See n.46, supra.

⁵¹ 15 U.S.C. 78f(b)(7).

⁵² The posting of the transitional rules on the public rules website will make it clear what disciplinary proceedings are governed by the transitional rules (i.e., matters initiated prior to the implementation date).

transitional rules from its public rules website. Thus, the transition will be conducted in a fair, orderly, and transparent manner.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change is not intended to address competitive issues, but it should reduce burdens on Members, and Associated Persons. Specifically and as described in detail above, the Exchange believes that this change will bring efficiency and consistency in application of the investigative, disciplinary, and adjudicatory processes, thereby reducing the burden on Members and Associated Persons who are also members of BX and the other Nasdaq, Inc. 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 Act⁵³ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁵⁴

⁵³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁵⁴ 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

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

IV. Solicitation of Comments

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

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-GEMX-2018-24 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-GEMX-2018-24. 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

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.

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-GEMX-2018-24 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.⁵⁵

Eduardo A. Aleman
Assistant Secretary

⁵⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are bracketed.

BY-LAWS OF NASDAQ GEMX, LLC

* * * * *

Article I DEFINITIONS

When used in these By-Laws, unless the context otherwise requires, the terms set forth below shall have the following meanings:

(a) - (m) No change

(n) "Industry member" means an Exchange Review Council member or a member of any committee appointed by the Board who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20 percent or more of the professional revenues received by the committee member or 20 percent or more of the gross revenues received by the committee member's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Company or any affiliate thereof or to FINRA (or any predecessor) or has had any such relationship or provided any such services at any time within the prior three years.

(o) – (r) No change.

(s) "Member Representative member" means an Exchange Review Council member or a member of any other committee appointed by the Board who has been elected or appointed after having been nominated by the Member Nominating Committee pursuant to these By-Laws.

(t) – (w) No change.

(x) "Non-Industry member" means an Exchange Review Council member or a member of any other committee appointed by the Board who is (i) a Public member; (ii) an officer or employee of an issuer of securities listed on the national securities exchange operated by the Company; or (iii) any other individual who would not be an Industry member.

(y) – (z) No change.

(aa) "Public member" means an Exchange Review Council member or a member of any other committee appointed by the Board who has no material business relationship with a broker or dealer, the Company or its affiliates, or FINRA.

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Article III BOARD OF DIRECTORS

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Section 6. Committees Not Composed Solely of Directors

(a) The Board shall appoint an Exchange Review Council as provided in Article VI of the By-Laws[Reserved].

(b) The Board shall appoint a Nominating Committee and a Member Nominating Committee. The Member Nominating Committee shall nominate candidates for each Member Representative Director position on the Board that is to be elected by Exchange Members or the Sole LLC Member under the terms of the LLC Agreement and these By-Laws, and shall nominate candidates for appointment by the Board for each vacant or new position on [any]the Exchange Review Council or any other committee that is to be filled with a Member Representative member under the terms of these By-Laws. The Nominating Committee shall nominate candidates for all other vacant or new Director positions on the Board, and candidates for all other vacant or new positions on the Exchange Review Council.

(i) – (v) No change.

(c) No change.

Section 7. Conflicts of Interest; Contracts and Transactions Involving Directors

(a) A Director or a committee member, including a member of the Exchange Review Council or any other committee, shall not directly or indirectly participate in any adjudication of the interests of any party if that Director or [committee]Exchange Review Council member or other committee member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case, the Director or [committee]Exchange Review Council member or other committee member shall recuse himself or herself or shall be disqualified.

(b) No change.

Section 8. Compensation of Board, Council, and Committee Members

The Board may provide for reasonable compensation of the Chair of the Board, the Directors, Exchange Review Council members, and the [committee]members of other committees. The Board may also provide for reimbursement of reasonable expenses incurred by such persons in connection with the business of the Company.

* * * * *

Article VI EXCHANGE REVIEW COUNCIL[RESERVED.]

Section 1. Appointment and Authority

The Board shall appoint an Exchange Review Council. The Exchange Review Council may be authorized to act for the Board in a manner consistent with these By-Laws and the Rules with respect to an appeal or review of a disciplinary proceeding, a statutory disqualification proceeding, or a membership proceeding; a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; the exercise of exemptive authority; and such other proceedings or actions as may be authorized by the Rules. The Exchange Review Council also may consider and make recommendations to the Board on policy and rule changes relating to business and sales practices of Exchange Members and associated persons and enforcement policies, including policies with respect to fines and other sanctions, may advise the Board on regulatory proposals and industry initiatives relating to quotations, execution, trade reporting, and trading practices and may advise the Board in its administration of programs and systems for the surveillance and enforcement of rules governing Exchange Members' conduct and trading activities in the national securities exchange operated by the Company. The Board may delegate such other powers and duties to the Exchange Review Council as the Board deems appropriate.

Section 2. Number of Members and Qualifications

The Exchange Review Council shall consist of no fewer than 8 and no more than 12 members. The Exchange Review Council shall include a number of Member Representative members that is equal to at least 20 percent of the total number of members of the Exchange Review Council. The number of Non-Industry members, including at least three Public members, shall equal or exceed the sum of the number of Industry members and Member Representative members. As soon as practicable following the appointment of members, the Exchange Review Council shall elect a Chair from among its members. The Chair shall have such powers and duties as may be determined from time to time by the Exchange Review Council. The Board, by resolution adopted by a majority of Directors then in office, may remove the Chair from such position at any time for refusal, failure, neglect, or inability to discharge the duties of Chair. No more than 50 percent of the members of the Exchange Review Council shall be engaged in market making activity or employed by an Exchange Member firm whose revenues from market making activity exceed 10 percent of its total revenues.

Section 3. Nomination Process

The Secretary of the Company shall collect from each nominee for the office of member of the Exchange Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry, Member Representative, Non-Industry, or Public member, and the Secretary shall certify to the Nominating Committee or the Member Nominating Committee (as applicable) each nominee's qualifications and classification. After appointment to the Exchange Review Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such information.

Section 4. Term of Office

(a) Except as otherwise provided in this Article, each Exchange Review Council member shall hold office for a term of three years or until a successor is duly appointed and qualified, except in the event of earlier termination from office by reason of death, resignation, removal, disqualification, or other reason.

(b) The Exchange Review Council shall be divided into three classes. The term of office of those of the first class shall expire one year after the date of their appointment, the term of office of those of the second class shall expire two years after the date of their appointment, and the term of office of those of the third class shall expire three years after the date of their appointment. After the expiration of the term of office of those in the first class, members shall be appointed for terms of three years to replace those whose terms expire.

(c) No member may serve more than two consecutive terms, except that if a member is appointed to fill a term of less than one year, such member may serve up to two consecutive three-year terms following the expiration of such member's initial term.

Section 5. Resignation

A member of the Exchange Review Council may resign at any time upon written notice to the Board. Any such resignation shall take effect at the time specified therein, or if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

Section 6. Removal

Any or all of the members of the Exchange Review Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.

Section 7. Disqualification

Notwithstanding Article VI, Section 4, the term of office of an Exchange Review Council member shall terminate immediately upon a determination by the Board, by a majority vote, (a) that the member no longer satisfies the classification (Industry, Member Representative, Non-Industry, or Public) for which the member was elected; and (b) that the member's continued service as such would violate the compositional requirements of the Exchange Review Council set forth in Article VI, Section 2. If the term of office of an Exchange Review Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the Exchange Review Council shall not be deemed to be in violation of Article VI, Section 2 by virtue of such vacancy.

Section 8. Filling of Vacancies

If a position on the Exchange Review Council becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the Nominating Committee or the Member Nominating Committee (as applicable) shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Article VI, Section 2 to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

Section 9. Quorum and Voting

At all meetings of the Exchange Review Council, a quorum for the transaction of business shall consist of a majority of the Exchange Review Council, including not less than 50 percent of the Non-Industry members of the Exchange Review Council and at

least one Member Representative member of the Exchange Review Council; provided, however, that a quorum for the transaction of business with regard to an appeal of proceedings involving Exchange Rules 720, 720A, and 804 shall consist of three members of the Exchange Review Council. In the absence of a quorum, a majority of the members present may adjourn the meeting until a quorum is present.

Section 10. Meetings

The members of the Exchange Review Council may participate in a meeting through the use of a conference telephone or other communications equipment by means of which all persons participating in the meeting may hear one another, and such participation in a meeting shall constitute presence in person at such meeting for all purposes.

Section 11. Review Subcommittee

The Exchange Review Council shall appoint a Review Subcommittee to determine whether disciplinary and membership proceedings decisions should be called for review by the Exchange Review Council under the Rules and to perform any other function authorized by the Rules. The Review Subcommittee shall be composed of no fewer than two and no more than four members of the Exchange Review Council. The number of Non-Industry members of the Review Subcommittee shall equal or exceed the sum of the number of Industry members and Member Representative members of the Review Subcommittee, and the Review Subcommittee shall include at least one Member Representative member. At all meetings of the Review Subcommittee, a quorum for the transaction of business shall consist of not less than 50 percent of the members of the Review Subcommittee, including not less than 50 percent of the Non-Industry members of the Review Subcommittee and one Member Representative member of the Review Subcommittee.

* * * * *

Nasdaq GEMX Rules

1. Definitions

Rule 100. Definitions

(a) The following terms, when used in these Rules, shall have the meanings specified in this Chapter 1, unless the context indicates otherwise. Any terms defined in the Limited Liability Company Agreement (the "LLC Agreement") or the By-Laws of Nasdaq GEMX, LLC (the "By-Laws") and not otherwise defined in this Chapter shall have the meaning assigned in the LLC Agreement or the By-Laws.

(a) – (e) No change.

(f) If a Member or person associated with a Member that becomes subject to a statutory disqualification under the Exchange Act wants to continue as a Member of the Exchange or in association with a Member, the Member or associated person must[, within thirty (30) days of becoming subject to a statutory disqualification,] submit an application to the Exchange seeking to continue as a Member or in association with a Member notwithstanding the statutory disqualification, as set forth in Rule 9522. Failure to timely file such an application is a factor that may be taken into consideration by the Exchange in making determinations pursuant to paragraph (e) of this Rule.

(g) Review by the Exchange Review Council

Subject to Chapter 90[15 (Summary Suspension)] of the Rules, any applicant whose application to become a Member is denied [Membership]or conditioned by the Exchange's Membership Department ("the Department"), or any person whose association with a Member is denied or conditioned by the Department pursuant to paragraph (b) or (c) of this Rule, and any Member or person associated with a Member who is not permitted by the Department pursuant to paragraph (e) of this Rule to continue as a Member or to be associated with a Member or which continuance as a Member or association is conditioned by the Department, may appeal the [Exchange's] Department's decision [under Chapter 17 (Hearings and Review) of the Rules.] to the Exchange Review Council, as set forth below.

(1) Initiation of Review by Applicant

Within 25 days after service of a decision under Rule 303, an applicant ("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 303, 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.

(2) Transmission of Documents

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

(A) 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

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

(3) 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.

(4) 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.

(5) 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.

(6) Hearing

(A) 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.

(B) Counsel

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

(C) 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.

(D) 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.

(7) 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.

(8) Abandonment of Request for Review

If an Applicant fails to specify the grounds for its request for review under Rule 303 (g)(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.

(9) 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 subparagraph (g)(6), and not later than seven days before the meeting of the Exchange Review Council at which the membership proceeding shall be considered.

(10) Decision

(A) 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 (g)(10)(B).

(B) Contents

The decision shall include:

- (i) a description of the Department's decision, including its rationale;
- (ii) a description of the principal issues raised in the review;
- (iii) a summary of the evidence on each issue; and
- (iv) a statement whether the Department's decision is affirmed, modified, or reversed, and a rationale therefor that references the bases for denial in Rule 303.

(C) 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 303(h). 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.

(D) Failure to Issue Decision

If the Exchange Review Council fails to serve its final written decision within the time prescribed in subparagraph (g)(10)(C), 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.

(h) Discretionary Review by the Exchange Board

(1) 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 subparagraph (h)(2).

(2) 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.

(3) Review At Next Meeting

If a Director calls a membership proceeding for review within the time prescribed in subparagraph (h)(2), 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.

(4) 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 303(g)(10)(B).

(5) 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.

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Rule 306. Registration Requirements

No change.

Supplementary Material to Rule 306

.01 - .04 No change.

.05 Pursuant to the Rule 9600 Series, [T]the Exchange may, in exceptional cases and where good cause is shown, waive the applicable qualification examination and accept other standards asevidence of an applicant's qualifications for registration. Advanced age or physical infirmity will not individually of themselves constitute sufficient grounds to waive a qualification examination. Experience in fields ancillary to

the securities business may constitute sufficient grounds to waive a qualification examination.

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Rule 307. Documents Required of Applicants and Members

(a) No change.

(b) [Every Member shall file with the Exchange and keep current an address where notices may be served.]Every Member shall report to the Exchange all contact information required by the Exchange via the FINRA Contact system. Each Member shall update its required contact information promptly, but in any event not later than 30 days following any change in such information. In addition, each Member shall review and, if necessary, update its required contact information, via such means as the Exchange may specify, within 17 business days after the end of each calendar year. Each member shall comply with any Exchange request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by Exchange staff.

(c) No change.

(d) Reserved.[Members shall keep and maintain a current copy of the By-Laws and Rules in a readily accessible place. Members that are approved to do business with the public pursuant to Rule 600 shall make the By-Laws and Rules available for examination by customers.]

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Rule 308. Dissolution and Liquidation of Members

Every Member shall promptly notify the Exchange in writing upon the adoption of a plan of liquidation or dissolution. Upon receipt of such notice, the Member's trading privileges may be suspended in accordance with Rule 9558[Chapter 15 (Summary Suspension) of these Rules].

* * * * *

Rule 720. Nullification and Adjustment of Options Transactions including Obvious Errors

The Exchange may nullify a transaction or adjust the execution price of a transaction in accordance with this Rule. However, the determination as to whether a trade was executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. A trade may be nullified or adjusted on the

terms that all parties to a particular transaction agree, provided, however, that such agreement to nullify or adjust must be conveyed to the Exchange in a manner prescribed by the Exchange prior to 8:30 a.m. Eastern Time on the first trading day following the execution. It is considered conduct inconsistent with just and equitable principles of trade for any Member to use the mutual adjustment process to circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

(a) – (j) No change.

(k) *Appeals*. If a Member affected by a determination made under this Rule so requests within the time permitted below, [the Obvious Error Panel (“Obvious Error Panel”)]an Exchange Review Council panel will review decisions made by the Official under this Rule, including whether an obvious error occurred and whether the correct determination was made.

[(1) The Obvious Error Panel will be comprised of representatives from four (4) Members. Two (2) of the representatives must be directly engaged in market making (any such representative, a “MM Representative”) and the other two (2) representatives must be employed by an Electronic Access Member (any such representative, a “Non-MM Representative”). To qualify as a representative of a Member other than a Member engaged in market making, a person must:

(A) be employed by a Member whose revenues from options market making activity do not exceed ten percent (10%) of its total revenues; or

(B) have as his or her primary responsibility the handling of Public Customer orders or supervisory responsibility over persons with such responsibility, and not have any responsibilities with respect to market making activities.]

[(2)](1) An Exchange Review Council panel will be comprised minimally of representatives of one (1) member engaged in market making and two (2) industry representatives not engaged in market making. At no time should a review panel have more than 50% members engaged in market making. [The Exchange shall designate at least ten (10) MM Representatives and at least ten (10) Non-MM Representatives to be called upon to serve on the Obvious Error Panel as needed. In no case shall an Obvious Error Panel include a person affiliated with a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate on an Obvious Error Panel on an equally frequent basis.]

[(3)](2) A request for review on appeal must be

made in writing via e-mail or other electronic means specified from time to time by the Exchange in a circular distributed to Members within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The [Obvious Error Panel]Exchange Review Council panel shall review the facts and render a decision as soon as practicable, but generally on the same trading day as the execution(s) under review. On requests for appeal received after 3:00 p.m. Eastern Time, a decision will be rendered as soon as practicable, but in no case later than the trading day following the date of the execution under review.

[(4)](3) The [Obvious Error Panel]Exchange Review Council panel may overturn or modify an action taken by the Official under this Rule. All determinations by the [Obvious Error Panel]Exchange Review Council panel shall constitute final action by the Exchange on the matter at issue.

[(5)](4) If the [Obvious Error Panel]Exchange Review Council panel votes to uphold the decision made pursuant to paragraph (k)(1) above, the Exchange will assess a \$5,000.00 fee against the Member(s) who initiated the request for appeal. In addition, in instances where the Exchange, on behalf of a Member, requests a determination by another market center that a transaction is clearly erroneous, the Exchange will pass any resulting charges through to the relevant Member.

[(6)](5) Any determination by an Official or by the [Obvious Error Panel]Exchange Review Council panel shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

Supplementary Material to Rule 720

No change.

Rule 720A. Erroneous Trades due to System Disruptions and Malfunctions

(a) No change.

(b) *Procedures for Review of Decisions Made Pursuant to Rule 720A(a).*

(1) If a party to a ruling by Market Control made pursuant to subsection (a) of this Rule requests within the time permitted below, [a Review Panel,]an Exchange Review Council panel will be utilized to review decisions made by Market Control under this Rule.

(i) An Exchange Review Council panel will be comprised minimally of representatives of one (1) member engaged in market making and two (2) industry representatives not engaged in

market making. At no time should a review panel have more than 50% members engaged in market making.[The Review Panel will be comprised of representatives from four (4) Member firms. Two (2) of the representatives must be directly engaged in market making activity and two (2) of the representatives must be employed by an Electronic Access Member. To qualify as a representative of an Electronic Access Member on a Review Panel, a person must (i) be employed by a Member whose revenues from options market making activity do not exceed ten percent (10%) of its total revenues; or (ii) have as his or her primary responsibility the handling of Public Customer orders or supervisory responsibility over persons with such responsibility, and not have any responsibilities with respect to market making activities.]

[(ii) The Exchange shall designate at least five (5) market maker representatives and at least five (5) Electronic Access Member representatives to be called upon to serve on the Review Panel as needed. In no case shall a Review Panel include a person related to a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate on a Review Panel on an equally frequent basis.]

[(iii)](ii) A request for review on appeal must be made via facsimile or e-mail within thirty (30) minutes after the party making the appeal is given notification of the initial determination being appealed. The [Review Panel]Exchange Review Council panel shall review the facts and render a decision within the time frame prescribed by the Exchange.

[(iv)](iii) The [Review Panel]Exchange Review Council panel may overturn or modify an action taken by the Exchange under this Rule. All determinations by the [Review Panel]Exchange Review Council panel shall constitute final action by the Exchange on the matter at issue.

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Rule 804.

Market Maker Quotations

(a) – (e) No change.

(f) *Temporary Withdrawal of Quotations by Primary Market Makers.* A Primary Market Maker may apply to the Exchange to withdraw temporarily from its Primary Market Maker status in an options class. The Primary Market Maker must base its request on demonstrated legal or regulatory requirements that necessitate its temporary withdrawal, or provide the Exchange an opinion of counsel

certifying that such legal or regulatory basis exists. The Exchange will act promptly on such a request, and, if the request is granted, the Exchange will temporarily reassign the options class to another Primary Market Maker.

(1) The Exchange Review Council shall have jurisdiction over proceedings brought by Primary Market Makers seeking review of the denial of an excused withdrawal pursuant to this Rule or the conditions imposed on their reentry.

(g) – (h) No change.

Supplementary Material to Rule 804

No change.

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15. Reserved[Summary Suspension]

[The rules contained in Nasdaq ISE Chapter 15, as such rules may be in effect from time to time (the “Chapter 15 Rules”), are hereby incorporated by reference into this Nasdaq GEMX Chapter 15, and are thus Nasdaq GEMX Rules and thereby applicable to Nasdaq GEMX Members. Nasdaq GEMX Members shall comply with the Chapter 15 Rules as though such rules were fully-set forth herein. All defined terms, including any variations thereof, contained in the Chapter 15 Rules shall be read to refer to the Nasdaq GEMX related meaning of such term. Solely by way of example, and not in limitation or in exhaustion: the defined term “Exchange” in the Chapter 15 Rules shall be read to refer to the Nasdaq GEMX Exchange; the defined term “Rule” in the Chapter 15 Rules shall be read to refer to the Nasdaq GEMX Rule; the defined term “Board” in the Chapter 15 Rules shall be read to refer to the Nasdaq GEMX Board; and the defined term “Member” in the Chapter 15 Rules shall be read to refer to the Nasdaq GEMX Member. For the avoidance of doubt, the reference to “leases” in Rule 1503 shall not apply to Nasdaq GEMX, since Nasdaq GEMX memberships can’t be leased.]

16. Disciplinary Jurisdiction and Minor Rule Violation Fines[Discipline]

The rules contained in Nasdaq ISE Chapter 16, as such rules may be in effect from time to time (the “Chapter 16 Rules”), are hereby incorporated by reference into this Nasdaq GEMX Chapter 16, and are thus Nasdaq GEMX Rules and thereby applicable to Nasdaq GEMX Members. Nasdaq GEMX Members shall comply with the Chapter 16 Rules as though such rules were fully-set forth herein. All defined terms, including any variations thereof, contained in the Chapter 16 Rules shall be read to refer to the Nasdaq GEMX-related meaning of such term. Solely by way of example, and not in limitation or in exhaustion: the defined term “Exchange” in the Chapter 16 Rules shall be read to refer to the Nasdaq GEMX Exchange; the defined term “Rule” in the

Chapter 16 Rules shall be read to refer to the Nasdaq GEMX Rule; the defined term “Affiliate” in the Chapter 16 Rules shall be read to refer to the Nasdaq GEMX Affiliate; and the defined term “Member” in the Chapter 16 Rules shall be read to refer to the Nasdaq GEMX Member. [In addition, for the avoidance of doubt, the contract with FINRA that is referred to in Rule 1615 also covers Nasdaq GEMX.]

17. Reserved[Hearings and Review]

[The rules contained in Nasdaq ISE Chapter 17, as such rules may be in effect from time to time (the “Chapter 17 Rules”), are hereby incorporated by reference into this Nasdaq GEMX Chapter 17, and are thus Nasdaq GEMX Rules and thereby applicable to Nasdaq GEMX Members. Nasdaq GEMX Members shall comply with the Chapter 17 Rules as though such rules were fully-set forth herein. All defined terms, including any variations thereof, contained in the Chapter 17 Rules shall be read to refer to the Nasdaq GEMX-related meaning of such term. Solely by way of example, and not in limitation or in exhaustion: the defined term “Exchange” in the Chapter 17 Rules shall be read to refer to the Nasdaq GEMX Exchange; the defined term “Rule” in the Chapter 17 Rules shall be read to refer to the Nasdaq GEMX Rule; the defined term “Business Conduct Committee” in the Chapter 17 Rules shall be read to refer to the Nasdaq GEMX Business Conduct Committee; and the defined term “Member” in the Chapter 17 Rules shall be read to refer to the Nasdaq GEMX Member.]

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23.-79. Reserved

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80. Investigations and Sanctions

Series 8000 of the Nasdaq BX, Inc. Rules, as such rules may be in effect from time to time (the "BX Rule 8000 Series"), are hereby incorporated by reference into this Nasdaq GEMX Rules Chapter 80, and are thus Nasdaq GEMX Rules and thereby applicable to Nasdaq GEMX Members, Associated Persons, and other persons subject to the Exchange’s jurisdiction. Nasdaq GEMX Members, Associated Persons, and other persons subject to the Exchange’s jurisdiction shall comply with the BX Rule 8000 Series as though such rules were fully-set forth herein. All defined terms, including any variations thereof, contained in the BX Rule 8000 Series shall be read to refer to the Nasdaq GEMX-related meaning of such term. The defined terms "Exchange" or “Nasdaq BX” in the BX Rule 8000 Series shall be read to refer to the Nasdaq GEMX Exchange; the defined terms "Rule" or “BX Rule” in the BX Rule 8000 Series shall be read to refer to the Nasdaq GEMX Rules; the defined terms "Board" or “Exchange Board” in the BX Rule 8000 Series shall be

read to refer to the Nasdaq GEMX Board of Directors; the defined term "Member" in the BX Rule 8000 Series shall be read to refer to a Nasdaq GEMX Member; the defined term "Associated Person" shall be read to refer to a Nasdaq GEMX Associated Person; the defined terms "BX Regulatory Department" or "Regulation Department" shall be read to refer to the Nasdaq GEMX Regulatory Department; the defined terms "BX Regulation" shall be read to refer to "Nasdaq GEMX Regulation"; the defined term "Chief Regulatory Officer" shall be read to refer to the Chief Regulatory Officer of Nasdaq GEMX; and "Equity Rule" shall be read to refer to a Nasdaq GEMX Rule.

Additionally, references in the BX Rule 8000 Series to "Rule 0120" shall be read to refer to Nasdaq GEMX Rule 100. References in the BX Rule 8000 Series to "Rule 1015" shall be read to refer to Nasdaq GEMX Rule 303.

81.-89. Reserved

90. Code of Procedure

Series 9000 of the Nasdaq BX, Inc. Rules, as such rules may be in effect from time to time (the "BX Rule 9000 Series"), are hereby incorporated by reference into this Nasdaq GEMX Rules Chapter 90, and are thus Nasdaq GEMX Rules and thereby applicable to Nasdaq GEMX Members, Associated Persons, and other persons subject to the Exchange's jurisdiction. Nasdaq GEMX Members, Associated Persons, and other persons subject to the Exchange's jurisdiction shall comply with the BX Rule 9000 Series as though such rules were fully-set forth herein. All defined terms, including any variations thereof, contained in the BX Rule 9000 Series shall be read to refer to the Nasdaq GEMX-related meaning of such term. Solely by way of example, and not in limitation or in exhaustion: the defined terms "Exchange" or "Nasdaq BX" in the BX Rule 9000 Series shall be read to refer to the Nasdaq GEMX Exchange; the defined terms "Rule" or "BX Rule" in the BX Rule 9000 Series shall be read to refer to the Nasdaq GEMX Rules; the defined terms "Board" or "Exchange Board" in the BX Rule 9000 Series shall be read to refer to the Nasdaq GEMX Board of Directors; the defined term "Member" in the BX Rule 9000 Series shall be read to refer to a Nasdaq GEMX Member; the defined term "Associated Person" shall be read to refer to a Nasdaq GEMX Associated Person; the defined terms "BX Regulatory Department" or "Regulation Department" shall be read to refer to the Nasdaq GEMX Regulatory Department; the defined terms "BX Regulation" shall be read to refer to "Nasdaq GEMX Regulation"; the defined term "Chief Regulatory Officer" shall be read to refer to the Chief Regulatory Officer of Nasdaq GEMX; and "Equity Rule" shall be read to refer to a Nasdaq GEMX Rule.

Additionally, references in the BX Rule 9000 Series to the following rules shall be read to refer to the following Nasdaq GEMX Rules: “Rule 0120” shall be read to refer to Nasdaq GEMX Rule 100; “Rule 1013” shall be read to refer to Nasdaq GEMX Rules 302 and 307; “Rule 1070” shall be read to refer to the Supplementary Material to Nasdaq GEMX Rule 306; “Rule 1160” shall be read to refer to Nasdaq GEMX Rule 307(b); “Equity Rule 2110” shall be read to refer to Nasdaq GEMX Rule 400; “Equity Rule 2120” shall be read to refer to Nasdaq GEMX Rule 405; “Rule 2140” shall be read to refer to Nasdaq GEMX Rule 309; “Equity Rule 2150” shall be read to refer to Nasdaq GEMX Chapter 6; “Rule 2170” shall be read to refer to Nasdaq GEMX Rule 403; “Rule 4110A” shall be read to refer to Nasdaq GEMX Chapter 13; “Rule 4120A” shall be read to refer to Nasdaq GEMX Chapter 13; “Rule 10000 Series” shall be read to refer to Nasdaq GEMX Rules Chapter 18; and “Chapter III, Section 16” shall be read to refer to Nasdaq GEMX Rule 403.

Notwithstanding the above, IM-9216 (“Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)”) in the BX Rule 9000 Series shall not apply to the Nasdaq GEMX Exchange or to its Members, Associated Persons, or other persons subject to the jurisdiction of the Exchange. Instead, the Nasdaq GEMX Rule that governs such violations shall be Nasdaq GEMX Rule 1614(b) and references in the BX Rule 9000 Series to IM-9216 shall be read to refer to Nasdaq GEMX Rule 1614(b). Moreover, the procedures set forth in BX Rule 9216(b) and 9143(e)(3), which shall govern the handling of violations of Rules listed in Nasdaq GEMX Rule 1614(b) that are subject to a plan approved by the Commission pursuant to SEC Rule 19d-1(c)(2) (the “Minor Rule Violation Plan” or “MRVP”) and the issuance of MRVP letters, shall also apply to the Exchange’s handling of violations of Rules listed in Nasdaq GEMX Rule 1614(b) that are not subject to the MRVP (“minor rule violations”) and the issuance of minor rule violation letters, except that the Exchange shall promptly report any final disciplinary action to the Commission, in accordance with SEC Rule 19d-1(c)(1).

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