

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * <input type="text" value="523"/>	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - <input type="text" value="2017"/> - * <input type="text" value="92"/>	Amendment No. (req. for Amendments *) <input type="text"/>
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Filing by
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 checked="" type="checkbox"/>	Exhibit 3 Sent As Paper Document <input checked="" type="checkbox"/>
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Description

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

Proposed rule change to adopt an investigatory and disciplinary process identical in all material respects to the investigatory and disciplinary processes of Nasdaq BX, Inc. and The Nasdaq Stock Market LLC.

Contact Information

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

First Name * Last Name *

Title *

E-mail *

Telephone * 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

By

(Name *)

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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

Exhibit 1 - Notice of Proposed Rule Change *

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

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

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

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

Add Remove View

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) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² Nasdaq PHLX LLC (“Phlx” or “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt an investigatory and disciplinary process identical in all material respects to the investigatory and disciplinary processes of Nasdaq BX, Inc. (“BX”) and The Nasdaq Stock Market LLC (“Nasdaq”).

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 March 28, 2016. No further action is required to be taken for this filing to be submitted.

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

T. Sean Bennett
Principal Associate General Counsel
Nasdaq, Inc.
(301) 978-8499

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

Phlx is proposing to adopt processes and related rules concerning investigative and disciplinary matters involving Phlx Members, Member Organizations, and persons associated with Member Organizations (also known as "Associated Persons"),³ which are

³ Pursuant to Rule 1(n), a Member is a permit holder which has not been terminated in accordance with the By-Laws and these Rules of the Exchange. A Member is a natural person. Pursuant to Rule 1(o), the term "Member Organization" shall mean a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a Member Organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of Rules 900.1 or 900.2 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6-4 of the By-Laws. Accordingly, a Member Organization is an entity and not a person (hence the name "organization"). Pursuant to Rule 908(c), a Member must be affiliated with a Member Organization. Every Member Organization must have at least one Member. A Member cannot be a broker or a dealer nor may a Member have associated persons. The Exchange notes that certain Exchange rules may lead a person to conclude that a Member may be a broker or a dealer and have persons associated with the Member. See, e.g., Rule 600(c). Notwithstanding any such ambiguities in the Phlx rules, a Member cannot be a broker or a dealer, and a Member cannot have persons associated with it on Phlx. In addition, Phlx does not currently have any Members that are a broker or a dealer, nor does it currently have any Members with associated persons. The Exchange will not allow a Member to be a broker or a dealer and have any associated persons in the future unless it amends its rules to allow for such Members and associated persons. Thus, the Exchange is replacing references to "members" in the BX rules with "member organizations" in the New Phlx rules, is replacing references to "persons associated with members" in BX rules with references to "persons associated with member organizations" in the New Phlx rules, and is clarifying any ambiguity in both the proposed New Phlx rules and certain existing Phlx rules that associated persons are associated with member organizations. As discussed above, the Exchange is amending the definition of "Member" to clarify that it is a natural person that is associated with a Member Organization. Accordingly, any references in the rules to an "associated person" or "persons associated with a member organization" also refer to a Member. Thus, any instance where the terms "associated person" or "persons associated with a member organization" occur in the rules and the term "member" is omitted, the rule nonetheless applies to Members. The Exchange is separately reviewing

identical in all material respects to the disciplinary process of Phlx's sister exchange BX, and substantially similar to that of Nasdaq.⁴ The proposed change will provide uniform investigative and disciplinary processes applied to Members, Member Organizations, and persons associated with Member Organizations of Phlx and members and persons associated with members of BX, and Nasdaq, and harmonize the work FINRA conducts for these exchanges.

FINRA performs, among other things, investigatory and prosecutorial work for Phlx pursuant to a Regulatory Services Agreement between the two parties (the "RSA").⁵ Under the RSA, FINRA is responsible for the investigation of potential violations of Phlx rules and the Exchange Act, and for the prosecution of any such violations thereof, by Phlx Members, Member Organizations, and Associated Persons. Moreover, under the RSA, Phlx's Regulation Department staff may elect to exercise jurisdiction over a matter involving a Phlx Member, Member Organization, or Associated Person, performing the investigation and any resulting prosecutorial work without FINRA's involvement. Upon the conclusion of FINRA's or staff's investigation of a matter involving a Member,

its entire rulebook to determine where other such ambiguities exist and will file a rule change proposal to clarify any additional ambiguities in the rules.

⁴ The BX disciplinary rules were based on those of Nasdaq with minor differences to the process discussed below. The Exchange is basing its new disciplinary rules on those of BX. Nevertheless, the majority of the new disciplinary rules proposed herein are materially identical to those of Nasdaq as well.

⁵ See RSA (January 2013). The Exchange retains ultimate legal responsibility for the regulation of its Members, Member Organizations, and Associated Persons and its market. Both BX and Nasdaq have entered into RSAs with FINRA to perform the work under their respective Rule 8000 and 9000 Series. The Exchange will amend its RSA to include the new processes under New Rule 8000 and 9000 Series, and the related changes proposed herein, thus harmonizing the regulatory work FINRA conducts for all three self-regulatory organizations ("SROs").

Member Organization, or Associated Person, a proposed resolution is recommended to the Phlx Business Conduct Committee (“BCC”), which is charged with, among other things, the approval of action against a Member, Member Organization, or Associated Person. When a matter is contested, it may be reviewed by a Phlx Hearing Panel, which is charged with issuing a decision in such matters after reviewing evidence and considering arguments.

As discussed in detail below, Phlx is proposing to eliminate the BCC and the related hearings process, and adopt a new Exchange Review Council and a related adjudicatory process that mirrors that of the Exchange’s sister exchanges, BX, and Nasdaq. Under the new process, FINRA’s responsibilities will now include the adjudicatory roles currently performed by the BCC⁶ and Hearings Panels⁷ under the Rule 960 Series, and the Exchange Review Council will serve as the appellate body for cases appealed from new Hearing Panels. The Exchange Review Council will also serve as the appellate body for other determinations made by Phlx, such as reviewing appeals of determinations brought by market makers seeking review of a denial of reinstatement pursuant to Rule 3220, which are currently reviewed by the Exchange’s Market

⁶ As described below, case authorization and adjudicatory functions of the BCC and current Hearing Panels will be administered by FINRA’s Office of Disciplinary Affairs and Office of Hearing Officers, while other functions of the BCC will be handled by the Phlx Regulation Department, Department of Enforcement, and the Department of Market Regulation. In certain existing rules where the responsibilities under the rule do not fall within the Office of Disciplinary Affairs’ purview under the Codes of Procedure for FINRA, BX, Nasdaq or any other exchange, the Exchange is replacing the BCC with the Chief Regulatory Officer instead of the Office of Disciplinary Affairs.

⁷ As described below, the current functions of the Phlx Hearings Panels will be handled by FINRA’s Hearing Panels.

Operations Review Committee, as discussed below.⁸ The Exchange Review Council will also be responsible for the approval of minor rule violation plan letters and violation letters under New Rule⁹ 9216(b), and appeals of Membership Department determinations (for denials of membership pursuant to Rule 923) under the new process.

Decisions¹⁰ issued by the Exchange Review Council may be reviewed by the Exchange Board of Directors (“Board”), which may also issue a decision in the matter.¹¹ Decisions issued by the Board are considered final action of the Exchange in a matter for purposes of appeals to the Commission.¹² Should the Board decline to review an Exchange Review Council decision, the decision is the final action of the Exchange.¹³ Phlx notes that, because the new proposed process is derived from the BX and Nasdaq member investigative and adjudicatory processes, it will provide consistency in the procedure used to investigate and resolve matters concerning members of three of Nasdaq, Inc.’s U.S. exchanges.¹⁴

⁸ See New Rule 1(k). The Exchange Review Council will also review appeals brought under the New Rule 9280 (Contemptuous Conduct), New Rule 9520 Series (Eligibility Proceedings), New Rule 9550 Series (Expedited Proceedings), and New Rule 9600 Series (Procedure for Exemptions).

⁹ Citation to rules of the proposed 8000 and 9000 Series herein will be preceded by “New Rule.”

¹⁰ As defined by New Rule 9349. See also BX Rule 9349 and Nasdaq Rule 9349.

¹¹ See New Rule 9351(d) and (e).

¹² 15 U.S.C. 78s(d).

¹³ See New Rule 9349(c).

¹⁴ Nasdaq, Inc.’s other three exchanges, Nasdaq ISE, LLC, Nasdaq GEMX, LLC, and Nasdaq MRX, LLC, are in various stages of harmonizing their investigative and disciplinary processes with those of BX, Nasdaq, and FINRA.

To implement the proposed change, Phlx is amending Phlx By-Law, Article V, Section 5-3, and its rules to adopt substantially similar text to that of BX and Nasdaq, reflect the changes to the process, and delete old text where necessary. Specifically and as discussed in greater detail below, the Exchange is deleting its current Disciplinary Rules found under the Rule 960 Series and replacing them with new investigatory and disciplinary rule sets under the New Rule 8000 and 9000 Series, which are in nearly all material respects identical¹⁵ to the Rule 8000 and 9000 Series of BX, and substantially similar to the Rule 8000 and 9000 Series of Nasdaq.¹⁶ Under the new process, the current BCC and Phlx Hearing Panels are generally being replaced with FINRA's Office of Disciplinary Affairs ("ODA")¹⁷ and new Hearing Panels,¹⁸ although in certain

¹⁵ The proposed New Rules are based on the BX rule set, which is substantially similar to the corresponding Nasdaq rule set. Significantly, the Nasdaq rules define Special Panelist, which is a category of Hearing Panelist BX does not have. A Special Panelist is an individual approved by the Nasdaq Board of Directors and selected by the Chief Hearing Officer to participate in proceedings in which certain issues arise, about which Nasdaq determined individuals with appropriate expertise and knowledge should be chosen. See Nasdaq Rule 9120(u). Like BX rules, the Exchange's rules do not provide for such a category of Hearing Panelist and the Exchange does not believe that Special Panelists are needed at this juncture. Nasdaq also has a legacy category of Panelist who the Chief Hearing Officer may select, who is a person that served on FINRA's National Adjudicatory Council ("NAC"), or on a disciplinary subcommittee thereof, prior to the date that Nasdaq commenced operation as a national securities exchange. See Nasdaq Rules 9231(b)(1)(D) and 9820(a)(4). Like BX, the Exchange is not adopting this category of person eligible to serve on a Panel.

¹⁶ As discussed in greater detail below, unlike Nasdaq and BX, the Exchange operates a physical trading floor, which necessitates some changes to accommodate regulation of the floor.

¹⁷ As defined under New Rule 9120(w).

¹⁸ As defined under New Rule 9120(s).

circumstances the BCC is being replaced by the Department of Enforcement,¹⁹ the Department of Market Regulation,²⁰ Phlx Regulation Department²¹ and/or the Chief Regulatory Officer (“CRO”).²² As a consequence, the Exchange is also eliminating references to the BCC and Phlx Hearings Panels in existing rules, deleting rules specifically relating to the BCC or Phlx Hearings Panels, and in certain cases replacing references to the BCC or Phlx Hearing Panels with the appropriate group or groups

¹⁹ New Rule 9120(f)

²⁰ New Rule 9120(g).

²¹ The Exchange is proposing to adopt a new defined term “Phlx Regulation Department” under New Rule 9120(v), which mirrors the definitions of “the Exchange’s Regulation Department” and “Nasdaq Regulation” under BX and Nasdaq Rules 9120(w), respectively, however, the proposed definition also expressly includes the Exchange’s Enforcement Department. Options Exchange Officials and Exchange staff acting in certain capacities are also considered staff of the Phlx Regulation Department. See note 47, infra for a description of the Phlx Regulation Department. The Exchange’s Enforcement Department is specifically charged with pursuing disciplinary action against Members, Member Organizations, Associated Persons and persons subject to the Exchange’s jurisdiction, and it is not affiliated with FINRA’s Department of Enforcement.

²² The Exchange is replacing the BCC with the CRO instead of the ODA where the responsibilities under the rule do not fall within the ODA’s purview under the Codes of Procedure for FINRA, BX, Nasdaq or any other exchange. For example, Rule 777(a) prohibits a branch office manager of any member organization, an employee of any member organization engaged in trading in securities for the organization, and a securities salesman of any member organization, from guaranteeing the payment of the debit balance, in a customer’s account, to his employer or to any other creditor carrying such account, without the prior written consent of the BCC. The Exchange is proposing to replace the BCC with the CRO in this instance because this is not a normal function of the ODA and the CRO is in the best position to make such determinations. The Exchange is also replacing the BCC’s role in determining penalties under the Advices with the Department of Enforcement, the Department of Market Regulation, and Phlx Regulation Department, which will each individually have the authority to assess, and determine the amount of, fines under the Advices after repeated violations thereof, with the exception of the Advices relating to Order and Decorum for which the Phlx Regulation Department will be solely responsible for assessing and determining the amount of fines thereunder.

responsible for the process. The Exchange notes that, under the proposed New Rules, in certain instances the rules may reference an obligation or right of an Associated Person and not also include such a reference to a Member, notwithstanding that a Member is an Associated Person. In such cases, the obligation or right also applies to the Member unless otherwise expressly noted.

Current Phlx Rules and Adjudicatory Process

Responsibility for the adjudication of Phlx rules is divided into two categories: (1) Rules for which the BCC and Hearing Panels are responsible for adjudicating as formal disciplinary proceedings; and (2) Rules under which fines may be assessed or privileges suspended in lieu of disciplinary action.²³ Specifically, in lieu of conducting a formal disciplinary proceeding, Rules 60 (Sanctions for Breach of Regulations) and 970 (Floor Procedure Advices: Violations, Penalties, and Procedures) provide alternative disposition of violations through assessment of a fine and/or suspension of trading floor privileges.²⁴ Rules 60 and 970 provide the process for administering fines for violations of the Options Floor Procedure Advices and Equity Floor Procedure Advices²⁵ (collectively, the “Advices”), which include regulations that comprise the Exchange’s minor rule violation plan (“MRVP”) as well as violations of Order and Decorum Regulations that are not

²³ Fines may be assessed by an Options Exchange Official or by Exchange staff. In certain circumstances, an Options Exchange Official and an officer of the Exchange, as defined by Rule 60(c)(ii), may exclude a Member from the trading floor.

²⁴ None of the fines assessed in lieu of formal disciplinary action exceed \$10,000. Under both Rules 60 and 970, matters may alternatively be referred for formal disciplinary proceedings.

²⁵ The Exchange notes that it no longer operates an equity trading floor. The regulations under the Equity Trading Floor Advices relate to requirements such as notices, record retention, and compliance with Exchange inquiries.

included in the Exchange's MRVP but may be considered minor in nature and thus possibly resolved outside of the formal disciplinary process.²⁶

Generally, notice to the SEC of final disciplinary action by an SRO is required pursuant to Rule 19d-1 of the Exchange Act; however, uncontested fines of \$1,000 or less or exclusion of a clerical employee from the trading floor for five days or less for violations of regulations that relate to administration of order, decorum, health, safety, and welfare ("Order and Decorum") are not required to be reported to the SEC. In addition, uncontested fines of \$2,500 or less assessed for violation of MRVP rules are subject to abbreviated periodic SEC reporting.

Rule 60 provides the process for regulating Order and Decorum on the Exchange's trading floor. The Order and Decorum rules are found under Section H of the Options Floor Procedure Advices. Pursuant to Rule 60, both Exchange staff and Options Exchange Officials²⁷ have authority to fine a Member, Member Organization, or

²⁶ For example, Options Floor Procedure Advice F-35 concerns violations of exercise and exercise advice rules for noncash-settled equity option contracts imposes a fine of \$1,000 for the first violation of the Advice, a fine of \$2,500 for the second violation of the Advice, and \$5,000 for the third and each subsequent violation of the Advice. The first two fines would fall under the Exchange's MRVP as they are \$2,500 or less in amount, whereas the third and subsequent violations would not as they are in excess of \$2,500, but may be considered as "minor" and not subject to formal disciplinary action. As is currently the case, the Exchange may choose to pursue formal disciplinary action in lieu of resolving a violation of the Advices through fine and/or suspension.

²⁷ The President of the Exchange and his designated staff shall have general supervision over: (i) the options trading floor as well as general supervision of the dealings of members on the trading floor and on Exchange trading systems and of the premises of the Exchange immediately adjacent thereto; (ii) the activities of specialists, registered option traders, floor brokers, or other types of market makers and shall establish standards and procedures for the training and qualification of members active on the trading floor; (iii) all trading floor employees of members, and shall make and enforce such rules with respect to such employees as it may deem necessary; (iv) all connections or means of

Associated Person for violations of any of the Order and Decorum regulations under the Options Floor Procedure Advices in lieu of conducting a formal disciplinary proceeding.

In addition, an Options Exchange Official and an officer of the Exchange may exclude a Member or Associated Person from the trading floor. Both Exchange staff and Options Exchange Officials may alternatively refer the matter to the BCC for formal disciplinary proceeding, which would be charged with determining whether a fine or formal disciplinary proceeding is appropriate.

Under Rule 60, a Member, Member Organization, or Associated Person may contest a fine by requesting a hearing before a Hearing Director appointed by the Chair of the BCC, who may overturn, affirm, or modify the citation. The Hearing Director's determination is final. A determination to exclude a Member, Member Organization, or Associated Person from the trading floor is not appealable.

Rule 970 provides the process for regulating other behavior pursuant to the Advices not related to Order and Decorum through assessment of a fine.²⁸ Fines assessed

communications with the options trading floor and may require the discontinuance of any such connection or means of communication when, in the opinion of the President or his designee, it is contrary to the welfare or interest of the Exchange; (v) the location of equipment and the assignment and use of space on the options trading floor; and (vi) relations with other options exchanges. See Rule 1000(e).

²⁸ Under the Advices, the Exchange assesses fines ranging from \$50 to \$10,000. Pursuant to paragraph (c) of Rule 19d-1 of the Exchange Act, the Commission allows SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions (i.e., an MRVP). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such an MRVP filed with, and declared effective by, the Commission shall not be considered "final" for purposes of Rule 19d-1(c)(1) of the Exchange Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies under Section 19d-1(c)(2). Most fines assessed under

under the Advices increase with each subsequent violation and after a set number of repeated violations, are thereafter assessed at the discretion of the BCC, which may, as an alternative to assessing a fine, recommend the matter for formal disciplinary proceeding. Notwithstanding, determinations to issue a fine are made on a case by case basis, whereby the Exchange considers the individual facts and circumstances to determine whether a fine of more or less than the recommended amount is appropriate for the violation, or whether the violation requires formal disciplinary action. Fines of \$2,500 or less levied for violations of the Advices, other than Order and Decorum, are included in the Exchange's MRVP, whereas any fine exceeding \$2,500 under the Advices is not. If a Member, Member Organization, or Associated Person contests a fine, it must provide a written response meeting the requirements of an "Answer," as set forth in Rule 960.4, which is thereafter provided to the BCC for its consideration.

With respect to violations that are adjudicated by the BCC and Hearing Panels, Rule 960.2(f)(i) requires the BCC to direct Exchange staff to initiate a Statement of Charges when it appears that there is probable cause for finding that a violation within the jurisdiction of the Exchange has occurred and disciplinary action is warranted.

The BCC is a Board-appointed committee²⁹ with jurisdiction to monitor compliance with the Act and the rules and regulations thereunder, the By-Laws and rules of the Exchange or any interpretation thereof, and the rules, regulations, resolutions, and

both Advices that do not exceed \$2,500 are included in the MRVP pursuant to Exchange Act Rule 19d-1(c)(2). Order and Decorum Regulations under the Option Floor Procedure Advices, however, are not included in the MRVP, but may be subject to an exemption from the notice requirement of Exchange Act Rule 19d-1(c)(1) if the fine does not exceed \$1,000.

²⁹ The BCC meets quarterly and on an as-needed basis.

stated policies of the Board or any Exchange committee, by Members, Member Organizations, and Associated Persons.³⁰ The BCC reviews disciplinary matters involving Members, Member Organizations, and Associated Persons, which are first identified generally by Phlx's Market Surveillance group and referred to FINRA to investigate and to propose a recommended resolution pursuant to the RSA.³¹

Under the RSA, FINRA is responsible for, among other things, the investigation of matters referred from the Phlx Market Surveillance and Membership departments, and the performance of routine and cause examinations of Phlx Members, Member Organizations, and Associated Persons. FINRA is also responsible for providing services related to Phlx's formal disciplinary process, including issuance of Wells Notices, Cautionary Action Letters, Statements of Charges, settlements, disciplinary decisions, and prosecution.

Upon completion of an investigation, FINRA analyzes the evidence and applicable law, and makes a preliminary determination of whether or not a violation appears to have occurred. Known as a "Sufficiency of Evidence" review, it is the same process followed by FINRA staff in matters involving Members, Members Organizations and Associated Persons for the Exchange; however, in such matters the BCC provides authorization to proceed as proposed by FINRA instead of the ODA, as described

³⁰ See Phlx By-Law, Article V, Sec. 5-3(b).

³¹ The Phlx Market Surveillance group is responsible for detecting potentially violative conduct among Members, Member Organizations, and Associated Persons and referring such conduct to FINRA for investigation pursuant to the RSA. In a small number of cases, Phlx enforcement staff will investigate potentially violative conduct and recommend a resolution to the BCC.

below.³² The Sufficiency of Evidence review determines whether FINRA will recommend that the Exchange negotiate a settlement, issue a Cautionary Action Letter, or pursue formal action against a Member, Member Organization, or Associated Person.³³ FINRA presents its recommendations to the BCC for approval at both periodic and ad hoc meetings. In order to become an official action of the Exchange, FINRA must gain BCC approval of its recommendation.³⁴ The BCC may approve, deny or modify each recommendation presented to it. In cases that FINRA recommends issuance of a Statement of Charges,³⁵ it prepares a memorandum and draft Statement of Charges for review and approval by the BCC. In certain cases, FINRA will also negotiate a settlement with a Respondent in addition to recommending the issuance of a Statement of Charges. In such cases, FINRA will provide the BCC with an offer of settlement together with a draft Statement of Charges for the BCC's review and approval.³⁶ If a

³² See FINRA Regulatory Notice 09-17 (March 2009) at 3 (available at <http://www.finra.org/sites/default/files/NoticeDocument/p118171.pdf>).

³³ Id.

³⁴ Rule 960.2.

³⁵ Rule 960.3.

³⁶ The offer of settlement is negotiated with, and signed by, the Respondent prior to FINRA's presentation of the proposed Statement of Charges to the BCC. Providing a draft Statement of Charges together with the proposed offer of settlement to the BCC at the same meeting facilitates expeditious resolution in cases where both parties have come to an agreement on how to settle the matter. The process also allows the BCC to consider the facts and circumstances of the matter at the time it is presented to it for approval, including that the Respondent has committed to settle the matter based on the Statement of Charges recommended by FINRA. If the BCC approves the issuance of the Statement of Charges in these matters it also accepts the offer of settlement, and considers it the Respondent's Answer. Like other matters involving an offer of settlement, where the BCC accepts an offer of settlement it must issue a decision and impose sanctions consistent with the terms of such offer. See Rule 960.7. Thus, after

recommendation to issue a Statement of Charges is approved, FINRA will finalize the approved Statement of Charges based on the BCC's recommendation, which is signed by the BCC's chairperson and then served on the Member, Member Organization, and/or Associated Person.³⁷

In certain cases, a Member, Member Organization, or Associated Person will not accept the allegations made against it in the Statement of Charges. If a Member, Member Organization, or Associated Person does not agree with the allegations, it may request that a Hearing Panel review the matter pursuant to Rule 960.5(a)1. Hearing Panels are charged with reviewing the facts and circumstances of a contested matter, and determining whether the Member, Member Organization, or Associated Person has committed a violation and if so, what the appropriate sanctions are, if any. A Hearing Panel also issues a written decision in conformity with its determination.³⁸ Moreover, a Hearing Panel may hold summary disposition hearings and issue a summary decision in cases where any Member, Member Organization, or Associated Person has admitted to a violation, or if there is no dispute concerning those material facts which give rise to such a violation.³⁹ Pursuant to Rule 960.9, a Hearing Panel decision may be appealed to the Board.

issuance of the Statement of Charges and acceptance of the offer of settlement, FINRA provides the BCC Chair, or its designee, with a draft Decision informing the Respondent that the BCC has accepted the offer of settlement.

³⁷ Rule 960.3.

³⁸ Rule 960.5(a)(3).

³⁹ Rule 960.6.

The BCC may also examine the business conduct and financial condition of a Member, Member Organization or Associated Person, and may authorize the initiation of any disciplinary actions or proceedings brought by the Exchange.⁴⁰ With respect to disciplinary actions, the BCC or its designee (including a Hearing Panel) shall impose appropriate sanctions of expulsion, suspension, fine, censure or any other fitting sanction where the BCC or its designee finds that a violation within the disciplinary jurisdiction of the Exchange has been committed.⁴¹ The BCC may also direct a general partner(s) or an executive officer(s) of a Member Organization to appear before the BCC or its designee for examination upon forty-eight hours' notice, either oral or in writing and, after such examination, the BCC has authority to suspend such Member Organization until the requirements of the financial responsibility and reporting rule⁴² are fully met.

The BCC may also prescribe regulations for the carrying of securities on margin by Members and Member Organizations for customers, and it may also make such regulations in regard to the segregation or hypothecation of securities carried in customers' accounts as it deems advisable.⁴³ The BCC may prohibit trading by a Member or Member Organization that is excessive in view of such person's or organization's capital.⁴⁴ The BCC may require or request detailed financial reports or

⁴⁰ Phlx By-Law, Article V, Sec. 5-3(b).

⁴¹ Id.

⁴² See Phlx By-Law, Article V, Sec. 5-3(b)(c); see also Rule 703.

⁴³ Phlx By-Law, Article V, Sec. 5-3(b)(d). Such proscriptive power is subject to the SEC rulemaking process.

⁴⁴ Phlx By-Law, Article V, Sec. 5-3(b)(e).

such other operational reports as it deems necessary,⁴⁵ and supervise the advertising of Members and Member Organizations.⁴⁶

The New Process and FINRA's Role

Resolution by Fine or Acceptance, Waiver, and Consent

Under the proposed new process, the Exchange will continue to have authority to resolve certain violations outside of the formal disciplinary process. Options Exchange Officials and Exchange staff will continue to have authority to investigate possible violations of the Advices, issue fines, and in certain cases suspend trading floor access for violations of the Advices. The authority to resolve violations outside of the formal disciplinary process exists under proposed New Rule 9216. New Rule 9216 provides alternatives to the issuance of a formal complaint and the initiation of a formal disciplinary proceeding, which include the assessment of fines or exclusion from the Exchange's options trading floor. The Exchange is proposing to adopt New Rule 9216(a) (Acceptance, Waiver, and Consent Procedures). It will provide a new process by which the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation⁴⁷ – if they have reason to believe a violation has occurred and the

⁴⁵ Phlx By-Law, Article V, Sec. 5-3(b)(f).

⁴⁶ Phlx By-Law, Article V, Sec. 5-3(b)(g).

⁴⁷ Phlx is adopting new defined terms "Department of Enforcement" the "Department of Market Regulation" under New Rules 9120(f) and (g), respectively, which are also defined in BX and Nasdaq under their respective Rules 9120. These two departments are authorized to act on behalf of BX and Nasdaq in investigating and administering disciplinary matters pursuant to regulatory service agreement, and will do the same for Phlx upon adoption of the new process. Phlx is also adopting a new defined term "Phlx Regulation Department," which is the department of Phlx that administers the Code, and includes the Phlx Enforcement Department. See New Rule 9120(v); see also note 21, supra. As described above, Options Exchange Officials, and Exchange staff

Member, Member Organization or Associated Person does not dispute the violation – may prepare and request that the Member, Member Organization or Associated Person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such Member’s, Member Organization’s or Associated Person’s right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Exchange Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. If the acceptance, waiver and consent is accepted, the matter is resolved without issuance of a complaint. The Exchange does not currently have an analogous process. However, the Exchange believes that providing its Members, Member Organizations and Associated Persons the optionality to dispose of a matter prior to the issuance of a complaint will make the process fairer for its participants. In certain respects, the process is similar to the Exchange’s current offer of settlement process, discussed above, by which FINRA recommends acceptance of an offer of settlement and provides a draft Statement of Charges to the BCC for its review and approval, together with an executed offer of settlement. This process results from negotiation with the Member, Member Organization or Associated Person prior to the approval of the offer of settlement, like an acceptance, waiver, and consent. An important difference is that, unlike the current offer of settlement process, which requires the issuance of a Statement of Charges and

acting in certain capacities are also considered staff of the Phlx Regulation Department. Phlx notes that the Phlx Regulation Department currently exists and is responsible for, among other things, preparing matters for review by the BCC. Under the new process, the Phlx Regulation Department will have the option of investigating and bringing matters to the ODA directly for review and possible authorization of a disciplinary action, or alternatively may provide a matter to the Department of Enforcement or Department of Market Regulation to investigate and present to the ODA for possible authorization of a disciplinary action.

decision, an acceptance, waiver and consent under New Rule 9216(a) is proposed in lieu of a complaint.⁴⁸ Thus, under the new rule, if the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation has reason to believe a violation has occurred and the Member, Member Organization, or Associated Person does not dispute the violation, then the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may prepare and request that the Member, Member Organization, or Associated Person execute a letter accepting the violation, consenting to the imposition of sanctions, and agreeing to waive any right of appeal, if the letter is accepted.⁴⁹ The letter must be approved by the Review Subcommittee,⁵⁰ FINRA's ODA,⁵¹ or the Exchange Review Council to become a final action of the Exchange.⁵² The process under New Rule 9216(a) is the same process used by BX and Nasdaq under their respective Rules 9216(a).

The Exchange is also adopting New Rule 9216(b) to address the process for administering violations of regulations that are resolved by assessment of a fine,

⁴⁸ The Exchange is also adopting New Rule 9270, which provides the settlement process once a complaint has been issued in a matter. Thus, the process under New Rule 9216(a) occurs in lieu of the issuance of a complaint, whereas the process under New Rule 9270 is applicable to Respondents that have been provided notice that a proceeding has been instituted against him or her. New Rule 9270 will replace the settlement process provided under Rule 960.7, as discussed below.

⁴⁹ New Rule 9216(a)(1).

⁵⁰ As defined in New Rule 9120(bb).

⁵¹ The Office of Disciplinary Affairs is a FINRA group independent of the enforcement function. See discussion *infra*, p. 25.

⁵² New Rule 9216(a)(3) and (4).

including regulations subject to the Exchange's minor rule violation regulations,⁵³ other than Order and Decorum, in lieu of the current process under Rule 970.⁵⁴ The Exchange is adopting procedures applicable to violations of the Advices subject to the MRVP under New Rule 9216(b)(1), and is adopting procedures applicable to other violations of the Advices not included in the MRVP under New Rule 9216(b)(2). The Exchange notes that neither BX nor Nasdaq have regulations analogous to the Advices with fines up to \$10,000. Therefore, BX and Nasdaq do not need to adopt separate rules addressing how violations resolved through a fine in lieu of formal disciplinary proceedings in excess of \$2,500 are managed. Thus, both BX and Nasdaq Rules 9216(b) solely address the procedures for violations of rules subject to their respective MRVPs pursuant to Rule 19d-1(c)(2) of the Exchange Act.

The Exchange is proposing to adopt New Rule 9216(b)(1) to address the process for administering fines included in the Advices that do not exceed \$2,500 and are included in the MRVP. Unlike Rule 970, which provides a process whereby the Exchange issues a citation that may be subsequently contested by the Member, Member Organization, or Associated Person, New Rule 9216(b) does not provide a similar process. Under New Rule 9216(b)(1) and like the comparable rules of BX and Nasdaq, the Department of Enforcement or Department of Market Regulation may prepare and

⁵³ The Exchange's minor rule violation regulations include both fines included in its MRVP and other fines up to \$10,000.

⁵⁴ As discussed below, the Exchange is adopting New Rules 9216(b)(1)(E) and 9216(b)(2)(E) to account for the process provided under Rule 970 concerning imposing fines under the Option Floor Procedure Advices, when the number of violations under Exchange Rules is determined based upon an exception-based surveillance program. BX and Nasdaq Rules 9216(b) do not have a similar rule, allowing "batching" of violations under certain conditions. Thus, the Exchange is keeping the process provided by Rule 970, Commentary .01.

provide an MRVP letter to a Member, Member Organization, or Associated Person for its signature. Unlike the BX and Nasdaq rules, the Exchange is also vesting the Phlx Regulation Department with the same authority given to the Department of Enforcement and Department of Market Regulation to administer the MRVP letter process.⁵⁵ The Exchange notes that a Member, Member Organization, or Associated Person is not obligated to agree to the terms of an MRVP fine or submit an MRVP letter for approval. The Exchange will issue an MRVP letter for execution by the Member, Member Organization, or Associated Person,⁵⁶ and the executed letter must thereafter be approved by the Exchange Review Council, Review Subcommittee or the ODA.⁵⁷ If the terms are not accepted, then the Exchange or FINRA on behalf of the Exchange may pursue formal disciplinary proceedings.⁵⁸ As a consequence, under the New Rules there is no ability for a fine to be reversed, modified or affirmed, prior to formal disciplinary proceedings. The Exchange notes that this is consistent with the processes used by BX, Nasdaq, and FINRA.

⁵⁵ The Phlx Regulation Department would prepare MRVP letters (and violation letters as discussed below) when it is the body that investigated the violation. This would occur commonly with violations of floor-based Advices. Options Exchange Officials are considered members of the Phlx Regulation Department, as are Exchange Staff when acting pursuant to the Advices; thus, Options Exchange Official and Exchange Staff rulings are considered action of the Phlx Regulation Department.

⁵⁶ New Rule 9216(b)(1)(A).

⁵⁷ New Rule 9216(b)(1)(C). The Exchange notes that, as is the case with BX and Nasdaq Rules 9216(b), a letter issued under New Rule 9216(b) is considered an action of the Review Council; however, the Review Subcommittee of the Review Council or ODA may accept such a letter on behalf of the Review Council by delegated authority. See New Rules 9216(b)(1)(A) and (C), and New Rules 9216(b)(2)(A) and (C).

⁵⁸ New Rule 9216(b)(1)(D).

The Exchange will follow the same process for violations of the Advices not included in the MRVP.⁵⁹ Specifically, the Exchange is proposing to adopt New Rule 9216(b)(2) to address the Exchange's authority to issue fines for violation of the Advices, other than violation of the Order and Decorum regulations, that exceed \$2,500 (and are thus not included in the MRVP), but are not greater than \$10,000. As discussed above, under Rule 970 the Exchange has authority to assess a fine up to \$10,000 under the Advices in lieu of pursuing formal disciplinary proceedings. The Exchange is proposing to provide the same procedures as applied to fines assessed for violations of regulations subject to the MRVP. However, violations of the Advices that result in a fine greater than \$2,500 up to the maximum fine assessed under the Advices of \$10,000 are not eligible for an exception to the reporting requirements of Rule 19d-1(c)(1) of the Act.⁶⁰

Last, the Exchange is proposing to adopt New Rule 9216(c) to address the process followed for violations of the Order and Decorum regulations under the Advices, none of which are included in the MRVP. The fines assessed for violations of the Order and Decorum Advices range from \$50 to \$10,000. Thus, fines assessed for violation of Order and Decorum regulations of \$1,000 or less may be exempt from the reporting requirements of Rule 19d-1(c)(1) of the Exchange Act.⁶¹ The Exchange notes that,

⁵⁹ Instead of issuing an MRVP letter, letters issued by the Exchange under New Rule 9216(b)(2) are termed "violation letters." As a consequence of the two types of minor rule violation letters, the Exchange is adopting New Rule 9143(e)(3) and New Rule 9144(c)(3), which discuss certain waivers in relation to ex parte communications and separation of functions, to include violation letters in addition to MRVP letters. As a consequence, these two new rules differ from the analogous rules of BX and Nasdaq, neither of which have violation letters.

⁶⁰ See 17 CFR 240.19d-1(c)(1); supra note 28.

⁶¹ Id.

because BX and Nasdaq do not have trading floors, their respective Rules 9216 do not address violations of Order and Decorum. Accordingly, the Exchange is incorporating the provisions of current Rule 60 into proposed New Rule 9216(c), largely unchanged. The Exchange is retaining sole jurisdiction to review violations of Order and Decorum under New Rule 9216(c) because the regulations arise from the operation of the trading floor. Nevertheless, non-compliance with the Order and Decorum regulations may result in referral for formal disciplinary action, which would then proceed pursuant to the New Rule 9000 Series.⁶²

Disciplinary Process

With respect to the formal disciplinary process, Phlx is retiring the BCC and its related processes and adopting new policy and disciplinary processes that are derived from those of BX and Nasdaq. Phlx and FINRA amended the RSA to include the processes formerly conducted by the BCC and Hearing Panels. As such, FINRA will now not only investigate possible violation of Phlx rules and federal securities laws and recommend action against Members, Member Organizations, and Associated Persons, but FINRA will also adjudicate matters pursuant to the Exchange's new rules.⁶³ In this

⁶² In cases where the Phlx Regulation Department determines that formal disciplinary action is appropriate for a violation of Order and Decorum, it would provide the recommendation to the ODA directly, or may provide it to the Department of Enforcement or Department of Market Regulation to manage the ODA review process. See, e.g., New Rule 9216(c). The Exchange notes that Phlx Regulation Department may provide the recommendation to the ODA directly, or may provide it to the Department of Enforcement or Department of Market Regulation to manage the ODA review process for each of the processes under New Rule 9216(a), (b) and (c). As discussed above, both Options Exchange Officials and Exchange Staff are considered members of the Phlx Regulation Department. Supra note 55.

⁶³ In certain instances, as set forth in proposed New Rule 9211(a)(1), Phlx Regulation will retain discretion to investigate potentially violative conduct itself

regard, the case authorization and adjudicatory functions of the BCC and current Hearing Panels will be administered by FINRA's ODA and Office of Hearing Officers ("OHO"), respectively.

The ODA is an office within FINRA, independent of the FINRA enforcement function and not involved in investigating or litigating cases.⁶⁴ Similar to the BCC, the ODA reviews each proposed complaint to determine the legal and evidentiary sufficiency of proposed charges and settlements.⁶⁵ Like matters presented to the BCC for its determination of whether to initiate charges,⁶⁶ a recommendation proposed by FINRA staff or the Phlx Regulation Department as proposed herein in a matter involving formal disciplinary action cannot proceed without approval by the ODA.⁶⁷ If a complaint is authorized by the ODA, then FINRA's Department of Enforcement or the Department of

and recommend a resolution to FINRA. In this respect, New Rule 9211(a)(1) will differ from the corresponding provisions of the BX and Nasdaq Rules.

⁶⁴ Supra note 32 at 4.

⁶⁵ Id. The ODA also reviews and accepts uncontested offers of settlement for FINRA matters (FINRA Rule 9270(e)(2)), and for BX and Nasdaq matters pursuant to their respective Rules 9270(e)(2). The ODA also has sole authority to accept or reject uncontested offers of settlement involving affiliates of BX and Nasdaq pursuant to their respective Rules 9270(e). As a practical matter, FINRA has informed the Exchange that the ODA reviews nearly all uncontested offers of settlement for possible acceptance, however, the ODAs authority to reject uncontested offers of settlement is limited to those involving affiliates of the Exchange. Accordingly, the Exchange is proposing to make it clear in New Rule 9270(e) and subparagraph (2) thereunder that the ODA may accept an offer of settlement and order of acceptance or refer them to the Exchange Review Council, and it may also reject uncontested offers of settlement in matters involving an affiliate of the Exchange pursuant to New Rule 9270(e).

⁶⁶ See Rule 960.2(f).

⁶⁷ Supra note 32 at 4; see also New Rule 9211(a).

Market Regulation or the Phlx Regulation Department as proposed herein⁶⁸ must issue the complaint, which is filed with the OHO.⁶⁹

The OHO, like the ODA, is an independent office within FINRA not involved in investigating or litigating cases. The OHO is responsible for the administration of the hearing process. Under the new process, hearings will be held before a Hearing Officer and two Panelists, with limited exception.⁷⁰ Panelists are selected by the Chief Hearing

⁶⁸ In addition to retaining discretion to investigate potentially violative conduct and recommending a resolution to FINRA, the Phlx Regulation Department is also retaining discretion to prosecute matters as a party before Hearing Panels. As a consequence, the Exchange has included reference to the Phlx Regulation Department in the New Rule 9200, 9300 and 9800 Series whereas the analogous rules of BX and Nasdaq do not include references to their respective Regulation Departments. Likewise, the Exchange is proposing to include the Phlx Regulation Department in the definition of “Party” under proposed New Rule 9120(z) for purposes of the New Rule 9200, 9300 and 9800 Series. The Exchange is also including the New Rule 9400 Series as covered by the term “Party.” Although, omitted from the related definitions of “Party” under the BX, Nasdaq and FINRA rules, the Exchange believes that it is appropriate to include the New Rule 9400 Series because it concerns expedited client suspensions whereby the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation at the direction of the CRO or another senior officer, may initiate expedited suspension proceedings with respect to alleged violations of Rule 774. The New Rule 9400 Series includes a hearings process in which the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation and the Member, Member Organization or Associated Person subject to expedited suspension are considered Parties to the matter. The Exchange notes that, although the BX and Nasdaq rules do not include the Department of Enforcement or the Department of Market Regulation, nor do they mention FINRA, it believes that including FINRA and its departments in proposed New Rule 9400 Series is appropriate because they may be involved in the initiation of such a matter for BX and Nasdaq currently. Thus, the proposed addition is a clarifying change. As such, the Exchange believes that including the New Rule 9400 Series under the definition “Party” is appropriate.

⁶⁹ See New Rule 9212(a)(1).

⁷⁰ New Rule 9231(b). As noted in the New Rule, there are certain limited circumstances whereby a hearing may proceed without the participation of a Hearing Officer or two Panelists, such as when Hearing Officer becomes incapacitated, or otherwise is unable to continue service after being appointed,

Officer and must be a person who: (i) previously served on the Exchange Review Council; (ii) previously served on a disciplinary subcommittee of the Exchange Review Council, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees; (iii) previously served as a Director, or as a Governor of the Exchange prior to its acquisition by Nasdaq, Inc., but does not serve currently in that position; or (iv) is a FINRA Panelist approved by the Board at least annually, including a member of FINRA's Market Regulation Committee or who previously served on the Market Regulation Committee not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed, or from other sources the Board deems appropriate given the responsibilities of Panelists.⁷¹

Upon the filing of a complaint, the respondent is afforded time to reply and request a hearing.⁷² The hearing process begins at this juncture, unless the respondent waives a hearing,⁷³ and the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel,⁷⁴ does not order a hearing on his or her own motion.⁷⁵ Should a hearing

and the replacement Hearing Officer determines to allow the Panelist to resolve the matter without his or her participation. See New Rule 9231(e)(1). See also New Rule 9234(a), (c), (d), and (e).

⁷¹ New Rule 9231(b).

⁷² See New Rules 9215 and 9221.

⁷³ Under New Rule 9221(a), a respondent may waive its right to a hearing if it fails to request a hearing in its answer.

⁷⁴ Under New Rules 9231(c) and 9331(a)(2), the Chief Hearing Officer and Exchange Review Council or Review Subcommittee, respectively, may determine that a matter be designated as an Extended Hearing or Extended Proceeding, and

be waived and the Hearing Officer or Hearing Panel declines to hold a hearing, the matter may be considered by the Hearing Panel on the record, as defined in New Rule 9267.⁷⁶ Should the hearing process proceed, it is governed by the New Rule 9200 Series. The hearing process concludes with either all of the causes of action in the matter summarily disposed of on motion,⁷⁷ acceptance of an offer of settlement,⁷⁸ or the issuance of a decision by the Hearing Panel.⁷⁹

The Exchange Review Council

The Exchange is eliminating two committees under the By-Laws and adopting the Exchange Review Council in their stead. The Exchange Review Council will have, in all

that such matter be considered by an Extended Hearing Panel or Extended Proceeding Committee. Under New Rule 9231(c), in making its determination, the Chief Hearing Officer will consider complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material. Under New Rule 9331(a)(2), in making its determination, the Exchange Review Council or the Review Subcommittee will consider the volume and complexity of the certified record, or other factors that the Exchange Review Council or the Review Subcommittee deems material. For purposes of this filing, references to Hearing Panels and Hearing Panelists include references to Extended Hearing Panels and Extended Hearing Panelists, and references to Subcommittees and Subcommittee members include references to Extended Proceeding Committees and Extended Proceeding Committee members, unless otherwise noted.

⁷⁵ See New Rule 9120 for definitions of these terms.

⁷⁶ New Rule 9221(c).

⁷⁷ After a hearing on the merits has commenced, either the Respondent or the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may make a motion for summary disposition of any or all of the causes of action in the complaint with respect to that Respondent or defenses raised in that Respondent's answer only with leave of the Hearing Officer. See New Rule 9264.

⁷⁸ New Rule 9270.

⁷⁹ New Rule 9268.

material respects, the same broad authority as the BX and Nasdaq Review Councils.⁸⁰ As such, the new Exchange Review Council will be charged with ensuring the consistent and fair application of the rules pertaining to discipline of Members, Member Organizations, and Associated Persons, and considering and making recommendations to the Board on policy and rule changes relating to business and sales practices of Members, Member Organizations, and Associated Persons and enforcement policies, including policies with respect to fines and other sanctions.⁸¹ The policy function of the Exchange Review

⁸⁰ The Review Councils of BX and Nasdaq preside over matters involving appeals of their respective Rules 4612 (Registration as an Equities/Nasdaq Market Maker), 4619 (Withdrawal of Quotations), 4620 (Voluntary Termination of Registration), and 11890 (Clearly Erroneous Transactions). See Rules 0120(m) of BX and Nasdaq. Moreover, the Nasdaq Review Council presides over matters involving appeals of Nasdaq Options Rule Chapter V Section 6 (Obvious and Catastrophic Errors). See Nasdaq Rule 0120(m). The Exchange Review Council presides over matters involving, in part, appeals of Rules 124 (Disputes-Options), 1092 (Obvious Errors and Catastrophic Errors), 3219 (Withdrawal of Quotations), 3220 (Voluntary Termination of Registration), and 3312 (Clearly Erroneous Transactions). See New Rule 1(k). BX and Nasdaq Rules 4619, 4620 and 11890 are materially identical to Exchange Rules 3219, 3220 and 3312, respectively. Nasdaq Options Rule Chapter V, Section 6, and Exchange Rule 1092 both address obvious and catastrophic errors on their respective options markets. Last, Exchange Rule 124 is unique to Phlx as it addresses disputes occurring on and relating to the Exchange's trading floor. Neither BX nor Nasdaq have a physical trading floor.

⁸¹ See New Phlx By-Law, Article V, Sec. 5-3(b)(i). 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 members, member organizations 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 member, member organization and associated person conduct and trading activities in the national securities exchange operated by the Company. Id. The same provisions of the BX and Nasdaq by-laws only apply this role as it relates to their respective members. The Exchange notes that programs and systems for the surveillance and enforcement of rules governing member conduct and trading activities, as described in the BX and Nasdaq by-laws, implicitly apply to such

Council is similar to that of the BCC, yet broader in scope.⁸² The Exchange is also eliminating the Market Operations Review Committee, whose duties will be the responsibility of the Exchange Review Council, which is discussed in greater detail below.

In its adjudicatory role, the Exchange Review Council will serve as an appellate body, with jurisdiction to: (i) review decisions issued in disciplinary proceedings,⁸³ statutory disqualification proceedings, or membership proceedings;⁸⁴ (ii) review an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter;⁸⁵ (iii) review the exercise of exemptive authority;⁸⁶ and (iv) review such other proceedings or actions as may be authorized by the Exchange rules.⁸⁷ As such, the

conduct and activity of associated persons. Thus, the proposed addition of Members and Associated Persons to this provision of New Phlx By-Law, Article V, Sec. 5-3(b)(i), is done for clarification purposes.

⁸² Specifically, the proposed amended By-Laws provide that the Exchange Review Council may be authorized to: act for the Board with respect to appeals or reviews of disciplinary proceedings; act for the Board with respect to statutory disqualification proceedings; act for the Board with respect to membership proceedings; review offers of settlement, letters of acceptance, waiver and consent, and minor rule violation plan letters; exercise exemptive authority; consider and make recommendations to the Board on policy and rule changes relating to business and sales practices of Members, Member Organizations and Associated Persons and enforcement policies, including policies with respect to fines and other sanctions; exercise other such powers and duties as the Board deems appropriate. See New Phlx By-Law, Article V, Sec. 5-3(b)(i).

⁸³ See New Rule 9300 Series.

⁸⁴ See New Rule 9520 Series.

⁸⁵ See New Rule 9216.

⁸⁶ New Rule 9600 Series.

⁸⁷ New Phlx By-Law, Article V, Sec. 5-3(b)(i).

Exchange Review Council will perform a role identical to that of the Review Councils of BX and Nasdaq, and FINRA's NAC. The NAC reviews decisions rendered by Hearing Panels in FINRA disciplinary proceedings and Member Regulation Department decisions rendered in membership proceedings involving FINRA members, among other things.⁸⁸

Likewise, the Exchange Review Council will review decisions issued by Hearing Panels concerning disciplinary matters and Membership Department decisions in membership proceedings concerning Members, Member Organizations, Associated Persons.⁸⁹ Hearing Panel decisions may be appealed to the Exchange Review Council by either the respondent or the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation.⁹⁰ Appeals must be made in writing within 25 days after service of the decision.⁹¹

The Exchange Review Council may also call a Hearing Panel decision for review on its own motion, except that default decisions issued pursuant to New Rule 9269 shall be subject to a call for review by the CRO and a decision with respect to a Member, Member Organization, or Associated Person that is an affiliate of the Exchange within the meaning of Rule 985 may not be called for review.⁹² Decisions of the Exchange Review Council are final unless called for review by the Board.⁹³ This process is

⁸⁸ FINRA Regulation, Inc. By-Law, Article V, Sec. 5.1.

⁸⁹ New Phlx By-Law, Article V, Sec. 5-3(b)(i).

⁹⁰ New Rule 9311(a).

⁹¹ Id.

⁹² New Rule 9312.

⁹³ New Rules 923(a)(x)(C), 9349(c), and 9351.

consistent with the current process by which the BX and Nasdaq Boards may call for review a decision made by their Review Councils arising from their respective disciplinary and membership rules, as well as the process followed by the FINRA Board of Directors in its review of such decisions issued by the NAC.⁹⁴

The Exchange notes that both Nasdaq and BX eliminated their respective Market Operations Review Committees and transferred those committees' responsibilities to their Review Councils.⁹⁵ Accordingly, the Exchange is proposing to eliminate its Market Operations Review Committee ("MORC") and include its responsibilities within those of the new Exchange Review Council. The MORC is responsible for considering appeals of determinations made pursuant to Exchange Rules 124, 1092, 3219, 3220, and 3312. Decisions of the MORC in these matters are not appealable,⁹⁶ however, determinations of the MORC with respect to Rule 3312 may be arbitrated.⁹⁷ The By-Laws require that the MORC be comprised of a number of Member Representative members that is equal to at least 20 percent of the total number of members of the MORC.⁹⁸ Moreover, the By-Laws require that no more than 50 percent of the members of the MORC be engaged in market making activity or employed by a Member whose revenues from market making exceed

⁹⁴ See Nasdaq Rules 1016, 9349(c) and 9351, BX Rules 1016, 9349(c) and 9351, and FINRA Rules 1016, 9349(c) and 9351.

⁹⁵ See Securities Exchange Act Release No. 72151 (May 12, 2014), 79 FR 28571 (May 16, 2014) (SR-NASDAQ-2014-048) and Securities Exchange Act Release No. 72149 (May 12, 2014), 79 FR 28564 (May 16, 2014) (SR-BX-2014-024).

⁹⁶ Unlike disciplinary proceedings under the New Rule 9000 Series, speedy resolution of matters under the MORC's jurisdiction is important to ensuring fair and equitable treatment of Members.

⁹⁷ See Rule 3312(c)(3).

⁹⁸ Phlx By-Law, Article V, Sec. 5-3(d).

10 percent of its total revenues.⁹⁹ The By-Laws do not provide a description of what is a quorum for purposes of holding a meeting of the MORC, however, the committee has adopted a three member quorum requirement.¹⁰⁰

Structure of the New Rules

The Exchange is adopting a New Rule 8000 and 9000 Series, which are modeled on the BX and Nasdaq Rules, and which replace the current Rule 960 Series.

The New Rule 8000 Series is titled “Investigations and Sanctions,” and it governs the regulation of Member Organizations, Members and Associated Persons, investigations and sanctions. With respect to regulation of Member Organizations, Members and Associated Persons, the New Rule 8000 Series generally describes the regulatory contract between the Exchange and FINRA,¹⁰¹ and requires Member Organizations to keep and maintain current paper or electronic copies of both the FINRA and Exchange manuals.¹⁰²

The New Rule 8200 Series concerns the investigative process. It grants the Phlx Regulation Department, including FINRA staff, the right to require Members, Member

⁹⁹ Id.

¹⁰⁰ Rule 3312(c)(2) expressly requires a panel to consist of three or more members of the MORC, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a Member firm whose revenues from market making activity exceed ten percent of its total revenues. The rule also states that in no case shall a MORC Panel include a person affiliated with a party to the trade in question. The amended Exchange By-Laws define an Exchange Review Council quorum for the transaction of business with regard to an appeal of proceedings involving Exchange Rules 124, 1092, 3219, 3320, and 3312 (currently under the MORC’s jurisdiction) shall consist of three members of the Exchange Review Council.

¹⁰¹ New Rule 8001.

¹⁰² New Rule 8110.

Organizations, Associated Persons and persons subject to the Exchange's jurisdiction to provide information and to testify under oath,¹⁰³ and to permit inspections of their books and records, and accounts with respect to any matter involved in the investigation, complaint, examination, or proceeding.¹⁰⁴ The New Rule 8200 Series also extends this authority to investigations conducted by a domestic or foreign SRO, association, securities or contract market, or regulator of such markets with which the Exchange has entered into an agreement providing for the exchange of information and other forms of material assistance solely for market surveillance, investigative, enforcement, or other regulatory purposes.¹⁰⁵ The New Rule 8211 Series imposes a new obligation on member organizations to submit certain trade data¹⁰⁶ to the Phlx Regulation Department, including FINRA staff, in such an automated format as the New Rule prescribes. Pursuant to the New Rule 9600 Series, the Exchange may exempt a Member Organization from this requirement for good cause shown.

The New Rule 8300 Series describes the nature and effect of sanctions the Exchange may impose on a Member, Member Organization or Associated Person after compliance with the New Rule 9000 Series, including the circumstances under which the Exchange will release information concerning a disciplinary matter.¹⁰⁷ The New Rule

¹⁰³ New Rule 8210(a)(1).

¹⁰⁴ New Rule 8210(a)(2).

¹⁰⁵ New Rule 8210(b).

¹⁰⁶ The data required is based on whether the transaction was proprietary or effected for a customer, however, the Phlx Regulatory Department also may require a member organization to submit other information in an automated format. See New Rule 8211(b) – (d).

¹⁰⁷ New IM-8310-3.

8300 Series also provides the requirements concerning payment of fines, other monetary sanctions, and the consequences of non-payment.¹⁰⁸

The New Rule 9000 Series is titled “Code of Procedure.” It governs proceedings for: disciplining Members, Member Organizations, and Associated Persons; regulating Member Organizations experiencing financial or operational difficulties; summary or non-summary suspensions, cancellations, bars, prohibitions, or limitations; and obtaining relief from the eligibility requirements of the Exchange By-Laws and the Exchange Rules. The New Rule 9000 Series generally describes the RSA between the Exchange and FINRA.¹⁰⁹

The New Rule 9100 Series describes the application and purpose of the New Rule 9000 Series, including the types of proceedings covered by the New Rules,¹¹⁰ the rights, duties, and obligations of Members, Member Organizations and Associated Persons,¹¹¹ jurisdiction,¹¹² defined terms,¹¹³ and rules concerning the filing and service of papers.¹¹⁴

¹⁰⁸ See New Rule 8320. New Rule 8330 provides that a Member, Member Organization or Associated Person that is disciplined pursuant to New Rule 8310 shall bear such costs of the proceeding, as the Adjudicator deems fair and appropriate under the circumstances.

¹⁰⁹ See New Rule 9001.

¹¹⁰ See New Rule 9110.

¹¹¹ Id.

¹¹² Id.

¹¹³ See New Rule 9120. The Exchange notes that it is adopting a more comprehensive definition of “Interested Staff” under New Rule 9120(t) than the comparable definitions under BX and Nasdaq. Specifically, the Exchange is adopting new text that accounts for the role of the Phlx Regulation Department, including the involvement of employees thereof. Thus, the proposed new definition will include all individuals that should be considered as “Interested Staff” for purposes of the New Rule 9000 Series.

The New Rule 9100 Series also provides rules concerning proceedings, including appearance and practice,¹¹⁵ withdrawal by attorney or representative,¹¹⁶ ex parte communications,¹¹⁷ separation of functions among Adjudicators and Interested Staff,¹¹⁸ rules of evidence and official notice,¹¹⁹ motions,¹²⁰ rulings on procedural matters,¹²¹ and interlocutory review.¹²²

The New Rule 9200 Series sets forth the disciplinary process, including rules concerning the authorization and issuance of a complaint,¹²³ the briefing and hearings process,¹²⁴ issuance of a decision,¹²⁵ the settlement process,¹²⁶ and sanctions for

¹¹⁴ See New Rules 9131 – 9138.

¹¹⁵ See New Rule 9141.

¹¹⁶ See New Rule 9142.

¹¹⁷ See New Rule 9143.

¹¹⁸ See New Rule 9144.

¹¹⁹ See New Rule 9145.

¹²⁰ See New Rule 9146.

¹²¹ See New Rule 9147.

¹²² See New Rule 9148.

¹²³ See New Rules 9211 and 9212.

¹²⁴ See New Rules 9215 – 9267.

¹²⁵ See New Rules 9268 and 9269.

¹²⁶ See New Rule 9270.

contemptuous conduct.¹²⁷ The New Rule 9200 Series also includes rules concerning adjudication that imposes a temporary or permanent cease-and-desist order.¹²⁸

The New Rule 9300 Series sets forth the process for review of disciplinary proceedings by the Exchange Review Council and the Board.¹²⁹ The New Rule 9300 Series also describes the role of Counsel to the Exchange Review Council, review of Counsel decisions,¹³⁰ and the time when sanctions become effective,¹³¹ including when a Respondent appeals a decision to the Securities and Exchange Commission.¹³²

The New Rule 9400 Series provides the process for expedited client suspension proceedings, involving alleged violations of New Rule 774 (Disruptive Quoting and Trading Activity Prohibited).

The New Rule 9500 Series provides the process for proceedings other than formal disciplinary proceedings. The New Rule 9520 Series sets forth procedures for a person to become or remain associated with a Member Organization, notwithstanding the existence of a statutory disqualification, and provides the process for a Member, Member Organization, or Associated Person to obtain relief from the eligibility or qualification

¹²⁷ See New Rule 9280.

¹²⁸ See New Rules 9290 and 9291.

¹²⁹ The New Rules include provisions for the appeal of a matter to the Exchange Review Council (New Rule 9311), review proceedings initiated by the Exchange Review Council (New Rule 9312), and discretionary review by the Board (New Rule 9350 Series).

¹³⁰ See New Rule 9313.

¹³¹ See New Rule 9360.

¹³² See New Rule 9370.

requirements. The New Rule 9550 Series¹³³ provides the process followed for violations of Phlx rules subject to expedited proceedings, including: failures to provide information or keep information current (New Rule 9552); failures to pay Exchange dues, fees and other charges (New Rule 9553); failures to comply with an arbitration award or related settlement or an order of restitution or settlement providing for restitution (New Rule 9554); failures to meet the eligibility or qualification standards or prerequisites for access

¹³³ The Exchange is proposing to include both the Phlx Regulation Department and FINRA as authorized to provide notice under the various expedited proceedings Rules. The Exchange notes that the analogous BX and Nasdaq expedited proceedings Rules state that notice is to be provided by those exchanges' respective Regulation Department staff only. See, e.g., BX and Nasdaq Rules 9553(b). FINRA, acting on behalf of the Exchange, is authorized to provide such notice under BX and Nasdaq rules, notwithstanding the omission in the rule text. Thus, including both Phlx Regulation Department staff as well as FINRA under the service of notice provisions of the expedited hearings rules will avoid any confusion caused by the omissions in the BX and Nasdaq rule text, and will make it clear that such notices may be issued by either the Exchange or FINRA. Similarly, the Exchange is proposing to adopt consistent notification requirements under New Rule 9550 Series. BX and Nasdaq Rules 9555(g) and 9556(g) provide a process by which a member or person subject to a limitation or suspension, respectively, may seek termination of the limitation or suspension. Under those rules, a written request for such a termination must be filed with "the head of the Exchange department or office that issued the notice or, if another Exchange department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the Exchange department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown." By contrast, BX and Nasdaq Rules 9552(f), 9553(g), 9554(g), and 9558(g) speak of filing a request for termination a limitation, prohibition or suspension, as applicable, with "the head of the FINRA department or office that issued the notice or, if another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown." The Exchange is proposing to adopt a consistent notification requirement under the respective New Rule 9550 Series by requiring notice to the "Exchange department or FINRA department." The Exchange notes that, in practice, a FINRA department may be included as the proper department for notice based on the respective RSAs of BX, Nasdaq and the Exchange. See BX Rule 9001, Nasdaq Rule 9001, and proposed New Rule 9001.

to services (New Rule 9555); failures to comply with temporary and permanent cease-and-desist orders (New Rule 9556); procedures for regulating activities under Rule 703 regarding a Member Organization experiencing financial or operational difficulties (New Rule 9557);¹³⁴ summary proceedings for actions authorized by Section 6(d)(3) of the Act (New Rule 9558); and the hearing procedures for expedited proceedings under the New Rule 9550 Series.

The New Rule 9600 Series provides procedures followed when a Member Organization seeks exemptive relief pursuant to any Exchange Rule that references the New Rule 9600 Series.

The New Rule 9800 Series provides the process followed by the Exchange in administering temporary cease-and-desist orders, including the initiation of proceeding to issue such an order,¹³⁵ service thereof,¹³⁶ subsequent review of the order by the Hearing

¹³⁴ Currently, the Exchange has emergency authority to suspend a member organization pursuant to Phlx By-Law, Article VII, Sec. 7-5(b), which provides “The Board of Directors, or such person or persons or committee as may be designated by the Board of Directors, in the event of an emergency or extraordinary market conditions, shall have the authority to take any action regarding . . . the operation of any or all offices or systems of Members and Member Organizations, if, in the opinion of the Board of Directors or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system.” The Exchange does not have an analogous rule that relates to this authority. As such, New Rule 9557 provides a more specific description of the exercise of this authority in instances where a Member Organization is experiencing financial or operational difficulties, including notice requirements, a hearing process, and a process for the removal or reduction of a requirement or restriction.

¹³⁵ New Rule 9810.

¹³⁶ Id.

Panel,¹³⁷ the consequences of non-compliance,¹³⁸ and the process for seeking Commission review of the order.¹³⁹

Specific Rule Changes

As discussed above, the Exchange is amending its By-Laws, deleting the Rule 960 Series, and adopting the New Rule 8000 and 9000 Series. As a consequence of these changes, the Exchange has amended or deleted other Rules, which are either not needed, duplicated elsewhere, or referenced the deleted rules or the BCC. Below is a description of the individual changes the Exchange is making to its Rules. The descriptions describe the current Rule, where the rule resides in the New Rules, and any differences between the current and New Rule.

- Phlx is proposing to amend its By-Laws by deleting Article V, Section 5-3(b), “The Board shall appoint a Business Conduct Committee” and replace it with a new Section 5-3(b) titled “The Board shall appoint an Exchange Review Council.” Current Section 5-3(b) describes the jurisdiction and composition requirements of the BCC. New Section 5-3(b), which is copied from Article VII of the BX By-Laws and Article VI of the Nasdaq By-Laws, describes the jurisdiction and composition requirements of the Exchange Review Council. The new rule text of Section 5-3(b) materially differs from Article VII of the BX By-Laws and Article VI of the Nasdaq By-Laws in that new Phlx By-Law expressly provides that the Exchange Review Council may advise the Board

¹³⁷ New Rule 9850.

¹³⁸ New Rule 9860.

¹³⁹ New Rule 9870.

in its administration of programs and systems for the surveillance and enforcement of rules governing Member, Member Organization and Associated Person conduct and trading activities in the national securities exchange operated by Phlx. In contrast, the related provisions of the BX and Nasdaq By-Laws only describe such an advisory role with respect to their members. The Exchange believes that BX and Nasdaq consider this Exchange Review Council advisory role to their respective boards to implicitly extend to associated persons. The Exchange also believes that this Exchange Review Council advisory role should include both Member Organizations and their Associated Persons, including Members.

Consequently, the Exchange is expressly including Members and Associated Persons in this provision. Otherwise, the new rule text of Section 5-3(b) is identical in all material respects to that of Article VII of the BX By-Laws and Article VI of the Nasdaq By-Laws, differing in the By-Laws and rule numbers cited due to the Exchange's different numbering conventions. The Exchange notes that the majority of these Rules align with the comparable rules of BX and Nasdaq (compare, e.g. Phlx Rule 3312 "Clearly Erroneous Transactions" with BX and Nasdaq Rules 11890 "Clearly Erroneous Transactions"); however, the Exchange includes Rule 124 "Disputes-Options" under the Exchange Review Council's jurisdiction, which is currently under the jurisdiction of the MORC as discussed above and which neither BX nor Nasdaq have. In addition, BX and Nasdaq have a Rule 4612, which concerns registration as a market maker and which the Exchange does not have an

analogue. The Exchange notes that appeals of determinations made pursuant to BX and Nasdaq Rules 4612 were reviewed by their respective MORCs prior to consolidation into their Review Councils. Similarly, appeals of determinations made pursuant to Exchange Rule 124 are currently reviewed by the Exchange's MORC. The Exchange notes that Section 5-3(b)(iv) of the amended By-Laws provides that 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. Further, Section 5-3(b)(iv) provides that the Exchange Review Council shall be divided into three classes. To simplify the process of appointing Exchange Review Council members, the Exchange is proposing to use the members of the BX and Nasdaq Review Councils as the members of the Exchange Review Council, with the same terms and classes as those members have on the BX Review Council. The Exchange notes that this will ease the administration and recruitment of members by harmonizing their terms, and thus when new members must be approved by the exchange boards.

- Phlx is proposing to amend its By-Laws by deleting Article V, Section 5-3(d), and holding it in reserve. Section 5-3(d) establishes the MORC and its functions, which have been incorporated into new Section 5-3(b).
- Existing Rule 1 provides definitions for purposes of the rules of the Board, and rules and regulations of standing committees of the Exchange.

- The Exchange is amending the definition of the terms “Associated Person” and “Person Associated with a Member Organization” to include, for purposes of the New Rule 8000 and 9000 Series, an amended definition of what currently resides at Rule 960.1, Interpretation and Policies .01. The Exchange is proposing to replace use of the term “associated person of a member,” which as described below is incorrectly used at Rule 960.1, Interpretation and Policies .01 since there are no persons associated with a Member, with the defined term “associated person.” The Exchange is also proposing to make it clear that, for purposes of the 8000 and 9000 Rule Series, the term “person associated with a member organization” or “associated person” shall have the same meaning as the term “persons associated with a member” or “associated person of a member,” respectively, as provided in Section 3(a)(21) of the Exchange Act. The Exchange notes that the proposed changes to the defined terms does not change how they are presently applied.
- The Exchange is defining the new term “Code of Procedure” as the procedural rules contained in the New Rule 9000 Series.
- The Exchange is amending the definition of the term “Commission” to include the term “SEC.”
- The Exchange is defining the new term “Exchange Review Council,” which is copied from BX and Nasdaq Rules 0120(m). The Exchange notes that item (6) of the new definition differs from the BX and Nasdaq items (6) in that it cites the analogous Rules of the Exchange, which have

different rule numbers. In addition, and as noted above in the By-Laws discussion, the rules for which the Exchange Review Council is the appellate body, which are listed under item (6) of each of the three exchanges, derive from the responsibilities of the former BX and Nasdaq MORCs that were incorporated into their Review Councils, and such responsibilities of the Exchange's current MORC. Accordingly, to the extent those rules differ, so do the citations under the Exchange Review Council definitions of the three exchanges.

- The Exchange is amending the definition of "Member" to add rule text that clarifies that a Member is a natural person and must be a person associated with a Member Organization, and, as such, any references to Exchange to the rights or obligations of an Associated Person or person associated with a Member Organization also includes a Member.
- The Exchange is eliminating references to the phase-in period of Rule 611 of Regulation NMS under the definition of "Protected Bid," since the phase-in period has since past. As a consequence, the Exchange is also deleting definitions of "Nasdaq Global Market Security" and "Nasdaq Capital Market Security," which were solely referenced under the deleted portions of the definition of "Protected Bid."
- Rule 50 concerns the consequences of a Member's, Member Organization's, or Associated Person's failure to pay dues, fees, and other charges. Phlx is replacing the Rule with New Rule 9553, which is materially identical to the old Rule, except for the notice provisions under Rule 50(b), which require that

service of a notice of suspension, cancellation or bar be done in accordance with Rule 960.6 (Summary Disposition Proceedings). Rule 960.6(b) requires that notice and a copy of a summary decision is provided to Respondents in accordance with Rule 960.11. Rule 960.11, in turn, allows service on a Respondent or Respondent's Counsel either personally or by deposit with the United States Postal Service (postage pre-paid via registered or certified mail), by courier service addressed to Respondent's Counsel or the Respondent at his address (as it appears on the books and records of the Exchange), or, upon mutual written consent of the parties, by electronic delivery. By contrast, New Rule 9553(b) requires notice in accordance with Rule 9134 (Methods of, Procedures for Service) or by facsimile or email. Rule 9134 is generally consistent with current requirements under Rule 50; however, Rule 9134 provides more specificity on the source of the addresses that may be used for service, types of allowable service by U.S. Postal Service, and when service is complete.

- Rule 60 provides the process for assessing fines pursuant to the Order and Decorum regulations under Section H of the Option Floor Procedure Advices and Order & Decorum Regulations. The Order and Decorum regulations provide fines assessed in lieu of formal disciplinary proceedings for conduct relating to the administration of order, decorum, health, safety and welfare on the Exchange. The Exchange is proposing to adopt Rules 9216(c)(1) and (2) to address the process for administering violations of the Order and Decorum regulations under Section H of the Option Floor Procedure Advices.

- Rule 60(a)(i) provides an Options Exchange Official authority to assess fines on Members, Member Organizations, and Associated Persons for breaches of the Order and Decorum regulations. In addition, the rule permits the Options Exchange Official to refer the matter to the BCC, where it will proceed in accordance with the Rule 960 Series. The Exchange is moving Rule 60(a)(i) to New Rule 9216(c)(1) with minor changes. Specifically, the Exchange is replacing reference to the BCC with reference to the Department of Enforcement or the Department of Market Regulation, which are the bodies responsible for bringing formal disciplinary action under the BX and Nasdaq rules. The Exchange is also providing that an Options Exchange Official, as a representative of the Phlx Regulation Department, may instead request authorization for the issuance of a complaint from the ODA directly.¹⁴⁰ In addition, the Exchange is replacing a reference to its current disciplinary Rules 960.1 – 960.12 with reference to the New Rule 8000 and 9000 Series.
- Rule 60(a)(ii) provides Exchange staff authority to assess fines on Members, Member Organizations, or persons associated with Member Organizations for breaches of the Order and Decorum regulations and is otherwise identical in all respects to Rule 60(a)(i), including permitting Exchange staff to refer the matter to the BCC, where it will proceed in accordance with the Rule 960 Series. The Exchange is moving Rule 60(a)(ii) to New Rule 9216(c)(1), which combines Rules 60(a)(i) and (ii),

¹⁴⁰ See notes 47 and 55, supra.

as modified by the minor changes described above. The Exchange is also providing that Exchange staff, acting as a representative of the Phlx Regulation Department, may instead request authorization of a complaint from the ODA directly.¹⁴¹

- Rule 60(b)(i) provides Options Exchange Officials and officers of the Exchange authority exclude a Member or Associated Person from the trading floor for breaches of Order and Decorum regulations that occurred on the trading floor, or on the premises immediately adjacent to the trading floor. In particular, Members and Associated Persons are excluded if they pose an immediate threat to the safety of persons or property, are seriously disrupting Exchange operations, or are in possession of a firearm. Under the rule, Members or Associated Persons so excluded may be excluded for a period of up to five business days. The Exchange is moving the Rule to New Rule 9216(c)(2), with only a minor change to delete text that defines a “Member” as either a Member or a person associated with a Member Organization. As described above, a Member must be a person associated with a Member Organization; however, use of the term to refer to both types of Associated Persons may be confusing. Thus, the Exchange is instead including both terms individually.

¹⁴¹

Id.

- Rule 60(b)(ii)¹⁴² defines an “officer of the Exchange” for purposes of Rule 60 to mean an officer who is a vice president or higher. The Exchange is moving the rule unchanged to New Rule 9216(c)(2)(A).
 - Rule 60(b)(iii) defines the “premises immediately adjacent to the trading floor” to include: (1) all premises other than the trading floor that are under Exchange control, and (2) premises in the building where the Exchange maintains its principal office and place of business, namely FMC Tower, 2929 Walnut Street, Philadelphia, Pennsylvania. The Exchange is moving the rule unchanged to New Rule 9216(c)(2)(B).
- Rule 60(b)(iv) provides that exclusion from the floor may not be the exclusive sanction for breaches of the Order and Decorum regulations, which include, in addition to exclusion, a fine or referral to the BCC, where it shall proceed in accordance with the Rule 960 Series. The Exchange is moving the Rule to New Rule 9216(c)(2)(C) with minor changes. Specifically, the Exchange is replacing reference to referring matters to the BCC with reference to the Department of Enforcement or the Department of Market Regulation, which are the appropriate bodies responsible for bringing formal disciplinary action under the BX and Nasdaq rules. The Exchange is also providing that the Phlx Regulation Department may instead request authorization of a complaint from the

¹⁴² The Exchange notes that Rule 60(c) was mistakenly placed between Rules 60(b)(i) and (ii). See Securities Exchange Act Release No. 61207 (December 18, 2009), 74 FR 69185 (December 30, 2009)(SR-Phlx-2009-84).

ODA directly.¹⁴³ In addition, the Exchange is replacing references to its current disciplinary rules with the New Rule 8000 and 9000 Series.

- Rule 60(c) provides the process for Expedited Hearings for Members and Associated Persons that are excluded for a period exceeding forty-eight hours. Pursuant to the Rule, an expedited hearing will be held before the Chair of the BCC or a member of the Committee designated by the Chair within forty-eight business hours after the Member's or Associated Person's exclusion from the trading floor. The Rule further provides the required contents of the notice to the Member or Associated Person and sets forth the Member's or Associated Person's right to be represented by counsel. The Rule also provides the hearing process, issues to be considered by the adjudicator, and the timing and form of the determination. The Exchange is moving the Rule to New Rule 9216(c)(2)(D) with minor changes. Specifically, the Exchange is changing who is authorized to be an Expedited Hearing Officer to either the Chair of the Exchange Review Council or a member thereof. The Exchange believes that members of the Exchange Review Council are best suited to be Expedited Hearings panelist because of their expertise. Moreover, violations of Order and Decorum rules are not appealable to the Exchange Review Council, thus members thereof will not be conflicted in any subsequent appeal. The Exchange is also adding clarifying text to

¹⁴³ See notes 47 and 55, supra.

New Rule 9216(c)(2)(E)(ii) that describes in greater detail the exception to reporting provided by Rule 19b-1(c).

- Rule 60, Commentary (a) provides the procedures to be followed in cases where a pre-set fine of up to \$10,000 is summarily assessed. The Exchange is moving the Commentary under New Rule 9216(c)(1).
 - Rule 60, Commentary (a).01 requires the notice of the fine for breach of such regulations to be given by the issuance of a written citation, served by Exchange staff. The commentary provides that the cited party may accept or contest the written citation. The Exchange is moving the Commentary unchanged to New Rule 9216(c)(1)(A).
 - Rule 60, Commentary (a).02 provides the notice requirements for hearings arising from contested citations. The Exchange is moving the Commentary unchanged to New Rule 9216(c)(1)(B).
 - Rule 60, Commentary (a).03 provides the hearing recordation requirements. The Exchange is moving the Commentary unchanged to New Rule 9216(c)(1)(C).
 - Rule 60, Commentary (a).04 provides the procedure for hearings of contested fines. The Exchange is moving the Commentary with minor changes to New Rule 9216(c)(1)(D). Specifically, the Exchange is replacing the Chair of the BCC as the individual responsible for appointing a Hearing Director under the Rule with the Chair of the Exchange Review Council.

- Rule 60, Commentary (a).05 provides the nature and timing of the Hearing Director's determination upon conclusion of the hearing. The Exchange is moving the Commentary unchanged to New Rule 9216(c)(1)(E).
- Rule 60, Commentary (a).06 provides the conditions for assessing a forum fee. The Exchange is moving the Commentary to New Rule 9216(c)(1)(F), with only a minor change to update a citation to Rule 60 with New Rule 9216(c).
- Rule 60, Commentary (a).07 states that there is no right of appeal of a hearing determination under the Rule. The Exchange is moving the Commentary unchanged to New Rule 9216(c)(1)(G).
- Rule 60, Commentary (a).08 states that the Exchange will file a report in appropriate form with the SEC for any fine assessed under the Rule that is not contested and does not exceed \$1,000. The Exchange is moving the Commentary, with only minor changes, to New Rule 9216(c)(1)(H) to clarify that the exemption to SEC reporting arises from SEC Rule 19d-1(c)(1).
- Rule 60, Commentary (b) provides the procedures to be followed when a Member or an Associated Person is to be excluded from the trading floor. The Exchange is moving the rule to New Rule 9216(c)(2)(E).
 - Rule 60, Commentary (b).01 provides that the determination that a Member or an Associated Person shall be excluded is final and that

there shall be no appeal from such determination. The Exchange is moving the Rule unchanged to New Rule 9216(c)(2)(E)(i).

- Rule 60, Commentary (b).02 notes that the Exchange will file a report in appropriate form with the SEC, except in cases where a clerical employee is excluded for a breach of the Order and Decorum regulations. The Exchange is moving the Rule unchanged to New Rule 9216(c)(2)(E)(ii).
- RULE 60—REGULATION AND FINE SCHEDULE provides that most violations of the Order and Decorum Code are handled by a pre-set fine and/or sanction, and an Options Exchange Official or Exchange staff may refer the matter to the BCC for formal disciplinary proceedings. The Rule also provides that in the case of repeat violations of a regulation by the same individual, the amount of the fine is determined by the number of such violations which have occurred within the year immediately preceding the current violation. The Exchange is moving the Rule to New Rule 9216(c), with minor changes to cite the new disciplinary rules and to note that referrals for formal disciplinary proceedings are made to either the Department of Enforcement or the Department of Market Regulation. The Exchange is also providing that an Options Exchange Official or Exchange Staff, as a representative of the Phlx Regulation Department, may instead request authorization of a complaint from the ODA directly.¹⁴⁴

¹⁴⁴ See notes 47 and 55, supra.

- The Rule 70 Series concerns insolvency of Members and Member Organizations, providing the Exchange with authority to suspend the permit of a Member that fails to perform its contracts or is deemed insolvent, and to suspend the permit of a Member or Member Organization that has failed to meet his or its engagements or is insolvent. See Rules 70 and 71. The Rule 70 Series consists of Rules 70 through 76, which provide the processes for suspending and resolving suspensions due to insolvency. These rules also provide the rights and obligations of those subject to suspension. This series of rules were significantly more important in the days when the Exchange required seats to transact on the Exchange. Prior to demutualization, when the Exchange issued seats, those seats could be leased. As a consequence, Members could be indebted to other Members for the right to lease a seat. Since the Exchange demutualized, there are no longer any seats, owners or lessors thereof. Today permits provide trading rights to Members and Member Organizations in lieu of the issuance of seats as property. Moreover, the Exchange collects fees owed by Members and Member Organizations via direct debit each month. Thus, these rules were designed to protect Members and the Exchange during a time when the relationships among Members, and between Members and the Exchange, resulted in much greater risk exposure if a Member became insolvent than is the case today. Under the New Rules, the Exchange will continue to have the authority to suspend a Member, Member Organization, or an Associated Person, which would include the ability to suspend the permit(s) associated with a Member Organization. Specifically,

New Rule 9558(a)(2), which provides the Exchange's CRO with authority to provide written authorization to FINRA staff to issue on a case-by-case basis a written notice that summarily suspends a Member Organization, and its associated permit(s), who is in such financial or operating difficulty that FINRA staff determines and so notifies the Commission that the Member Organization cannot be permitted to continue to do business as a Member Organization with safety to investors, creditors, other Member Organizations, or the Exchange.¹⁴⁵ New Rule 9558 provides protections similar to the Rule 70 Series by preventing a Member Organization, and by extension its Associated Persons (including the Member(s) holding the permit(s)), from transacting on the Exchange while it is having financial or operating difficulty. Such financial or operating difficulty includes insolvency, which is what the Rule 70 Series concerns. Accordingly, the Exchange is proposing to delete the Rule 70 Series.

- Rule 70 permits the Exchange to suspend the permit of a Member upon notice of insolvency to the Exchange. Rule 71 permits the Exchange to suspend the permit of a Member if it appears to the BCC that the Member or its Member Organization has failed to meet its engagements or is insolvent. New Rule 9558(a) provides the CRO authority to direct FINRA

¹⁴⁵ Unlike the Rules 9558(a)(2) of BX and Nasdaq, the Exchange is including authority to suspend a Member Organization's associated permit. The Exchange notes that neither BX nor Nasdaq have trading permits. Permits allow Members and Member Organizations the ability to trade on the Exchange's. Consequently, suspension of a permit is vital to suspending a Member Organization, and its Associated Persons' ability to trade on the Exchange when subject to a suspension under Rule 9558(a)(2).

to suspend a Member Organization, together with its permit(s), that is in such financial or operating difficulty that FINRA staff determines and so notifies the Commission that the Member Organization cannot be permitted to continue to do business as a Member Organization with safety to investors, creditors, other Member Organizations, or the Exchange. The Exchange notes that, although New Rule 9558 does not provide an affirmative obligation of Member Organizations to notify the Exchange that it is having financial difficulties, the Exchange does not believe that such an obligation is needed in light of the direct debit of Member Organization obligations and the prompt notice of a deficit in a Member Organization's account.

- Rule 72 concerns investigation of insolvency, and describes the Member's and Member Organization's obligation to cooperate with the BCC's investigation of insolvency. New Rule 8210 provides the Exchange similar authority to conduct an investigation and obligates a Member, Member Organization and Associated Person to provide information and allow Phlx Regulation Department and FINRA staff to inspect and copy books and records and accounts of such Member, Member Organization or person.
- Rule 73 concerns the time for settlement of an insolvent Member, and allows the Membership Department to terminate a Member's permit if the Member fails to settle with its creditors and apply for reinstatement within six months from the time of such suspension, and permits the Board of

Directors or their designee to extend the time of settlement for periods not exceeding one year each. In lieu of this process, the Exchange is instead applying the process under New Rule 9558, which provides an expedited process for resolving suspensions issued to Member Organizations having financial or operating difficulties that places the safety of investors, creditors other Member Organizations, or the Exchange at risk. In terms of settlement with its creditors, the Exchange, FINRA acting on behalf of the Exchange, or to the extent a hearing is held, a Hearing Panel, may determine the steps necessary to lift the suspension. If a Member Organization fails to satisfy those prerequisites, the Exchange may terminate the Member Organization and its permit(s).¹⁴⁶

- Rule 74 concerns reinstatement of an insolvent Member, and requires Members applying for reinstatement of their permits to provide proof of settlement with their creditors, and provides the right to appeal a denial of reinstatement to the Board of Directors. New Rule 9558(d) provides that that a Member Organization may submit a written request for a hearing and written request for a stay, the Chief Hearing Officer or Hearing Officer assigned to the matter finds good cause exists to stay the limitation, prohibition or suspension.¹⁴⁷ Under New Rule 9558(g), a

¹⁴⁶ As discussed, a Member Organization may appeal a suspension issued pursuant to New Rule 9558(a)(2) to a Hearing Panel. Any decision thereof may be called for review by the Review Council pursuant to New Rule 9559(q). If a Member Organization fails to request a hearing timely, the suspension is final action of the Exchange.

¹⁴⁷ A Hearing held pursuant to New Rule 9558 follows the expedited hearing procedures provided by New Rule 9559.

Member Organization may file a written request for termination of the limitation, prohibition or suspension on the ground of full compliance with the notice or decision. The appropriate head of the Exchange or FINRA department or office may grant relief for good cause shown.

- Rule 75 allows the Exchange to proceed with against a Member whose permit is suspended, or its affiliated Member Organization, for any offense committed by the Member either before or after the announcement of the suspension as if the suspension had not occurred. New Rule 9110(d) sets forth the disciplinary jurisdiction of the Exchange, which provides similarly broad jurisdiction. Specifically, Rule 9110(d) provides that any Member, Member Organization, or any partner, officer, director or person employed by or associated with any Member Organization (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities Exchange Act of 1934 (Exchange Act), the rules and regulations thereunder, the By-Laws and Rules of the Exchange or any interpretation thereof, and the Rules, Regulations, resolutions and stated policies of the Board of Directors or any Committee of the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange. Moreover, the rule further provides that disciplinary jurisdiction applies to any Member, or any partner, officer, director, or person employed by or associated with a Member Organization, and any Member Organization following the termination of such person's permit or the termination of the employment by or the association with a Member Organization of such

Member or partner, officer, director or person, or following the deregistration of a Member Organization from the Exchange.

- Rule 76 concerns the rights of a Member suspended for insolvency, and provides that such a Member and its affiliated Member Organization shall be deprived during the suspension of all rights and privileges of a Member or Member Organization, except the right to have its business transacted at Members' commission rates. As described above, New Rule 9558(a) provides that a Member Organization, together with its associated permit(s), may be suspended. This effectively ensures that it is unable to conduct business on the Exchange. New Rule 9558(d) provides that such a suspension shall remain in effect unless, after a timely written request for a hearing and written request for a stay, the Chief Hearing Officer or Hearing Officer assigned to the matter finds good cause exists to stay the limitation, prohibition or suspension. New Rule 9558(g) provides the process by which a Member Organization subject to a suspension may request termination of the suspension. Last, the Exchange notes that the concept of allowing a Member or Member Organization the right to transact at Members' commission rates applied to the time when the Exchange had seats, and thus is no longer applicable.
- Rule 124 concerns disputes that occur on or relate to the Phlx options trading floor. Under subparagraph (b) of the Rule, a Member's, Member Organization's, or Associated Person's failure to comply with an initial Options Exchange Official ruling may result in a referral to the BCC. Phlx is

replacing reference to the BCC with reference to the Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement, which will be charged with the review of any such referred non-compliance. Phlx is proposing that the Phlx Regulation Department, Department of Market Regulation, and Department of Enforcement have this discretion under the proposed Rules because these departments may exercise prosecutorial discretion to determine if formal disciplinary action is warranted. To the extent the Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement determines that formal disciplinary action is warranted, the department must gain approval from the ODA to issue a complaint. As described above, the ODA is an office within FINRA, independent of the enforcement function and not involved in investigating or litigating cases. Thus, ultimately the referred non-compliance will be reviewed by a committee independent of the enforcement function. Phlx is also replacing references to Rules 60 and 970 in subparagraphs (b) and (c) of the rule with references to New Rules 9216(c) and (b), respectively, which have replaced those Rules as discussed both above and below. Phlx is also making it clear under Rule 124(c) that Options Exchange Official rulings issued pursuant to Floor Procedure Advices not related to Order and Decorum are subject to the 9000 Series. As described below in relation to Rule 970, Phlx is adopting the process used by BX and Nasdaq in administering their MRVPs.¹⁴⁸ Specifically, once the Phlx Regulation Department,¹⁴⁹ the

¹⁴⁸ New Rule 9216(b).

Department of Enforcement or the Department of Market Regulation determine that a fine should be levied against a Member, Member Organization, or an Associated Person, a draft letter is provided to the Member, Member Organization, or Associated Person. If a Member, Member Organization, or Associated Person does not agree to the terms of a minor rule violation letter or violation letter proposed by the Exchange pursuant to the Advices, then it is not compelled to accept the letter. As a consequence, however, the Exchange or FINRA acting on its behalf may pursue formal disciplinary action. Phlx notes that assessing a fine pursuant to the Advices in lieu of pursuing formal disciplinary action is always discretionary. Thus, if a Member, Member Organization, or Associated Person does not agree to the terms of a minor rule violation plan letter or violation letter provided, then the matter may be resolved through the formal disciplinary process, through which the Member, Member Organization, or Associated Person may submit arguments in its defense through an Answer. Phlx is also replacing references to the Market Operations Review Committee in subparagraph (d) with references to the Exchange Review Council, which is the committee responsible for reviewing disputed rulings under the New Rules. Under subparagraph (d)(v) of the Rule, all decisions of the Market Operations Review Committee that are not complied with promptly by a Member, Member Organization, or Associated Person may result in referral to the BCC. Phlx is replacing reference to the BCC with reference to the Phlx Regulation Department, Department of

Market Regulation, and Department of Enforcement, each of which will have authority to review of any such referred non-compliance since each of these departments may exercise their prosecutorial discretion to determine if formal disciplinary action is warranted. To the extent the Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement determines that formal disciplinary action is warranted, the department must gain approval from the ODA to issue a complaint pursuant to New Rule 9211(a)(1). As described above, the ODA is an office within FINRA, independent of the enforcement function and not involved in investigating or litigating cases. Thus, ultimately the referred non-compliance will be reviewed by a committee independent of the enforcement function.

- Rule 600 concerns a Member's and Member Organization's obligation to provide notice to the Exchange of its address and any changes thereto. The Rule also requires Members and Member Organizations to use FINRA's Web Central Registration Depository for reporting obligations. Rule 600(c) requires each Member and Member Organization applicant that is a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934 must use Web CRD to submit a Uniform Application for Broker-Dealer Registration, Form BD. The Exchange is deleting the term "member" from Rule 600(c) because it erroneously applies the requirement to Members, which, as discussed above, cannot be registered brokers or dealers. The Exchange is also adopting a new paragraph (d) to the Rule, which requires Member Organizations to report all contact information required by the

Exchange to the FINRA Contact System. FINRA uses the FINRA Contact System as the repository of member firm contact information for its members, as do BX and Nasdaq under their respective Rule 1160. The Exchange is adopting this requirement to facilitate FINRA's execution of its responsibilities under the RSA.

- Rule 615 concerns the Exchange's authority to waive the applicable Qualification Examination and accept other standards as evidence of an applicant's qualifications for registration. The Exchange is amending this Rule to make clear that the New Rule 9600 Series process for receiving a waiver is followed for such requests. The New Rule 9600 Series concerns the procedures for Member Organizations to request exemptions, and the appeal of adverse decisions regarding an exemptive request. Thus, Member Organizations may request an exemption to a Qualification Examination on behalf of their Associated Persons. The Exchange notes that text of Rule 615 currently closely mirrors BX and Nasdaq Rule 1070(d) and that the new language added to Rule 615 is taken from these BX and Nasdaq Rules.
- Rule 712 concerns the Exchange's requirement that each Member Organization doing business with the public have an independent audit of its affairs at least once a year. Under the Supplementary Material to the Rule, the BCC provided guidance to Member Organizations on the textual requirements of the agreement between the Member Organization and its accountant, which is provided in supplementary material to the Rule and is cited as a directive of the BCC. In such references to the BCC, the Exchange is replacing it with

references to the Exchange. With the retirement of the BCC, the Exchange is adopting the directive as a directive of the Exchange. The guidance requires accountants to Member Organizations to agree to provide notice of the commencement of an audit, and provide certain documents to the BCC. The Exchange is replacing references in the guidance to the BCC with references to the Membership Department, which the Exchange has determined is the best entity within the Exchange to receive such notice and documents in the absence of the BCC. The purpose of the guidance is to ensure that the Exchange is notified of the initiation of the required annual audit, thus aiding the Exchange in its oversight responsibilities. Likewise, the documents required to be provided by the auditing accountant ensures that the Exchange is aware of any identified deficiencies. The Exchange is now requiring that accountants performing annual audits provide the notice discussed above to the Membership Department.

- Rule 722 concerns requirements for margin accounts in miscellaneous securities. Subparagraph (d) of the rule provides that the BCC may appoint a World Currency Options Margin Subcommittee, charged with the monitoring of the use of letters of credit by world currency option writers, monitoring the volatility of each world currency underlying a class of world currency options traded on the Exchange and for recommending to the Exchange that higher margin requirements be imposed with respect to any world currency option position(s) whenever such Subcommittee deems such higher margin requirements advisable. The Exchange is replacing references to the BCC and

Subcommittee with reference to the CRO and Committee, respectively. The Exchange believes that the CRO is best suited to select members of such a committee to make these determinations in light of the retirement of the BCC because the CRO has general supervision of the Exchange's regulatory operations, including the responsibility for overseeing its surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another self-regulatory organization to which the Exchange is a party. The CRO meets with the regulatory oversight committee of the Board of Directors. As such, the Board will remain apprised of the formation of, and any decisions made by, the new Committee. The Exchange notes that the new Committee will have the same responsibilities under the amended rule as the Subcommittee does currently.

- Rule 774 is currently held in reserve. The Exchange is amending Rule 774 to now include an express requirement that Member Organizations and Members not engage in disruptive quoting and trading activity. BX and Nasdaq adopted this authority under their respective Equities Rule 2170 and Options Rule Chapter III, Section 16 to clearly prohibit disruptive quoting and trading activity on both the equities and options markets.¹⁵⁰ BX and Nasdaq also

¹⁵⁰ See Securities Exchange Act Release No. 77913 (May 25, 2016), 81 FR 35081 (June 1, 2016) (SR-NASDAQ-2016-074) (adopting the prohibition applied to the equity market and the disciplinary process) and Securities Exchange Act Release No. 77914 (May 25, 2016), 81 FR 35106 (June 1, 2016) (SR-BX-2016-028) (adopting the prohibition applied to the equity market and the disciplinary process); see also Securities Exchange Act Release No. 78208 (June 30, 2016), 81 FR 44366 (July 7, 2016) (SR-NASDAQ-2016-092) (extending the prohibition to the options market) and Securities Exchange Act Release No. 78107 (June 21, 2016), 81 FR 41619 (June 27, 2016) (SR-BX-2016-036) (extending the prohibition to the options market). Nasdaq and BX filed immediately effective

adopted new Rules 9400 to permit them to take prompt action to suspend their members or their clients that violate such rule. The Exchange is amending Rule 774 to house the obligation of its Member Organizations and Members, which will apply to both participation in the Exchange's equity and options markets. The Exchange is amending Rule 3202 to include Rule 774 as a rule that applies to the Nasdaq PSX ("PSX") equities market. The Exchange notes that Rules 600 through 799 concern the regulation of Members and Member Organizations (including associated persons thereof), and their participation on both the Exchange's equity and options markets. The Exchange is likewise adopting New Rule 9400 as adopted by BX and Nasdaq except that the Exchange rule includes the Department of Enforcement and the Department of Market Regulation as potential parties to the matter. As discussed above, the Exchange believes that including these departments in proposed New Rule 9400 Series is appropriate because they may be involved in the initiation of such a matter for BX and Nasdaq currently. The Exchange is also adding FINRA to other parts of New Rule 9400 where it is appropriate to show that FINRA may be the entity that initiated an action under the rule.

- Rule 777 prohibits certain guarantees made by Member Organizations or persons employed by them. Subparagraph (a) of the rule prohibits a guarantee

rule changes to make a technical correction to their respective Rules 9400 to include reference to their respective Options Rules Chapter III, Section 16, which were inadvertently not updated when Nasdaq and BX extended the prohibition on engaging in disruptive quoting and trading activity their options markets. See Securities Exchange Act Release No. 79240 (November 4, 2016), 81 FR 79068 (November 10, 2016) (SR-NASDAQ-2016-146) and Securities Exchange Act Release No. 79241 (November 4, 2016), 81 FR 79534 (November 14, 2016) (SR-BX-2016-056).

of payment of the debit balance, in a customer's account, to his employer or to any other creditor carrying such account, without the prior written consent of the BCC. The Exchange is replacing reference to the BCC with reference to the CRO, who Phlx believes is best suited to make such determinations in light of the elimination of the BCC.

- Rule 923 sets forth an applicant's right to appeal an adverse action with respect to a membership application, permit application, or other matter for which the Membership Department has responsibility. The Exchange is retaining this right under the Rule, but is replacing the current Board subcommittee appeals process with an Exchange Review Council appeals process with discretionary review by the Board based on the processes of BX and Nasdaq under their respective Rules 1016 and 1015. In adopting the new rule text under Rule 923, the Exchange is not copying the term "Applicant," which is a defined term under BX and Nasdaq membership proceedings rules. The Exchange is rather using the term "applicant" as it is represented in current Rule 923, which applies to membership applications, permit applications, or other matters for which the Membership Department has responsibility.
- The Rule 960 series sets forth the Exchange's current Disciplinary Rules. The Exchange is deleting the entire rule series¹⁵¹ and replacing it with the New Rule 8000 and 9000 Series. Specifically:

¹⁵¹ As discussed below, the Exchange will retain a transitional rule book that will contain the Exchange's rules as they are at the time of this filing, including the

- Rule 960.1 concerns the jurisdiction of the Exchange in disciplinary matters.
 - Rule 960.1(a) defines who is subject to the disciplinary jurisdiction of the Exchange as any Member, Member Organization, or any partner, officer, director or person employed by or associated with any Member or Member Organization (the Respondent) who is alleged to have violated or aided and abetted a violation of the Act, rules and regulations thereunder, the By-Laws and rules of the Exchange or any interpretation thereof, and the rules, regulations, resolutions and stated policies of the Board or any committee of the Exchange. After notice and opportunity for a hearing, such a Respondent may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a Member or Member Organization, or any other fitting sanction in accordance with the provisions of the disciplinary rules. The Exchange is moving this rule to New Rule 9110(d), which is not included in Rule 9110 of either BX or Nasdaq, but will preserve the Exchange's current jurisdiction under its rules.
 - Rule 960.1(b) permits the Exchange to charge a supervisor with a violation of a rule within the disciplinary jurisdiction of the Exchange committed by an employee under his supervision or by the Member Organization with which he is associated, as though such violations

Rule 960 series. This transitional rule book will apply only to matters initiated prior to the operational date of the changes proposed herein.

were his own. Similarly, the rule permits the Exchange to charge a Member Organization with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or employees or by a Member or Associated Person, as though such violation were its own. The Exchange is moving this rule to New Rule 9110(d), which is not included in Rule 9110 of either BX or Nasdaq, but will preserve the Exchange's current jurisdiction under its rules.

- Rule 960.1(c) extends the disciplinary jurisdiction of the Exchange to continue after the termination of a Member's permit or employment or association with the firm, or following deregistration of the Member from the Exchange. Staff must serve written notice to the former Member within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters, which occurred prior to the termination or deregistration. The Exchange is moving this Rule to New Rule 9110(d), which is not included in Rule 9110 of either BX or Nasdaq but will preserve the Exchange's current jurisdiction under its rules.
- Rule 960.1, Interpretations and Policies .01 defines the term "person associated with a member" or "associated person of a member" as the same meaning as Section 3(a)(21) of the Act. The Exchange is retaining this definition by amending Rule 1(b), which currently defines "associated person" or "person associated with a member organization," but is making a corrective change to the rule text by

making it clear that the Rule applies to persons associated with a “member organization” instead of a “member.” As discussed above, there are no persons associated with a Member. Therefore, under amended Rule 1(b), the Exchange is noting that, for purposes of the Rule 8000 and 9000 Series, the terms “person associated with a member organization” or “associated person” have the same meaning as the terms “persons associated with a member” or “associated person of a member,” respectively, as provided in Section 3(a)(21) of the Act.

- Rule 960.1, Interpretations and Policies .02 notes that summary suspension or other action taken pursuant to Exchange By-Laws or rules, or Section 6(d)(3) of the Act is not deemed to be disciplinary action under the disciplinary rules. The Exchange is replacing this Rule with New Rule 9558, which concerns summary proceedings authorized by Section 6(d)(3) of the Act. Although not explicitly noted in the New Rule, action taken under the rule is not defined as disciplinary action, but rather summary action to impose limitation, prohibition or suspension on a Member, Member Organization, or Associated Person, pending the opportunity for a hearing.
- Rule 960.2 concerns the investigative process and authorization of complaints. The Exchange is replacing this Rule with New Rules under the Rule 8000 and 9000 Series.
 - Rule 960.2(a) requires that the Exchange investigate possible violations within its disciplinary jurisdiction upon instruction of the

Board, BCC, or other Exchange official or upon receipt by the Exchange of a written accusation from a Member, Member Organization, or Associated Person, which specifies in reasonable detail the facts that are subject to the accusation. The Exchange is replacing this Rule with New Rule 8210, which sets forth staff's (including FINRA staff's) authority to examine and investigate potential violations of the Exchange rules.

- Rule 960.2(b) requires a Member, Member Organization, or Associated Person to cooperate with Exchange staff in the investigative process, and to not otherwise impede or delay an Exchange investigation into matters within its disciplinary jurisdiction. The Exchange is replacing this Rule with New Rule 8210, which specifically sets forth the Member's, Member Organization's, Associated Person's, or person subject to the Exchange's jurisdiction's obligation to cooperate with the Exchange and FINRA in the investigative process.
- Rule 960.2(c) sets forth a Member's, Member Organization's or Associated Person's right to counsel in connection with requests for information, documents or testimony and throughout the course of any disciplinary proceeding and the review thereof, or any hearing concerning a summary action. The Exchange is replacing this Rule with New Rule 9141(b), which provides that a Member, Member Organization, or Associated Person may be represented in any

proceeding by an attorney, so long as the attorney has not been barred pursuant to New Rules 9150 or 9280. Although not explicitly stated in the rules, as is the case for BX and Nasdaq, FINRA allows a member or person associated with a member to be represented by counsel in an investigation.¹⁵²

- Rule 960.2(d) requires staff to, upon forming a reasonable basis that a violation with the disciplinary jurisdiction of the Exchange has occurred, submit a written report to the BCC that specifies the violations and the facts that gave rise to the violations. The Exchange is replacing this Rule with New Rule 9211(a)(1), which provides a process whereby staff may seek approval from the ODA to issue a complaint in a matter when staff believes that any Member, Member Organization, or Associated Person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Exchange has jurisdiction to enforce.
- Rule 960.2(e) requires staff, prior to submitting its report pursuant to subparagraph (d), to provide notice to the person who is the subject of the report of the nature of the allegations and specific rule(s) and/or law(s) that appear to have been violated. Such notice must also state that report will be reviewed by the BCC. The subject of the report

¹⁵² See FINRA Regulatory Notice 09-17 (March 2009) (stating, “All FINRA investigations are non-public and confidential, and firms and individuals are entitled to be represented by counsel.”).

may submit a written statement to the BCC stating why no disciplinary action should be taken. Staff must provide the subject with access to any documents and other materials in the Exchange's investigative file that were furnished by the subject or his agents. This Rule describes the "Wells Notice" process and, although there is no explicit rule under the New Rule 8000 and 9000 Series that describes the Wells Notice process, FINRA uses this process in its disciplinary process.¹⁵³

- Rule 960.2(f)(i) requires the BCC to direct staff to prepare a Statement of Charges when it appears that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange. Should the BCC determine there is not such probable cause, or disciplinary action is not warranted, it shall inform staff and instruct them not to initiate action. In such a case, the BCC must document its basis for its determination in its meeting minutes. This process is generally subsumed in the ODA approval process noted under New Rule 9211(a)(1). Under the new process, however, a complaint is required only if a settlement is unable to be reached. Although not noted in New Rule 9211(a)(1), FINRA represented to the Exchange that the ODA memorializes in writing all decisions not to authorize a complaint or accept a settlement.
- Rule 960.2(f)(ii) permits the Exchange, in the case of violations determined based on an exception-based surveillance program, to

¹⁵³

Id.

aggregate individual violations of the Exchange order handling rules and consider such violations as a single offense only in accordance with the guidelines set forth in the Exchange's Numerical Criteria for Bringing Cases for Violations of Exchange Order Handling Rules. The Rule also provides that the Exchange may batch individual violations of Rule 1014(c)(i)(A) pertaining to quote spread parameters (and corresponding Options Floor Procedure Advice F-6). In the alternative, the Exchange may refer the matter to the Business Conduct Committee for possible disciplinary action when: (i) the Exchange determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be so egregious that referral to the Business Conduct Committee for possible disciplinary action is appropriate. The Exchange is proposing to move the language under Rule 960.2(f)(ii) to New Rule 9211(a)(1), which discusses the authorization of complaints, with minor changes. Specifically, the Exchange is replacing text concerning referring matters to the BCC with requesting authorization from the ODA, which is the appropriate body responsible for authorizing the issuance of a complaint for conduct arising from violations under the Advices. The Exchange is also replacing references to the "Exchange" with references to the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation. The Exchange

is also being more specific under the New Rules by noting that Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may seek authorization to take formal disciplinary action from the ODA.

- Rule 960.3 concerns the contents and required service of Statements of Charges. The Rule requires Statements of Charges to include the specific provisions within the Exchange's disciplinary jurisdiction alleged to have been violated, the persons or organizations alleged to have committed each of the violations (the "Respondents"), and the specific acts that give rise to the alleged violations. New Rule 9212(a)(1) sets forth the required contents of a complaint. In this regard, the new requirements are substantially similar to the old rule. Specifically, both rules require the Exchange to name the specific provision(s) of the rules purported to have been violated by the respondent(s), and the specific conduct that gave rise to the alleged violations. In addition, Rule 960.3 provides a definition of the term "Respondents" as noted above, whereas New Rule 9212 does not; however, New Rule 9120(aa) provides a definition of the term "Respondents," which is materially identical to the definition in Rule 960.3 and is designed to encompass the same entity in the process. Specifically, New Rule 9120(aa) defines "Respondent" as an Exchange Member, Member Organization or Associated Person against whom a complaint is issued in a disciplinary proceeding governed by the New Rule 9200 Series and in an appeal or review governed by the New Rule

9300 Series. Moreover, the definition notes that in a proceeding governed by the Rule 9800 Series, the term “Respondent” means an Exchange Member, Member Organization or Associated Person that has been served a notice initiating a cease and desist proceeding. Rule 960.3 also requires that a copy of the Statement of Charges be served on each of the Respondents. The Exchange is replacing this Rule with New Rule 9130 Series, which concerns the service and filing of papers in a matter. New Rule 9131 specifically sets forth the process for service of complaints and documents initiating proceedings.

- Rule 960.4 concerns the content and timing of submission of an Answer to a Statement of Charges. The Rule requires a Respondent to file an Answer within 15 business days after service of the Statement of Charges. The Rule allows a Member, Member Organization, or Associated Person to request a hearing or alternatively request that a decision be rendered based upon the written submissions. The Rule also provides that the charges shall be considered admitted by a Member, Member Organization, or Associated Person that fails to submit an Answer within the specified time, or failed to receive an extension from Exchange staff prior to the expiration of the 15 business day deadline. The Exchange is generally replacing this Rule with rules found in the New Rule 9220 Series, which concern requests for hearings. New Rule 9215 concerns Answers to Complaints and requires Respondents to file an Answer within 25 days after service of a complaint. New Rule 9138(a) defines a “day,” for

purposes of the New Rule 9000 Series, as a calendar day. Like the old Rule, New Rule 9269 provides for the issuance of a default decision against a Respondent that fails to answer the complaint within the time afforded under New Rule 9215. Under New Rule 9221, a Respondent may request hearing, and if it does not request a hearing, subparagraph (c) of the rule permits a Hearing Panel or Extended Hearing Panel to consider the matter on the record.

- Rule 960.5 concerns the hearings process, and sets forth, among other things, the process for requesting a hearing, how Hearings Panels are selected, and the roles and responsibilities of Hearing Panel members and counsel thereto, the pre-hearing and hearing procedures, and the conduct of hearings. The Exchange is replacing this Rule with the New Rule 9200 Series, which provides a more comprehensive process than the existing rule.
 - Rule 960.5(a)1. allows a hearing to be held on a Statement of Charges if requested by the Respondent in its Answer or upon motion of the BCC or staff. The Rule requires hearings to be presided over by three Hearing Panelists. New Rule 9221 provides a Respondent with the right to request a hearing in its answer. If a Respondent does not request a hearing in its answer and, in the absence of a waiver by an adjudicator for a hearing request submitted after submission of the answer, the decision may be made on the record, as defined in New Rule 9267. Pursuant to New Rule 9221(b), in the absence of a request

for a hearing from any Respondent, the Hearing Officer may order any complaint set down for hearing. Pursuant to New Rule 9221(c), if all respondents waive a hearing, and the Hearing Officer does not order a hearing on his or her own motion, a Hearing Panel or, if applicable, the Extended Hearing Panel may order a hearing or may consider the matter on the record. Further, if fewer than all Respondents waive a hearing, a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, may exercise its discretion to order that a hearing be held as to all Respondents or, alternatively, conduct a hearing as to only those Respondents who requested a hearing and consider the matter on the record as to those Respondents who waived a hearing. Consequently, the new rule will preserve the ability for a Respondent to request a hearing, and for an adjudicator to order a hearing, however, staff will no longer have the authority to request a hearing. The Exchange notes that both the Hearing Officer and Hearing Panel may exercise discretion to order a hearing, thereby providing unbiased judgement on whether a hearing is warranted.

- Rule 960.5(a)2. requires that the Chair of the BCC or its designee name a Hearing Panel within ten business days of receipt of notice that the Respondent has requested a hearing, upon motion of the BCC for naming of a Hearing Panel, or upon Respondent's request that the matter be decided on written submissions. Under the Rule, the BCC Chair or its designee must promptly notify staff and the Respondent of

the selection. New Rule 9213(a) provides that a Hearing Officer must be assigned to preside over the matter as soon as practicable after staff files a complaint, and requires that Parties are provided with notice of the Hearing Officer's assignment pursuant to New Rule 9132. New Rule 9213(b) provides that the Chief Hearing Officer must appoint Hearing Panelists pursuant to New Rules 9231 and 9232 as soon as practicable after assigning the Hearing Officer in the matter.

- Rule 960.5(a)3. sets forth the responsibilities of the Hearing Panel, which include but are not limited to presiding over hearings in contested disciplinary cases, conducting pre-hearing conferences, ruling on procedural or discovery matters, making all necessary evidentiary or other rulings, regulating the conduct of a hearing, imposing appropriate sanctions for improper conduct by a party or a party's representative, issuing decisions, and rendering decisions in connection with Summary Disposition Proceedings. The Rule also prohibits Hearing Panelists from involvement with the investigative process, participation in the decision to institute disciplinary proceedings, issue decisions without a majority concurrence of the Hearing Panel, rule on requests to disqualify a member of the Hearing Panel, or issue citations for violations of Exchange Rules and Floor Procedure Advices. Hearing Panelists under the current Rule may be Members, general partners or officers of Member Organizations, or other individuals that the BCC Chair or its designee deems qualified.

New Rule 9231(b) describes the compositional requirements of Hearing Panels. Under the New Rule, the Hearing Panel generally must consist of a Hearing Officer and two Hearing Panelists. The Chief Hearing Officer is responsible for selecting the Panelists, who must be associated with a Member Organization or retired therefrom. New Rule 9233(a) requires a Hearing Officer to recuse himself if he determines that he has a conflict of interest or bias or circumstances otherwise exist where his fairness might reasonably be questioned. Subparagraph (b) of the New Rule provides that a Party may move for the disqualification of a Hearing Officer. New Rule 9234(a) applies the same recusal standard as New Rule 9233(a) to Hearing Panelists. Likewise, New Rule 9234(b) provides parties with a process identical to New Rule 9233(b), yet also provides that the Chief Hearing Officer may order the disqualification of a Hearing Panelist if he determines that the Panelist has a conflict of interest or bias or circumstances otherwise exist where his fairness might reasonably be questioned. New Rule 9231(b)(1) permits the Chief Hearing Officer to select as a Panelist a person who: (A) previously served on the Exchange Review Council; (B) previously served on a disciplinary subcommittee of the Exchange Review Council, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees; (C) previously served as a Director, or as a Governor of the Exchange prior to its acquisition by Nasdaq, Inc., but does not serve currently in

that position; or (D) is a FINRA Panelist approved by the Exchange Board at least annually, including a member of FINRA's Market Regulation Committee or who previously served on the Market Regulation Committee not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed, or from other sources the Board deems appropriate given the responsibilities of Panelists. For purposes of initially applying New Rule 9231(b)(1)(B), the Exchange will allow former BCC members and former MORC members to serve as Panelist under the Rule. The Exchange believes that this is appropriate because it will be drawing from both of the groups for Exchange Review Council members.

- Rule 960.5(a)4. describes the role of the Hearing Attorney. The Hearing Attorney assists a Hearing Panel in the discharge of its duties. The Hearing Attorney advises the Hearing Panel on application of rules, sanctions and relevant precedent, yet may not vote in the disposition of a matter. Under the existing Rule, the Hearing Attorney is subject to the same conflict of interest prohibitions as Hearing Panelists. Under the New Rules, hearings will be conducted by FINRA's OHO, which is responsible for the adjudication of matters. Hearings conducted by the OHO are managed by a Hearing Officer, who is an attorney appointed by the Chief Hearing Officer to act in an

adjudicative role and fulfill various adjudicative responsibilities and duties set forth in the New Rule 9200, 9550, and 9800 Series (see New Rule 9120(r)). Hearing Officers are subject to the same conflicts of interest standard as a Hearing Panelist. This standard requires a Hearing Officer to withdraw from a matter any time he or she determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned (see New Rule 9233(a)). Similarly, in appellate matters, the Exchange Review Council is assigned counsel. New Rule 9120(e) defines the term “Counsel to the Exchange Review Committee” as an attorney that reports to the Chief Regulatory Officer of the Exchange who is responsible for advising the Exchange Review Council, the Review Subcommittee, a Subcommittee, or an Extended Proceeding Committee regarding a disciplinary proceeding on appeal or review before the Exchange Review Council. Counsel also may decide a motion on a procedural matter in the Rule 9300 Series (see New Rule 9146(j)). New Rule 9313 describes the authority of the Counsel and the process for seeking the review of a Counsel decision. Under New Rule 9313(a), Counsel has authority to take ministerial and administrative actions to further the efficient administration of a proceeding. A Party may seek review of a Counsel decision on motion to the Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee.

Similar to the Hearing Attorney, Counsel is subject to the same conflict of interest prohibitions as the Exchange Review Council (see New Rule 9332), which requires that if a member of the Exchange Review Council, including a member of the Review Subcommittee, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the Exchange Review Council determines that the member, the Panelist, or the Counsel to the Exchange Review Council has a conflict of interest or bias or circumstances otherwise exist where the fairness of the member, the Panelist, or the Counsel to the Exchange Review Council might reasonably be questioned, the member, the Panelist, or the Counsel to the Exchange Review Council shall notify the Chair of the Exchange Review Council, and the Chair of the Exchange Review Council shall issue and serve on the Parties a notice stating that the member, the Panelist, or the Counsel to the Exchange Review Council has withdrawn from the matter.

- Rule 960.5(a)5. requires written notice of the Hearing Panelist selection to be given to the Respondent. The Rule provides opportunity for any person involved in the disciplinary proceeding to disclose any relationship with a Hearing Panelist, which might result in such Panelist being unable to render a fair and impartial decision. New Rule 9233(b) permits a Party to move for the disqualification of a Hearing Officer not later than 15 days after the later of: (1) when the Party learned of the facts believed to constitute the disqualification; or

(2) when the Party was notified of the assignment of the Hearing Officer. Similarly, New Rule 9234(b) permits a Party to move for the disqualification of a Hearing Panelist within 15 days after the later of:

(1) when the Party learned of the facts believed to constitute the disqualification; or (2) when the Party was notified of the assignment of the Hearing Panelist.

- Rule 960.5(a)6. outlines Hearing Panelist compensation, including additional compensation in extraordinary cases. Under New Rule 9231(c), the Chief Hearing Officer may determine based on the complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material, that a matter be designated as an Extended Hearing, and that such matter be considered by an Extended Hearing Panel. Similarly, under New Rule 9331(a)(2) the Exchange Review Council or Review Subcommittee may designate a matter as an Extended Proceeding and that such matter be considered by an Extended Proceeding Committee based upon consideration of the volume and complexity of the certified record, or other factors deemed material by the Exchange Review Council or Review Subcommittee. The primary significance of such a designation is to allow the compensation of Extended Hearing Panelists at the rate then in effect for arbitrators appointed under the FINRA Rule 12000 and 13000 Series.

- Rule 960.5(a)7. vests the BCC Chair with authority to appoint a qualified replacement Hearing Panelist should a Hearing Panelist become unavailable. New Rule 9231(e) provides that the Chief Hearing Officer may replace a Hearing Officer if the Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed. Similarly, New Rule 9234 provides the Chief Hearing Officer the authority to appoint new Hearing Panelists.
- Rule 960.5(b)1. requires a hearing on the Statement of Charges to be held no later than 120 days after the earlier of the filing date of the Answer or the date the BCC requests a hearing. The hearing date may be extended by Hearing Panel for good cause. New Rule 9221(d) provides that the Hearing Officer must issue a notice stating the date, time, and place of the hearing, and whether the hearing shall be held before a Hearing Panel or an Extended Hearing Panel, and shall serve such notice on the Parties at least 28 days before the hearing, unless:
(1) in the discretion of the Hearing Officer, he or she determines that extraordinary circumstances require a shorter notice period; or (2) the Parties waive the notice period. Unlike Rule 960.5(b)1., New Rule 9221(d) does not impose a deadline by which a hearing must be held but the Exchange anticipates hearings will generally be held within 120 days.
- Rule 960.5(b)2. requires that the Respondent be given notice at least 15 business days before the hearing of the time and place of the

hearing. As noted above, New Rule 9221(d) provides that notice of the hearing date and location must be provided to the Parties at least 28 days before the hearing.

- Rule 960.5(b)3. permits the Respondent or staff to request in writing an adjournment of the hearing date for just cause. The Hearing Panel must promptly consider the request and inform the parties of its determination. If granted, the Hearing Attorney must also inform the parties of the new hearing date. New Rule 9222 concerns extensions of time, postponements, and adjournments. Under the New Rule, a Hearing Officer may, for good cause shown, change the place of the hearing, postpone the commencement of the hearing, or adjourn a convened hearing for a reasonable period of time. Such an extension may not exceed 28 days unless the Hearing Officer states on the record or provides by written order the reasons a longer period is necessary.
- Rule 960.5(b)4. requires parties to furnish to the Hearing Panelists and each other copies of all documentary evidence to be presented at the hearing, and a list of witnesses to be called at the hearing. New Rule 9261 provides that, no later than ten days before the hearing, or at such earlier date as may be specified by the Hearing Officer, each Party shall submit to all other Parties and to the Hearing Officer copies of documentary evidence and the names of the witnesses each Party intends to present at the hearing.

- Rule 960.5(b)5. permits the Hearing Panel to schedule pre-hearing conferences not less than eight business days prior to the hearing date. Pre-hearing conferences are held for the purpose of clarifying and simplifying issues and otherwise expediting the proceeding, and must be attended by all parties and the Hearing Panel. New Rule 9241 provides that, on his or her own motion or at the request of a Party, the Hearing Officer may, in his or her discretion, order counsel or any Party to meet for a pre-hearing conference. The conference may be held for the following non-exclusive list of reasons: expediting the disposition of the proceeding; establishing procedures to manage the proceeding efficiently; and improving the quality of the hearing through more thorough preparation. Under the New Rule, an initial pre-hearing conference, unless determined by the Hearing Officer to be unnecessary or premature, shall be held within 21 days after filing of an Answer. Under New Rule 9241(f), a Hearing Officer may issue a default decision against a Party that fails to appear at a pre-hearing conference, if the Party was provided due notice.
- Rule 960.5(c) vests the Hearing Panelists with authority to determine all questions concerning the admissibility of evidence, and to otherwise regulate the conduct of the hearing. The Rule also states that the formal rules of evidence do not apply. The Rule requires staff to present the charges in the matter, and permits both parties to present evidence and produce witnesses that testify under oath and are subject

to cross-examination. The Rule also allows the Hearing Panel to request production of documentary evidence and witnesses, and to question witnesses. Last, the Rule requires that a written transcript be made of the hearing, which becomes part of the record. New Rule 9263 provides the Hearing Officer with authority to receive relevant evidence, and to exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial. New Rule 9145(a) provides that the formal rules of evidence shall not apply in a proceeding brought under the Rule 9000 Series.

- Rule 960.5, Interpretation and Policy .01 permits a non-party to the matter to intervene upon showing that it has an interest in the subject of the hearing and that the disposition of the matter may impair or impede its ability to protect its interest. The Hearing Panel may also permit a non-party to intervene as a party when the person's claim or defense and main action have questions of law or fact in common. A non-party wishing to intervene must file with the Hearing Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought. The Exchange is eliminating the ability for a non-party to intervene, but will allow the consolidation of proceedings under New Rule 9214, which concerns consolidation and severance of disciplinary proceedings. Under subparagraph (b) of the New Rule, a Party may file a motion to consolidate two or more disciplinary proceedings if

such consolidation would further the efficiency of the disciplinary process, or if the subject complaints involve common questions of law or fact or one or more of the same Respondents. When determining whether to order the consolidation of such disciplinary proceedings, the New Rule requires the Chief Hearing Officers to consider whether the same or similar evidence reasonably would be expected to be offered at each of the hearings, whether the proposed consolidation would conserve the time and resources of the parties, and whether any unfair prejudice would be suffered by one or more parties as a result of the consolidation. Unlike Rule 960.5, Interpretation and Policy .01, New Rule 9214 does not permit a non-party to a disciplinary proceeding to file a motion or intervene in the proceeding in any manner whatsoever. The Exchange believes that eliminating the ability of a non-party to intervene in a matter is a better practice and will ensure that disciplinary proceedings are limited to issues of concern to parties of a matter while still allowing the consolidation of matters under the conditions noted above.

- Rule 960.5, Interpretation and Policy .02 requires a Hearing Panel to consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. As noted above, the New Rules do not permit a non-party to a disciplinary proceeding to file a motion or intervene in the proceeding in any manner whatsoever. Also as noted above, New Rule 9214(a) permits the Chief Hearing

Officer to consolidate disciplinary proceedings after considering, among other things, whether any unfair prejudice would be suffered by one or more parties as a result of the consolidation.

- Rule 960.5, Interpretation and Policy .03 prohibits any person not otherwise a party or licensed counsel representing a party from attending a hearing unless specifically allowed by the Hearing Panel. The new rules do not have a provision specifically concerning attendance at a hearing; however, hearings will be similarly limited to parties and licensed counsel. New Rule 9141(b) concerns who may represent a Party in a matter. The New Rule provides that a licensed attorney may represent a Party in a proceeding, a member of a partnership may represent the partnership, and a bona fide officer of a corporation, trust or association may represent the corporation, trust or association. New Rule 9261(a) requires Parties to submit to all other Parties and to the Hearing Officer copies of documentary evidence and the names of the witnesses each Party intends to present at the hearing.
- Rule 960.6 concerns the summary disposition process. Under Rule 960.6(a), a Hearing Panel may issue a summary decision in a disciplinary proceeding that violations within the disciplinary jurisdiction of the Exchange have occurred and impose sanctions upon those culpable for such conduct if the Respondent has admitted to the violation(s), or there is no dispute concerning those material facts which give rise to such violation(s). Under Rule 960.6(b), the Exchange is required to serve the

summary decision on the Respondent(s), to which the Respondent(s) may reply with a request to set aside any of the findings made or sanctions imposed by the summary decision. Rule 960.6(b) also provides that the Respondent(s) may request a hearing in their reply, which is governed by Rule 960.5 and, in cases where the Respondent has admitted to committing a violation, any further proceedings are limited to the issue of the propriety of the sanction imposed. Rule 960.6(c) requires the Hearing Panel to set aside a decision in a summary proceeding if the Respondent establishes that an issue of material fact or law exists as to any of the finding contained or sanctions imposed in the summary decision. New Rule 9264 provides for summary disposition. Unlike Rule 960.6, a motion for summary disposition must be initiated by a Party. Moreover, New Rule 9264 has different requirements based on when in the process the motion is made. Under the New Rule, the Respondent and/or staff may, prior to the Hearing but after the Respondent has filed an answer and had opportunity to inspect documents in the record, make a motion for summary disposition of any or all the causes of action in the complaint with respect to that Respondent, as well as any defense raised in a Respondent's answer. If a hearing on the merits has begun, then parties may submit such a motion only with leave of the Hearing Officer. New Rule 9264(c) provides the process for proceeding when a summary motion does not dispose of the matter entirely. Under the New Rule, the Hearing Panel must, if practicable, ascertain what material facts exist without

substantial controversy and what facts are controverted, and, based on this determination, issue an order specifying such. New Rule 9264(d) requires motions for summary disposition to be supported by a statement of undisputed facts, a supporting memorandum of points and authorities, and affidavits or declarations that set forth such facts. Because summary disposition proceedings are initiated by the Hearing Panel under Rule 960.6, there is no such analogue under the New Rules. New Rule 9264(e) concerns rulings on motions for summary disposition. The New Rule provides that a Hearing Officer may deny or defer a decision on any motion for summary disposition, yet only a Hearing Panel or, if applicable, the Extended Hearing Panel, may grant such a motion, except that the Hearing Officer may grant motions for summary disposition with respect to questions of jurisdiction. The New Rule also provides that a motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law.

- Rule 960.7 concerns offers of settlement. Under the Rule, a Respondent in a matter may submit an offer of settlement within 120 days of submitting its Answer. The offer of settlement must contain a proposed stipulation of facts and shall consent to specified sanctions. The BCC may accept the offer of settlement or reject it. Should the BCC reject the offer of settlement, the matter will proceed normally. As noted above, in certain cases FINRA will negotiate a settlement prior to the issuance of a

complaint. In such cases, the proposed Statement of Charges and offer of settlement are provided to the BCC for review and approval, with the BCC treating the offer of settlement as the Respondent's Answer. The Exchange is replacing this Rule with New Rule 9270,¹⁵⁴ which provides expressly that a Respondent to propose in writing an offer of settlement at any time. The offer must conform to the requirements of the New Rule and in submitting the offer the Respondent waives certain rights. If the Phlx Regulation Department,¹⁵⁵ Department of Enforcement or Department of Market Regulation do not oppose the offer of settlement, it is considered uncontested. Similar to Rule 960.7, an uncontested offer of settlement is provided to the Exchange Review Council (or to the ODA, in the case of a Respondent that is an affiliate of the Exchange within the meaning of Rule 985) by the Phlx Regulation Department, Department of Enforcement or Department of Market Regulation together with its recommendation. Under New Rule 9270(e), the ODA or Review Subcommittee may also accept any uncontested offer of settlement, and

¹⁵⁴ As discussed above, the Exchange is also adopting an acceptance, waiver and consent process under New Rule 9216(a), which allows for the settlement of matters prior to the issuance of a complaint. The Exchange is proposing to include the Phlx Regulation Department as an entity that may administer the acceptance, waiver and consent process under New Rule 9216(a) in addition to the Department of Enforcement and Department of Market Regulation, which is unlike the analogous rules of BX and Nasdaq that reference only the Department of Enforcement and Department of Market Regulation.

¹⁵⁵ The Exchange is proposing to include the Phlx Regulation Department as an entity that may administer the settlement process under New Rule 9270(e) in addition to the Department of Enforcement and Department of Market Regulation, which is unlike the analogous rules of BX and Nasdaq that reference only the Department of Enforcement and Department of Market Regulation.

the Review Subcommittee may reject uncontested offers of settlement while the ODA may only reject uncontested offers of settlement involving Respondents that are affiliates of the Exchange. If a hearing on the merits has begun, the offer of settlement and a proposed order of acceptance is provided to the Hearing Panel or, if applicable, the Extended Hearing Panel for acceptance or rejection. If accepted by the Hearing Panel or, if applicable, the Extended Hearing Panel, the offer of settlement and the order of acceptance shall be forwarded to the Exchange Review Council (or to the ODA, in the case of a Respondent that is an affiliate of the Exchange within the meaning of Rule 985) to accept or reject. As described above, the Review Subcommittee may accept or reject an uncontested offer of settlement, and the ODA may only accept an uncontested offer of settlement not involving an Exchange affiliate.

- Rule 960.7 Interpretation and Policies .01 allows the BCC to consider an offer of settlement submitted after 120 days as long as its consideration does not delay the hearing in the matter. The policy also provides that, if the Respondent submits an offer of settlement after the hearing has commenced, staff must promptly submit its position with respect to the offer and the Hearing Panel will then determine whether to consider the offer, and if so, determine whether to accept or reject the offer. The Exchange is replacing this policy with New Rule 9270(a), which provides that if a Respondent proposes an offer of settlement after the hearing on the merits has begun, the making of an offer of settlement shall not stay

the proceeding, unless otherwise decided by the Hearing Panel or, if applicable, the Extended Hearing Panel. Under New Rule 9270(e), if an offer of settlement is offered after a hearing has commenced and it is uncontested, then the Phlx Regulation Department, the Department of Enforcement or Department of Market Regulation must transmit the offer with a proposed order of acceptance to the Hearing Panel or, if applicable, the Extended Hearing Panel, for approval or rejection. Under New Rule 9270(f), which concerns contested offers of settlement provided prior to or after a hearing has commenced, if an offer of settlement is offered after a hearing has commenced and it is contested then the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation must provide a written opposition to the Hearing Panel or, if applicable, the Extended Hearing Panel, which may issue an approval or rejection of the offer, or may order the Parties attend a settlement conference. If a contested offer of settlement is approved by the Hearing Panel, or, if applicable, the Extended Hearing Panel, the Hearing Officer shall draft an order of acceptance of the offer of settlement, which is sent to the Exchange Review Council (or ODA in the case of a Respondent that is an Exchange affiliate) for acceptance or rejection. The Review Subcommittee may accept or reject a contested offer of settlement and offer of acceptance, other than those concerning a Respondent that is an Exchange affiliate, or refer them to the Exchange Review Council.

- Rule 960.8 concerns the content, approval and issuance of Hearing Panel decisions. The Rule requires the Hearing Panel to review the entire record and make a determination by a majority vote on the disposition of the matter, including whether a Respondent committed violations and the appropriate sanctions, if any. The Rule requires the Hearing Panel to thereafter issue a written decision consistent with its determination. The written decision must contain a statement of findings and conclusions, with the reasons therefor, upon all material issues presented in the record, and whether each violation within the disciplinary jurisdiction of the Exchange alleged in the Statement of Charges occurred. The Rule requires the Hearing Panel, absent extraordinary circumstances, to issue its decision within 60 days after its receipt of the Transcript from staff, a copy of which must be promptly served on the Respondent. Last, the Rule requires disciplinary sanctions arising from the decision be made public in a manner prescribed by the Board of Directors. The Exchange is replacing this Rule with New Rule 9268, which concerns decisions of Hearing Panels or, if applicable, the Extended Hearing Panel. Similar to the old Rule, the New Rule requires the Hearing Panel to make a determination in a matter based on a majority vote, which is reflected in a decision drafted by the Hearing Officer. Also similar to the old Rule, New Rule 9268 requires a decision to include, in part, the specific statutory or rule provisions allegedly violated, a statement that sets forth the findings of the Hearing Panel with respect to the act or practice the Respondent was

alleged to have committed or omitted, and to provide the conclusions of the Hearing Panel whether the Respondent violated any provision alleged in the complaint. The New Rule requires that the decision be issued within 60 days of the final date allowed for filing proposed findings of fact, conclusions of law, and post hearing briefs, or by a date established by the Chief Hearing Officer. Although the date on which the 60 day period begins is different between the old and New Rules, the principle is the same, namely that once the matter is closed to further motion or argument a decision must be issued within the required timeframe. Last, under subparagraph (d) of the New Rule, the OHO must publish notice of the decision and any dissenting opinion in the Central Registration Depository and provide a copy of the decision and any dissent thereto to the each Member Organization of the Exchange with which the Respondent is associated.

- Rule 960.8, Supplementary Material, provides the Board of Directors' directive with regard to publicity of sanctions. The Exchange is replacing this Rule with New Rule IM-8310-3, which concerns the release of disciplinary complaints, decisions, and other information. The New Rule generally requires the Phlx Regulation Department to release information concerning a decision that imposes a suspension, bar, cancellation or expulsion of a Member Organization or Member; suspension or revocation of a Member's permit; or suspension, bar or revocation of the registration of a Member or Associated Person. Unlike BX and Nasdaq Rules

8310(a), New Rule 8310(a) will include suspension of a Member's permit and revocation or cancellation of a Member's permit as available sanctions under the rule, which is consistent with the authority currently provided under Rule 960.10(a)(1). As described above, BX and Nasdaq do not have Associated Persons that are permit holders, and therefore Members. Consequently, the Exchange is including Members in IM-8310-1, which discusses the effect of a suspension, revocation, cancellation or bar. The Exchange is also including disclosure of suspension of a Member's permit and revocation or cancellation of a Member's permit under New Rule IM-8310-3. The Regulation Department may also release such information concerning a decision where there is a significant policy or enforcement determination and the CRO has deemed the release to be in the public interest.

- Rule 960.9 concerns the review process of Hearing Panel decisions, which includes both appeals thereof and the initiation of reviews by the Board of Directors.
 - Rule 960.9(a) provides a Respondent ten days after service of the notice and decision to appeal the decision to the Board of Directors by service of the petition on the Secretary of the Exchange. The Rule requires the petition to be in writing and to specify the findings and conclusions of the decision, which is the subject of the petition, together with the reasons that the Respondent petitions for review of these findings. Any objections to a decision not specified in the

petition are thereafter waived. The rule permits staff to provide a written response to the request filed with the Secretary within fifteen days of service of the petition. Under the rule, staff may request review of a decision by petitioning the Board of Directors within ten days after the decision. The New Rule 9300 series concerns the review of Disciplinary Proceedings by the Exchange Review Council, Board of Directors, and CRO. Under the new process, a Hearing Panel decision issued pursuant to New Rules 9268 (Decision of Hearing Panel) or 9269 (Default Decisions) may be appealed to the Exchange Review Council by a party within 25 days after service of a decision. See New Rule 9311(a). A Hearing Panel decision issued pursuant to New Rule 9268 may be called for review by the Exchange Review Council within 45 days after the date of service of the decision. See New Rule 9312(a)(1). A Hearing Panel decision issued pursuant to New Rule 9269 may be called for review by the CRO within 25 days after the date of service of the decision. Should the matter move forward (i.e., the appeal is not withdrawn, abandoned, or the call for review is withdrawn), the Exchange Review Council will issue its own decision. Under the New Rule 9350 series, a Director of the Board of Directors may call for review of the decision of the Exchange Review Council not later than the next meeting of the Board of Directors that is at least fifteen days after the date on which the Board of Directors receives the Exchange Review Council decision.

Unlike the old rule, New Rule 9351(a) does not provide a right to Parties to petition the Board of Directors for a review of an Exchange Review Council decision. The Exchange believes this is appropriate because parties are given the right to appeal a Hearing Panel decision to the Exchange Review Council, which serves in a similar appellate capacity as the Board of Directors under the old process.

- Rule 960.9(b)(i) concerns the Hearing Panel decision review process. Under the rule, the review is conducted by the Board of Directors or an Advisory Committee thereof. If an Advisory Committee is appointed, it must be composed of three Board Directors, one of which must be a Public Director appointed by the Chair of the Board. Any Board member that participated in the matter before the BCC or Hearing Panel may not participate in the Board review. Last, the rule provides that a matter is considered on the record and written exceptions filed by the parties, unless the adjudicators determine to hear oral arguments. As noted above, the Exchange Review Council performs a similar appellate function as the Board of Directors under the old process. Under New Rule 9332, Exchange Review Council members are subject to the same disqualification and recusal standards as the Hearing Panelists and Hearing Officers, including a direct conflict of interest such as prior participation in the matter. Under the new Exchange Review Council process and pursuant to New Rule 9331(b), a Subcommittee or Extended Proceeding Committee is formed for the

purpose of participating in a hearing, to the extent oral arguments are heard, and to recommend the disposition of a matter before the Exchange Review Council. New Rule 9343 provides that, if no oral argument is held, a matter shall be decided on the record, supplemented by any written materials submitted to or issued by the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council in connection with the appeal, cross-appeal, or call for review. Pursuant to New Rule 9346, the Exchange Review Council is charged with issuing a decision based on the record, as described above, and any oral argument permitted under the Code of Procedure, subject to limited exception.

- Rule 960.9(b)(ii) concerns reviews conducted by the Board of Directors. Under the rule, the Board must determine, by a majority vote, whether to affirm, reverse or modify, in whole or in part the decision of the Hearing Panel. The Board may not reverse or modify, in whole or in part the decision of the Hearing Panel if the factual conclusions in the decision are supported by substantial evidence and the decision is not arbitrary, capricious or an abuse of discretion. The rule requires the Board decision to be in writing and promptly served on the Respondent. Last, the rule provides that the Board decision represents the final disciplinary sanction of the Exchange in terms of the Act. As noted above, the Exchange Review Council performs a similar appellate function as the Board of Directors under the old

process. Under New Rule 9348, the Exchange Review Council may affirm, dismiss, modify, or reverse with respect to each finding, or remand the proceeding with instructions. The Exchange Review Council may also affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. The Exchange Review Council must issue a decision consistent with New Rule 9349(b), which provides elements required to be included in an Exchange Review Council decision.

- Rule 960.9(b)(iii) concerns reviews conducted by an Advisory Committee of the Board. The Advisory Committee must submit a report to the Board with a recommendation to affirm, reverse or modify, in whole or in part, the decision of the Hearing Panel. A modification may include an increase or decrease of the sanction. Like the Board process, the Advisory Committee may not reverse or modify, in whole or in part the decision of the Hearing Panel if the factual conclusions in the decision are supported by substantial evidence and the decision is not arbitrary, capricious or an abuse of discretion. The Board must determine to affirm, reject or modify, in whole or in part the recommendation of the Advisory Committee under the same standard as if were reviewing the matter itself. The rule requires the Board decision to be in writing and promptly served on the Respondent. Last, the rule provides that the Board decision represents the final disciplinary sanction of the Exchange in terms of

the Act. The Advisory Committee process is similar to the compulsory Subcommittee or Extended Proceeding Committee process under the New Rule 9330 series, as discussed above.

- Rule 960.9(c) permits the Board to initiate a review of a Hearing Panel decision within twenty days of Respondent's notice of the decision. A review initiated under this rule follows the process outlined above. As noted above, the Exchange Review Council performs a similar appellate function as the Board of Directors under the old process. Under New Rule 9312(a), the Exchange Review Council may call for review of the decision of a Hearing Panel within forty-five days after the date of service of the decision. If, however, the Hearing Panel decision relates to a default decision issued pursuant to New Rule 9269, the Chief Regulatory Officer may call such decision for review within twenty-five days after the date of service of the decision. If called for review, such decision will be reviewed by the Exchange Review Council. As discussed, under the new process, an Exchange Review Council decision may be reviewed by the Board of Directors pursuant to New Rule 9351, and any final Exchange action may be appealed to the Commission pursuant to New Rule 9370.
- Rule 960.9(d) permits a Respondent to request review of a decision in a disciplinary proceeding to the Board in writing within ten days after the decision has been rendered. An appeal taken by staff or by a Respondent will be determined on the written record; however, parties

may request an oral argument before the Board or Advisory Committee. As noted above, the Exchange Review Council performs a similar appellate function as the Board of Directors under the old process. Under New Rule 9311(a), a Respondent or the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may file written notice of appeal within twenty-five days after service of a decision.

- Rule 960.9(e) provides the process for staff to request Board review of a Hearing Panel decision, the timing of which mirrors that of a Respondent's appeal to the Board. As noted above, the Exchange Review Council performs a similar appellate function as the Board of Directors under the old process. Under New Rule 9311(a), a Respondent or the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may file written notice of appeal within twenty-five days after service of a decision.
- Rule 960.10 concerns the process for determining appropriate sanctions against Members, Member Organizations, or persons associated with Member Organizations and the effectiveness of judgments.
 - Rule 960.10(a)(1) requires Members, Member Organizations, or persons associated with Member Organizations to be appropriately disciplined for violations under the disciplinary rules by expulsion, suspension, fine, censure, limitations or termination as to activities, functions, operations, or association with a Member Organization, or

any other fitting sanction. The Exchange is replacing this rule with New Rule 8310(a), which stands for the same proposition that Members, Member Organizations, and persons associated with Member Organizations should be subject to appropriate sanction for each violation of the federal securities laws, rules or regulations thereunder, subject to the process under the New Rule 9000 Series.

Unlike BX and Nasdaq Rules 8310(a), New Rule 8310(a) will include suspension of a Member's permit and revocation or cancellation of a Member's permit as available sanctions under the rule, which is consistent with the authority currently provided under Rule 960.10(a)(1). As described above, BX and Nasdaq do not have Associated Persons that are permit holders, and therefore Members.

- Rule 960.10(a)(2) requires the BCC and Hearing Panel to refer to the Exchange's "Enforcement Sanctions User's Guide" when imposing sanctions for violation of the Order Handling Rules. Under New Rule 9270(c)(5), the Enforcement Sanctions User's Guide must be considered in settlement proceedings involving all proceedings under the New Rule 9000 Series. The Exchange notes that this is consistent with analogous rules of BX and Nasdaq.
- Rule 960.10(b) provides that sanctions imposed under the disciplinary rules are not effective until the Exchange review process is completed or the decision otherwise becomes final. Pending effectiveness of a decision imposing sanctions on a Respondent, a Hearing Panel may

impose conditions and restrictions on the activities of a Respondent which it finds to be necessary or appropriate for the protection of the investing public, Members, Member Organizations, and persons associated with Member Organizations, and the Exchange and its subsidiaries. Under the new rules, the concept of final exchange action for purposes of Rule 19d-1(c)(1) of the Act is reflected in multiple sections of the rule. Generally, action in a matter is not final until all periods available for appeal of a decision or call for review have lapsed. Under New Rule 9268(e), a Hearing Panel decision becomes final action if it is not appealed timely pursuant New Rule 9311 or timely called for review by the Exchange Review Council pursuant to New Rule 9312. New Rule 9268(e) provides that a majority decision of a Hearing Panel with respect to a Member or Member Organization that is an affiliate of the Exchange within the meaning of Rule 985(b) is final action of the Exchange and cannot be appealed or called for review. New Rule 9269 concerns default decisions in a matter before a Hearing Panel. Subparagraph (d)(1) provides that the default decision becomes final action if it is not appealed timely pursuant New Rule 9311 or timely called for review by the Exchange Review Council pursuant to New Rule 9312. New Rule 9269(d)(2), a default decision with respect to an Exchange member or member organization that is an affiliate of the Exchange within the meaning of Rule 985(b) constitutes final disciplinary action

of the Exchange and cannot be appealed or called for review. New Rule 9349(c) concerns final exchange action with respect to an Exchange Review Council decision. Under the rule, the decision of the Exchange Review Council becomes final action of the Exchange after the decision has been provided to the Board of Directors and the decision was not called for review pursuant to New Rule 9351. If the Exchange Review Council decision remands the matter to the Hearing Panel, however, the decision is not final exchange action and will continue through the Code of Procedure process. If the Board of Directors calls an Exchange Review Council decision for review, any decision issued by the Board of Directors become final exchange action, unless the decision remands the matter, in which case the matter continues through the Code of Procedure process. The New Rule 9800 Series concerns temporary cease-and-desist orders, and provides the process by which the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may impose such restrictions and how such restrictions are adjudicated.

- Rule 960.11 concerns the requirements for service of notice under the disciplinary rules and the authority of the BCC, Hearing Panel or other appropriate committee to provide extensions to certain time limits under the Disciplinary Rules.

- Rule 960.11(a) permits any charges, notices or other documents to be served on the Respondent or its counsel, either personally or by deposit in the U.S. mail, either registered or certified, or by courier. Such service must be made to the Respondent or its counsel at the address as it appears on the books and records of the Exchange, or by e-mail by the written mutual consent of the parties. The rule also requires that all documents required by the disciplinary rules filed by any party to also be filed with the Hearing Panel and all parties, and received on the day prescribed by the disciplinary rules. The Exchange is replacing this rule with the New Rule 9130 Series, which concerns service and filing of papers. The new rule series provides the timing and form of required service based on the type of the notice. New Rule 9134 concerns the methods of and procedures for service. Like the old rule, New Rule 9134 permits personal service, service by U.S. Postal Service, or service by courier.
- Rule 960.11(b) permits the BCC or its designee, Hearing Panel, or the appropriate committee before whom a matter is pending, to extend any time limit imposed under the disciplinary rules, unless otherwise noted. The Exchange is replacing this rule with New Rules 9222 and 9322. New Rule 9322(a) allows, any time prior to the issuance of a decision, the Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Exchange Review Council, for good cause shown, to

extend or shorten a period prescribed by the Code for the filing of any papers, except that Counsel to the Exchange Review Council may shorten a period so prescribed only with the consent of the Parties. Similarly, New Rule 9322(b) allows the Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Exchange Review Council, for good cause shown, to postpone, adjourn, or change the location of the oral argument, except that Counsel to the Exchange Review Council may adjourn or adjourn the oral argument only with the consent of the Parties. New Rule 9222(a) allows, at any time prior to the issuance of the decision of the Hearing Panel or, if applicable, the Extended Hearing Panel, the Hearing Officer to, for good cause shown, extend or shorten any time limits prescribed by the Code for the filing of any papers and, consistent with paragraph (b), postpone or adjourn any hearing. Paragraph (b) requires the Hearing Officer to take into consideration several factors in determining to grant an extension and limits the length of the extension to 28 days unless the Hearing Officer states on the record or provides by written order the reasons a longer period is necessary.

- Rule 960.12 concerns fairness and impartiality of Board or Committee members in the disciplinary process. The rule sets forth the impartiality standard for adjudicators and provides the process for the removal of an

adjudicator that does not meet the standard, either by motion of the chair or the adjudicator.

- Rule 960.12(a) prohibits a Board or Committee member, Hearing Officer, or Hearing Panelist from participating in any disciplinary proceeding if the individual cannot render a fair and impartial decision in the matter. In such a case, the rule requires the individual to remove himself from any consideration of the matter. As discussed above, New Rule 9233(a) requires a Hearing Officer to recuse himself if he determines that he has a conflict of interest or bias or circumstances otherwise exist where his fairness might reasonably be questioned. New Rule 9234(a) applies the same recusal standard as New Rule 9233(a) to Hearing Panelists. Similarly, New Rule 9332(a) requires an Exchange Review Council member and Counsel to recuse themselves should they determine that he has a conflict of interest or bias or circumstances otherwise exist where the fairness of the Exchange Review Council member or Counsel might be reasonably questioned.
- Rule 960.12(b) provides the Chair of an adjudicatory body authority to remove an individual from consideration of a matter, upon receiving written notice that such individual cannot render a fair and impartial decision in the disciplinary proceeding. The written notice must specify the grounds for contesting the qualification of the individual. The determination of the Chair is final and conclusive with respect to the participation of the individual. The Exchange is replacing this rule

with New Rules 9233(b), 9234(b) and 9332(b). New Rule 9233(b) provides that a party may move for the disqualification of a Hearing Officer. Likewise, New Rule 9234(b) provides parties with a process identical to New Rule 9233(b), yet also provides that the Chief Hearing Officer may order the disqualification a Hearing Panelist if he determines that he has a conflict of interest or bias or circumstances otherwise exist where his fairness might reasonably be questioned. New Rule 9332(b) provides that a party may move for the disqualification of an Exchange Review Council member, Review Subcommittee, a Panelist of a Subcommittee or an Extended Proceeding Committee, or Counsel to the Exchange Review Council.

- Rule 970 provides the process for assessing fines not relating to Order and Decorum up to \$10,000 in lieu of formal disciplinary proceedings. The Exchange is replacing Rule 970 with New Rule 9216(b).
 - Rule 970(a) sets forth the Exchange's authority to assess a fine no greater than \$10,000 on a Member, Member Organization, or Associated Person in lieu of any disciplinary proceeding, other than regulations relating to order, decorum, health, safety and welfare on the Exchange pursuant to Section H of the Option Floor Procedure Advices. The rule also provides that any fines assessed pursuant to this Rule not exceeding \$2,500, and non-contested are not publicly reported to the Members except as may be required by Rule 19d-1 under the Exchange Act, or any other regulatory authority. The rule notes that any fine imposed pursuant to this Rule

which exceeds \$2,500 shall be publicly reported to the Members as required by Rule 19d-1 under the Securities Exchange Act of 1934, and as may be required by any other regulatory authority. The Exchange is replacing Rule 970(a) with New Rules 9216(b)(1) and (2), which provides the Exchange's authority to assess such fines, and with New Rule 9216(b)(1)(D) and New Rule 9216(b)(2)(D).

- Rule 970(b) sets forth the notice requirements for service upon the Member, Member Organization, or Associated Person against which the fine is levied. The Exchange is replacing this rule with New Rule 9216(b)(1)(A), which describes the required contents of a minor rule violation plan letter, and New Rule 9216(b)(2)(A), which describes the required contents of a violation letter.
- Rule 970(c) states that payment of a fine assessed under the rule is deemed a waiver of a right to a disciplinary proceeding. The Exchange is replacing this rule with New Rules 9216(b)(1)(A), 9216(b)(2)(A), 9216(b)(1)(B), and 9216(b)(2)(B). New Rules 9216(b)(1)(A) and 9216(b)(2)(A) note that the Member, Member Organization, or Associated Person waives any right to hearing or appeal. New Rules 9216(b)(1)(B)(i)(a) and 9216(b)(2)(B)(i)(a) provide additional waivers not noted in Rule 970(c), concerning claims of bias or prejudgment of the CRO or Exchange Review Council in such body's participation in discussions of the terms and conditions of the minor rule violation plan letter or violation letter. New Rules 9216(b)(1)(B)(i)(b) and

9216(b)(2)(B)(i)(b) provide additional waivers not noted under Rule 970(c) concerning ex parte communications. All of these new waivers arising from a Member's, Member Organization's or Associated Person's execution of a minor rule violation plan letter or a violation letter are a result of the different process for issuing fines for Advices. Under the current rule, a Member, Member Organization, or Associated Person may contest a citation by filing an Answer, which is provided to the BCC for disposition. Under the New Rules, a minor rule violation plan letter or a violation letter, as applicable, is agreed upon between the Exchange, or FINRA on its behalf, and the Member, Member Organization, or Associated Person. The waivers under New Rules 9216(b)(1)(A), 9216(b)(2)(A), 9216(b)(1)(B), and 9216(b)(2)(B) serve to protect the parties involved in the negotiated disposition of a matter through a minor rule violation plan letter or violation letter. Should a Member, Member Organization, or Associated Person not consent to the issuance of a minor rule violation plan letter or violation letter, the matter may be subject to formal disciplinary action, as is the current practice for contested matters under Rule 970(d).

- Rule 970(d) sets forth the process a Member, Member Organization, or Associated Person must follow to contest the assessment of a fine assessed under the rule. As noted immediately above, the new process requires that a minor rule violation plan letter, or violation letter, is agreed upon prior to its issuance. As a consequence, there is no provision under the new rules

for contesting a fine. If a Member, Member Organization, or Associated Person does not agree to the terms of a minor rule violation plan or violation letter proposed by the Exchange, then it is not compelled to accept the letter.

- Rule 970(e) sets forth the review process of a contested fine. Under the rule, the BCC may then: (a) decide that the matter be dismissed and the notice of alleged violation be rescinded; (b) decide that the notice, as issued, is valid, whereupon the alleged violator could either pay the fine or contest the matter before a Hearing Panel; (c) decide that the notice, as issued, should be modified to specify either a higher or lower fine than the one on the notice as issued, whereupon the alleged violator could either pay the new fine or contest the matter before a Hearing Panel; or (d) decide that the matter merits formal disciplinary action and authorize issuance of a complaint, pursuant to Rule 960.2. As noted above, should a Member, Member Organization, or Associated Person not consent to the terms of a proposed minor rule violation plan letter or a violation letter, the matter may be subject to formal disciplinary proceedings. Unlike a hearing under Rule 970(d), the Exchange, or FINRA acting on its behalf, may pursue formal disciplinary action in any matter wherein a Member, Member Organization, or Associated Person refuses to consent to a minor rule violation plan letter or violation letter. As a consequence, there is no discretion to rescind, affirm or modify a determination prior to initiation of a formal disciplinary proceeding.

- Rule 970(f) sets forth the possible outcomes arising from a disciplinary proceeding arising from a contested fine. The rule provides that a hearing panel may impose any disciplinary sanction provided for in Disciplinary Rules, and may determine whether the violation is minor in nature. The rule further provides that if the violation is determined to be minor in nature, the violation(s) giving rise to the penalty shall not be publicly reported, except as may be required pursuant to Rule 19d-1 of the Exchange Act, or as may be required by any other regulatory authority. The rule notes that if the violation is determined to not be minor in nature, the decision of the Hearing Panel and any penalty imposed shall be publicly reported to the Members, Member Organizations, and persons associated with Member Organizations, in addition to any filing required by Rule 19d-1 of the Exchange Act, or any other regulatory authority, once such decision becomes “final” under the Disciplinary Rules. As noted above, the new process requires that the terms of a minor rule violation plan letter or a violation letter are agreed upon prior to their issuance. As a consequence, there is no provision under the new rules for contesting a fine. If a Member, Member Organization, or Associated Person does not agree to the terms of a minor rule violation letter or a violation letter proposed by the Exchange, then it is not compelled to accept the letter. Should a Member, Member Organization, or Associated Person not consent to the terms of a proposed minor rule violation plan letter or violation letter, the matter is subject to formal disciplinary action,

as is the current practice for contested matters under Rule 970(d). As discussed above, under the new rules, if a Member, Member Organization, or Associated Person does not agree to the terms of a proposed minor rule violation plan letter or violation letter, the Exchange or FINRA acting on its behalf will pursue a formal disciplinary proceeding against the Member, Member Organization, or Associated Person.

- Rule 970, Commentary .01 permits the Exchange to “batch” individual violations of order handling Options Floor Procedure Advices that are based on an exception-based surveillance program. The rule provides that such batch violations may be treated as a single occurrence, only in accordance with the guidelines set forth in the Exchange’s Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules. The rule further provides that the Exchange may batch individual violations of Rule 1014(c)(i)(A) pertaining to quote spread parameters (and corresponding Options Floor Procedure Advice F-6). The Exchange may, in the alternative, refer the matter to the Business Conduct Committee for possible disciplinary action when (i) the Exchange determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be so egregious that referral to the Business Conduct Committee for possible disciplinary action is appropriate. The Exchange is proposing to move Commentary .01 to New Rules 9216(b)(1)(E) and 9216(b)(2)(E) with minor changes.

Specifically, the Exchange is replacing text concerning referring matters to the BCC with requesting authorization from the ODA, which is the appropriate body responsible for authorizing the issuance of a complaint for conduct arising from violations under the Advices. The Exchange is also replacing references to the “Exchange” with references to the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation. The Exchange is also being more specific under the New Rules by noting that Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may seek authorization to take formal disciplinary action from the ODA.

- Rule 985 sets forth the limitations on ownership of the Exchange’s parent company Nasdaq and restrictions on the Exchange’s affiliation with Members, Member Organizations, and persons associated with Member Organizations. Rule 985(b) is cited in several sections of the New Rule 9000 Series, which uses its definition of “affiliate” to draw distinctions in the appeals process. Rule 985 is based on BX Rule 2140. The term “member” under BX’s rules is synonymous with the Exchange’s definition of “member organization,” whereas the definition of a “member” of the Exchange relates to the permit holder.¹⁵⁶ BX does not have such a concept, nor does Nasdaq under its analogous rules. Given that the purpose of the rule is to guard against any possibility that the Exchange may exercise, or forebear to exercise, regulatory authority with respect to an affiliated member in a manner that is influenced

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See supra note 3.

by commercial considerations, to provide an opportunity for Commission review of certain proposed affiliations, and to ensure that certain affiliated members do not receive advantaged access to information in comparison with unaffiliated members, the Exchange is adding to the rule references to Member Organizations.¹⁵⁷ When the rule was adopted, the Exchange neglected to include Member Organizations in the rule.¹⁵⁸ The Exchange is also clarifying in Rule 985(a)(i) that the rule applies to persons “associated with a member organization,” not “associated with a member.” As discussed above, there is no category of “person associated with a member” permitted by the Exchange, and thus the term “organization” was erroneously omitted when adopted.¹⁵⁹

- Rule 1092 concerns obvious errors and catastrophic errors. The rule currently references the MORC as the body responsible for review of determinations made by Options Exchange Officials pursuant to the rule. In light of the fact that the MORC’s responsibilities are now incorporated into those of the Exchange Review Council, the Exchange is changing references to the MORC under the rule to references to the Exchange Review Council, which BX and Nasdaq have done in their analogous Options Rules Chapter V, Section 6(l).
- Rule 3202 concerns the application of other rules of the Exchange to the PSX equities market. The Exchange is amending references in this rule to replace

¹⁵⁷ See Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 28, 2008) (SR-Phlx-2008-31).

¹⁵⁸ Id.

¹⁵⁹ Id.

references to the Rule 960 series with references to the New Rule 8000 and 9000 Series, delete references to Rule 50, which is replaced by New Rule 9553, and make conforming updates to the titles of Rules 98, 705, 754, 756, 792, 794, 795, 797, 798, 803, 902, 903, 904, 905, 906, and 907. The Exchange is also adding Rule 774 to the list of rules applicable to PSX, which, as discussed above, is being adopted as an express requirement that Member Organizations and Members not engage in disruptive quoting and trading activity. Last, the Exchange is deleting reference to Rules 70, 71, 72, 73, 74, 75, and 76, which are being deleted as part of this proposal.

- Rule 3219 concerns the withdrawal of quotations in PSX. The Exchange is replacing reference to the MORC with reference to the Exchange Review Council under Subparagraph (f) of the rule, which concerns jurisdiction over proceedings brought by PSX Market Makers seeking review of the denial of an excused withdrawal pursuant to the rule, or the conditions imposed on their reentry.
- Rule 3220 concerns the voluntary termination of registration. The Exchange is replacing reference to the MORC with reference to the Exchange Review Council under Subparagraph (e) of the rule, which concerns jurisdiction over proceedings brought by market makers seeking review of their denial of a reinstatement pursuant to paragraphs (b) or (d) of the rule.
- Rule 3312 concerns clearly erroneous transactions. The Exchange is replacing several references to the MORC with references to the Exchange Review Council under Subparagraphs (c), (d)(1), (e)(2) and (f) of the rule.

Subparagraph (c) of the rule concerns the review of clearly erroneous determinations. Subparagraph (d)(1) of the rule concerns the requirements for communicating materials to the Exchange. Subparagraph (e)(2) of the rule concerns fees for appeals. Lastly, Subparagraph (f) of the rule concerns refusal to abide by rulings of an Exchange official or the MORC.

- The Exchange's Equity Floor Procedure Advices provide fine-based sanctions for violations of the Exchange's regulations relating to equities trading. The Advices include MRVP violations, consistent with Rule 19d-1(c) under the Act.¹⁶⁰ Under the various fine schedules of these regulations, the fine amount increases with each additional violation of the particular advice violated. Upon reaching a certain number of violations of a particular advice over a certain period (as noted in the schedule), further sanction is discretionary with the BCC. In light of the retirement of the BCC, the Exchange is providing the Phlx Regulation Department, Department of Enforcement, and the Department of Market Regulation with discretionary authority to assess further sanction upon Members, Member Organizations or persons associated with a Member Organization for such violations of the Advices.¹⁶¹ The Exchange believes that these departments are best positioned to make determinations of whether further sanction is warranted under the Advices or

¹⁶⁰ 17 CFR 240.19d-1(c).

¹⁶¹ Notwithstanding, determinations to issue a fine are made on a case by case basis, whereby the Exchange considers the individual facts and circumstances to determine whether a fine of more or less than the recommended amount is appropriate for the violation, or whether the violation requires formal disciplinary action.

whether formal disciplinary action should be pursued for such repeated violations because it is the same prosecutorial discretion that these departments exercise in determining whether matters under investigation warrant formal disciplinary action. As a consequence, Phlx is replacing references in the regulations to the BCC with the Phlx Regulation Department, Department of Enforcement, and the Department of Market Regulation. The Exchange is also deleting certain references in the Equity Floor Procedure Advices that reference Members as being broker-dealers and/or having the obligations of a broker-dealer, or as having associated persons. As described above, Members may not be broker-dealers on the Exchange, and thus would not have such obligations or associated persons.

- The Exchange is also amending its Option Floor Procedure Advices and Order & Decorum Regulations, which provide fine-based sanctions for violations of the Exchange's regulations relating to options trading. These regulations include violations of the Exchange's MRVP relating to options trading. Under the various fine schedules of these regulations, the fine amount increases with each additional violation of the particular advice violated. Upon reaching a certain number of violation of a particular advice over a certain period (as noted in the schedule) further sanction is discretionary with the BCC. In light of the retirement of the BCC, the Exchange is providing the Phlx Regulation Department, Department of Enforcement, and the Department of Market Regulation with discretionary authority to assess further sanction upon Members, Member Organizations or persons associated

with a Member Organization for such violations of the Advices, other than Order and Decorum Regulations, and to serve as the body to which certain violations are referred.¹⁶² As noted above, the Exchange believes that these departments are best positioned to make determinations of whether further sanction is warranted under the Advices or whether formal disciplinary action should be pursued for such repeated violations because it is the same prosecutorial discretion that these departments exercise in determining whether matters under investigation warrant formal disciplinary action.¹⁶³ As a consequence, Phlx is replacing references in the Advices to the BCC with the Phlx Regulation Department, Department of Enforcement, and the Department of Market Regulation.¹⁶⁴ For Order and Decorum Regulations, the Exchange is proposing to provide only the Phlx Regulation Department with discretionary authority to assess further sanction upon Members, Member Organizations or persons associated with a Member Organization for

¹⁶² For example, Option Floor Procedure Advice B-6 provides, in part, that “In any instance where an order is misrepresented in this fashion due to factors which give rise to the concern that it was the result of anything other than an inadvertent error, the Exchange may determine to bypass the fine schedule below and refer the incident to the Business Conduct Committee for possible disciplinary proceedings in accordance with those procedures set forth under the Exchange’s Disciplinary Rule 960.” The Exchange is replacing the Business Conduct Committee with the Phlx Regulation Department, Department of Enforcement, and the Department of Market Regulation, and is also replacing reference to the Disciplinary Rule 960 with reference to the New Rule 8000 and 9000 Series.

¹⁶³ As noted above, determinations to issue a fine are made on a case by case basis. See supra note 161.

¹⁶⁴ In Options Floor Procedure Advice F-11, the Exchange is replacing the uppercase word “Discretionary” with a lowercase word and is deleting the word “the” to conform the Advice with other Advices.

such violations. The Exchange notes that, by definition, such violations arise from the trading floor, which the Phlx Regulation Department is best positioned to determine what the appropriate sanction is for repeated violation of these regulations in light of its physical presence on the trading floor. In addition, the Exchange is replacing certain references to the MORC with references to the Exchange Review Council, since the MORC's responsibilities are subsumed into those of the Exchange Review Council, as discussed above. The Exchange is also deleting certain text in the Advices that reference persons associated with Members or otherwise make it unclear as to whether the rule applies to an associated person of a Member, which as described above does not exist.¹⁶⁵ The Exchange is also replacing references the "members" with references to "member organization" in Advices concerning obligations of registered broker-dealers.¹⁶⁶ The Exchange is updating rule citations in the Advices to reflect the appropriate rules in the New Rules. Last, the Exchange is deleting the upper case term "Member Organization" and is replacing it with the lower case term "member organization," which is the convention used throughout the rules.

¹⁶⁵ For example, in Options Floor Procedure Advice C-9 the Exchange is making it clear that the rule concerns persons on the floor associated with a member organization.

¹⁶⁶ The Exchange is also making a clarifying change to Options Advice F-23 "Clerks in the Crowd" to make it clear that a clerk is an Associated Person, and that the rule is referring to Member Organizations and not Members in describing the entity unable to effect transactions on the trading floor.

Conclusion

The changes proposed herein will allow the Exchange to harmonize its investigatory and disciplinary processes with the processes of BX and Nasdaq, thus providing a uniform process for the investigation and discipline of members and persons associated with members across all three self-regulatory organizations as administered by FINRA pursuant to RSAs. Harmonizing the investigatory and disciplinary processes of all three self-regulatory organizations 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 itself follows. Harmonized processes will bring consistency to investigations and adjudications of rule violations, and will reduce the number of disciplinary processes and requirements with which Members, Member Organizations, 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, Member Organizations 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 consequently is more transparent. Moreover, the Exchange notes that nearly two thirds of Phlx Member Organizations are also members of FINRA. Thus, those firms are already familiar with the FINRA disciplinary process.

The Exchange intends to announce the operative date of the new rules at least 30 days in advance via a regulatory alert. To facilitate an orderly transition from the current

rules to the new rules, the Exchange is proposing to apply the current rules to all matters that the BCC has reviewed prior to the operative date. In terms of formal disciplinary matters, any matter that has been approved for the issuance of a Statement of Charges by the BCC will continue under the existing rules. In terms of applying the Advices, any fine that is subject to review by the BCC, but has not yet been reviewed by the BCC to determine whether to exercise its discretion to apply a fine or authorize disciplinary action as of the operative date, will instead be reviewed by the Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement. Any fine that was imposed prior to the operative date that is contested will continue under the existing rules. As a consequence of this transition process, the Exchange will retain the BCC and the existing processes during the transition period until such time that there are no longer any matters proceeding under the current rules. To facilitate this transition process, the Exchange will retain a transitional rule book that will contain the Exchange's rules as they are at the time of that this proposal is filed with the Commission, including the Rule 960 series. This transitional rule book 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 member organizations or persons subject to the Rule 960 series, the Exchange will remove the transitional rule book from its public rules website.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶⁸ in

¹⁶⁷ 15 U.S.C. 78f(b).

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 proposed rule is consistent with Section 6(b)(6) of the Act,¹⁶⁹ which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or the rules of the Exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

The Exchange believes that the proposed changes are consistent with these requirements because the changes harmonize Phlx's investigative and adjudicatory processes with similar processes used by BX and Nasdaq. The new processes are well-established as fair and designed to protect investors and the public interest, providing greater detail and transparency in the processes than is currently provided under the Rule 960 Series. Because the Exchange is adopting these Rules materially unchanged from the related BX and Nasdaq rules, with only minor differences based on the need to account for the Exchange's trading floor and the Phlx Regulation Department's involvement in matters, the Exchange believes that the proposed changes should facilitate prompt, appropriate, and effective discipline of Members, Member Organizations, and Associated

¹⁶⁸ 15 U.S.C. 78f(b)(5).

¹⁶⁹ 15 U.S.C. 78f(b)(6).

Persons consistent with the Act. The proposed rule change also makes miscellaneous changes to Exchange rules to account for the adoption of the New Rule 8000 and 9000 Series, and to make minor updates and corrections to the Exchange's rules.

Moreover, the Exchange believes that harmonizing the investigative and adjudicatory processes with those of BX and Nasdaq will reduce the burden on Members, Member Organizations, and Associated Persons that are also members or member organizations of BX, Nasdaq, and/or FINRA as they only will need to be familiar with a single process going forward. As discussed above, the new process will benefit all parties as it provides greater detail and specificity than the retired Rules and, consequently, is more transparent.

The Exchange also believes that adopting an Exchange Review Council is consistent with the Act because the committee's mandate is to, among other things, ensure consistent and fair application of the Exchange rules pertaining to discipline of Members, Member Organizations 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 Review Councils of BX and Nasdaq, as well as FINRA's National Adjudicatory Council. In addition to reviewing appeals of disciplinary actions, the Exchange Review Council will also have jurisdiction to review decisions to deny applications for membership in the Exchange, and appeals regarding limitations placed on members or their employees that are subject to a statutory

disqualification. 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, Member Organizations 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. Last, the Exchange notes that Exchange Review Council will have significant overlap in membership with the current BCC, thereby ensuring familiarity with Exchange rules and membership issues. For these reasons, the Exchange believes that adoption of the Exchange Review Council is consistent with the Act.

The Exchange also believes that incorporating the functions of the MORC into the Exchange Review Council is consistent with the requirements of the Act because it will bring efficiency to the committee process, by vesting a single Board committee with responsibilities that would otherwise be spread across the MORC and proposed Exchange Review Council, while ensuring that such responsibilities are performed to a high regulatory standard. In this regard, the Exchange Review Council is, by every measure, a more diverse body than the MORC that it replaces, yet it will maintain overlapping membership with current MORC members. The broad membership of the new Exchange Review Council will ensure that decisions made with respect to the MORC's former responsibilities are made fairly. Maintaining overlap in membership will ensure continuity and familiarity with the MORC responsibility and processes. In terms of similarity between the compositional requirements of the two committees, the Exchange

notes that the proposed Exchange Review Council will have the same MORC requirement that not more than 50 percent of the committee's members be engaged in market making activity or employed by Exchange member organization whose revenues from market making exceed 10 percent of its total revenues.¹⁷⁰ The Exchange notes that the proposed By-Laws will limit Exchange Review Council members to a maximum of two consecutive three-year terms unlike the MORC, which has no stated limit in the By-Laws.¹⁷¹ This requirement ensures that there is a consistent influx of new members to the Exchange Review Council. The proposed By-Laws further require that membership of the Exchange Review Council to be divided into three classes of members, whose terms expire in different years, thus ensuring that the Review Council is not completely reconstituted in any given year.¹⁷² Accordingly, the Exchange believes that the proposed changes will serve to protect the public interest and promote appropriate discipline of members for violations of securities laws and rules of the Exchange. The Exchange notes that both BX and Nasdaq incorporated their respective MORCs into their Review Councils, making the same changes proposed herein.¹⁷³ Moreover, members of the MORC will be included in the membership of the Exchange Review Council. Thus, the

¹⁷⁰ See Phlx By-Law, Article V, Section 5-3(d) and New Phlx By-Law, Article V, Section 5-3(b)(ii).

¹⁷¹ See Phlx By-Law, Article V, Section 5-3(d) and New Phlx By-Law, Article V, Section 5-3(b)(iv). Note that under New Phlx By-Law, Article V, Section 5-3(b)(iv), an Exchange Review Council member may serve greater than two terms if the member is appointed to fill a term of less than one year, in which case the member may serve up to two consecutive three-year terms following the expiration of such member's initial term.

¹⁷² See New Phlx By-Law, Article V, Section 5-3(b)(iv).

¹⁷³ See supra note 95.

change will not impose any burden on Members, Member Organizations, and Associated Persons, while reducing the burdens and inefficiencies experienced by the Exchange in managing multiple committees.

The Exchange believes that eliminating the BCC is consistent with Sections 6(b)(5) and 6(b)(6) of the Act,¹⁷⁴ because the Exchange is replacing the BCC with other groups and processes that, while different, will continue to provide Members, Member Organizations and Associated Persons with a fair investigative and adjudicatory process. In particular, the functions of the BCC will be handled by the ODA, Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement, and the Exchange's CRO. The ODA will authorize the issuance of complaints, which is currently the responsibility of the BCC. The Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement will each individually have the authority to assess, and determine the amount of, fines under the Advices after repeated violations thereof, with the exception of the Advices relating to Order and Decorum for which the Phlx Regulation Department will be solely responsible for assessing and determining the amount of fines thereunder. Although, the BCC currently is responsible for this, the Exchange notes that it believes that these departments are best positioned to make determinations of whether further sanction is warranted under the Advices or whether formal disciplinary action should be pursued for such repeated violations because it is the same prosecutorial discretion that these departments exercise in determining whether matters under investigation warrant formal disciplinary action. As described above, the ODA will review any such recommendation for formal disciplinary

¹⁷⁴ 15 U.S.C. 78f(b)(5) and (6).

action. As described above, the CRO will have responsibility for the current BCC functions of approving of customer account guarantees and appointing of World Currency Options Margin committees, which do not fall within the ODA's purview. The Exchange believes that the CRO is best suited to manage these responsibilities. The Exchange notes that the CRO has general supervisory responsibility over the Exchange's regulatory operations, including the responsibility for overseeing its surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another self-regulatory organization to which the Exchange is a party. The CRO meets with the regulatory oversight committee of the Board of Directors. As such, the Board will remain apprised of the formation of, and any regulatory decisions made by, the CRO, and any World Currency Options Margin Committee. In sum, each BCC function will be handled in a fair manner and provide Members, Member Organizations and Associated Persons with a well-known process.

The Exchange believes that its proposal furthers the objectives of Section 6(b)(7) of the Act,¹⁷⁵ in that it is designed to provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof. Specifically, the Exchange believes that the proposed investigatory and disciplinary process is consistent with Section 6(b)(7) of the Act¹⁷⁶ because it is based on the existing processes

¹⁷⁵ 15 U.S.C. 78f(b)(7).

¹⁷⁶ Id.

used by BX and Nasdaq. The process is well-established as consistent with the Act and where there are differences from the processes used by BX and Nasdaq, such as accounting for conduct on the Exchange's floor, the Exchange has proposed a fair process that includes elements of existing Exchange processes and processes of BX and Nasdaq. For example, the Exchange is proposing to vest the Phlx Regulation Department, Department of Enforcement, and the Department of Market Regulation with the authority to determine whether repeated violations of the Advises warrant additional fines or formal disciplinary proceedings, which is currently vested with the BCC. Notwithstanding, the Exchange will continue to make determinations to issue a fine on a case by case basis, whereby the Exchange considers the individual facts and circumstances to determine whether a fine of more or less than the recommended amount is appropriate for the violation, or whether the violation requires formal disciplinary action. Although the Exchange is replacing the BCC, which is independent of the investigatory and disciplinary processes, with the Phlx Regulation Department, Department of Enforcement, and the Department of Market Regulation, which are not, the Exchange believes that this will provide a fair procedure because these departments must gain approval to issue a complaint and settlements generally from the ODA, an entity independent of the enforcement function, if they determine formal disciplinary action is appropriate in lieu of a fine under the Advises. Moreover, if these departments determine that an additional fine is appropriate in lieu of pursuing formal disciplinary action, the departments are constrained by the maximum fine allowed under the Advises, which is the same constraint that the BCC has to the extent it determines an addition fine

is appropriate.¹⁷⁷ If these departments instead determine that formal disciplinary action is warranted, they must gain approval to issue a complaint from the ODA, as discussed above.

Last, the Exchange believes that its proposal to phase-in the implementation of the new disciplinary process is consistent with Section 6(b)(7)¹⁷⁸ of the Act because both the current and proposed disciplinary processes are consistent with the Act, providing fair procedures for disciplining Members, Member Organizations and Associated Persons. The Exchange is proposing to provide advanced notice of the implementation date of the new process, and will apply the new process 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 process. As a consequence, the Exchange will delete the Rule 960 series from the rule book, but maintain a transitional rule book on the Exchange's public rules website (<http://nasdaqphlx.cchwallstreet.com/>), which will contain the Exchange rules as they are at the time of filing this rule change.¹⁷⁹ 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 fair, orderly and transparent manner.

¹⁷⁷ As described above, the Exchange may assess fines up to \$10,000 under the Advices in lieu of pursuing formal disciplinary proceedings.

¹⁷⁸ Supra note 175.

¹⁷⁹ 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).

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, Member Organizations, 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 and adjudicatory processes, thereby reducing the burden on Members, Member Organizations, and Associated Persons who are also members of BX and/or Nasdaq.

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 proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act¹⁸⁰ and paragraph (f)(6) of Rule 19b-4 thereunder,¹⁸¹ in that the proposed rule change: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission

¹⁸⁰ 15 U.S.C. 78s(b)(3)(A).

¹⁸¹ 17 CFR 240.19b-4(f)(6).

may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

The Exchange believes that, because the proposed rule change provides investigative and adjudicatory processes that are well-established as fair and designed to protect investors and the public interest, and because the proposed changes are based on the current rules of BX and Nasdaq, 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, New York Stock Exchange LLC (“NYSE”),¹⁸² NYSE American LLC (“NYSE American”)¹⁸³ 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 Phlx Member Organizations that are also members of FINRA, BX, Nasdaq and/or other exchanges. As noted above, nearly two thirds of Phlx Member Organizations are also members of

¹⁸² 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 11, 2013), 78 FR 15394 (March 5, 2013)(SR-NYSE-2013-02).

¹⁸³ 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).

FINRA, and as a consequence are already subject to a very similar process.¹⁸⁴ Thus, Member Organizations that are members of these other self-regulatory organizations will be familiar with these new Exchange processes. For those Member Organizations that are not members of FINRA, BX, Nasdaq and/or other exchanges, and thus not necessarily familiar with the new process, the Exchange is providing a transition period in applying the proposed new disciplinary process, which will allow such Member Organizations to become familiar with the process. The transition period will allow those subject to the Exchange's disciplinary process to assess and manage the proposed changes by providing a clear demarcation between what matters would be subject to the current process and the new process. As such, the proposed transition to the new process will provide a fair and transparent implementation process, and should be considered non-controversial by Member Organizations.

The Exchange also believes that the proposed changes to the Exchange's By-Laws and rules are non-controversial. The proposed New Rule 8000 and 9000 Series are materially unchanged from the related BX and Nasdaq rules, with only minor differences based on the need to account for the Exchange's trading floor and the Phlx Regulation Department's involvement in matters. The BX and Nasdaq rules have already been deemed to be consistent with the Act, and thus adoption of the materially identical rules proposed herein does not affect the protection of investors or the public interest, nor does it raise new or novel issues. Although the proposed New Rule 8000 and 9000 Series differ from those of BX and Nasdaq, as described above, those changes were necessary to

¹⁸⁴ Moreover, a large number of market participants that are members of FINRA, NYSE and/or NYSE American and that are not Member Organizations of the Exchange are familiar with the process. Thus, the process is widely used in the U.S. securities markets.

account for the Exchange's operation of a trading floor and the Phlx Regulation Department's active role in the disciplinary process. For example, the Exchange adopted New Rule 9216(b)(2) to account for the fines that it currently may assess in excess of \$2,500 under that are not part of the MRVP, and adopted New Rule 9216(c) to account for its Order and Decorum procedures. In the former example, the Exchange is adopting the process used by BX and Nasdaq under their Rules 9216(b). In the latter example, the Exchange is leaving the Order and Decorum procedures largely unchanged, with minor differences to account for FINRA's involvement in the disciplinary process, should disciplinary action be pursued. The Exchange does not believe that the differences affect the protection of investors or the public interest because they are reflective of current processes used by the Exchange, which have already been deemed to be consistent with the Act.

In terms of the functions of the Exchange Review Council, as described above, the Exchange Review Council, like the Review Councils of BX and Nasdaq, will be an adjudicatory 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 roles of BX and Nasdaq Review Councils, adoption of the Exchange Review Council does not raise new or novel issues. The Exchange notes that there is significant overlap between the members of the BX and Nasdaq Review Councils, and the BCC, as well as with the proposed membership of the Exchange Review Council, thus ensuring familiarity with Exchange rules and membership issues.

Moreover, the Exchange believes that the proposed elimination of the BCC is non-controversial because all of the functions of the BCC will be handled by other regulatory bodies, namely the ODA, Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement, and the Exchange's CRO. Although different than the current process, as described above, these regulatory bodies will ensure that responsibilities of the BCC are handled in a manner that protects investors and the public interest, without placing imposing any significant burdens on market participants. The Exchange believes that incorporating the functions of the MORC into the Exchange Review Council is non-controversial because it will bring efficiency to the committee process by vesting a single Board committee with responsibilities that would otherwise be spread across the MORC and proposed Exchange Review Council, while ensuring that such responsibilities are performed to a high regulatory standard. As a consequence, in their new roles as members of the Exchange Review Council, members thereof that are also members of BX and Nasdaq Review Councils will have familiarity with the Review Council process (including the administration of the MORC process), while also retaining familiarity with the Exchange and its rules. Accordingly, the Exchange believes that adoption of the Exchange Review Council, incorporation of the MORC therein, and elimination of the BCC will promote the protection of investors and reduce burdens on market participants, and therefore will be viewed as non-controversial by market participants.

In sum, the proposed By-Laws and rules are nearly identical to the By-Laws and rules of BX and Nasdaq, and therefore do not raise any new or novel issues. To the extent the proposed rules differ from those of BX and Nasdaq, the differences are

technical and conforming in nature to reflect the Phlx Regulation Department's involvement in matters and the Exchange's operation of a trading floor. The revisions to current rules that the Exchange is making, as described above, are necessary to reflect the new disciplinary process. As such, the proposed rule change should have minimal impact on market participants and should be considered non-controversial. Accordingly, the Exchange believes that the proposed rule change does not affect the protection of investors or the public interest, and does not impose any significant burden on competition.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4.¹⁸⁵ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 BX Code of Procedure under the Rule 8000 and 9000 Series. The proposed rule change is also based on Article VI of the Nasdaq By-Laws and the Nasdaq Rule 8000 and 9000 Series. The Exchange notes that in 2013, the New York Stock Exchange LLC 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

¹⁸⁵ 17 CFR 240.19b-4(f)(6)(iii).

modeled on the rules of FINRA.¹⁸⁶ 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.¹⁸⁷

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.

¹⁸⁶ Supra note 182.

¹⁸⁷ Supra note 183.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-Phlx-2017-92)

November __, 2017

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Investigatory and Disciplinary Processes Identical to Nasdaq BX, Inc. and The Nasdaq Stock Market LLC

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 3, 2017, Nasdaq PHLX LLC (“Phlx” 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 adopt an investigatory and disciplinary process identical in all material respects to the investigatory and disciplinary processes of Nasdaq BX, Inc. (“BX”) and The Nasdaq Stock Market LLC (“Nasdaq”).

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaqphlx.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

Phlx is proposing to adopt processes and related rules concerning investigative and disciplinary matters involving Phlx Members, Member Organizations, and persons associated with Member Organizations (also known as "Associated Persons"),³ which are

³ Pursuant to Rule 1(n), a Member is a permit holder which has not been terminated in accordance with the By-Laws and these Rules of the Exchange. A Member is a natural person. Pursuant to Rule 1(o), the term "Member Organization" shall mean a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a Member Organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of Rules 900.1 or 900.2 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6-4 of the By-Laws. Accordingly, a Member Organization is an entity and not a person (hence the name "organization"). Pursuant to Rule 908(c), a Member must be affiliated with a Member Organization. Every Member Organization must have at least one Member. A Member cannot be a broker or a dealer nor may a Member have associated persons. The Exchange notes that certain Exchange rules may lead a person to conclude that a Member may be a broker or a dealer and have persons associated with the Member. See, e.g., Rule 600(c). Notwithstanding any such ambiguities in the Phlx rules, a Member cannot be a broker or a dealer, and a Member cannot have persons associated with it on Phlx. In addition, Phlx does not currently have any Members that are a broker or a dealer, nor does it currently have any Members with associated persons. The Exchange will not allow a Member to be a broker or a dealer and have any associated persons in the future unless it amends its rules to allow for such

identical in all material respects to the disciplinary process of Phlx's sister exchange BX, and substantially similar to that of Nasdaq.⁴ The proposed change will provide uniform investigative and disciplinary processes applied to Members, Member Organizations, and persons associated with Member Organizations of Phlx and members and persons associated with members of BX, and Nasdaq, and harmonize the work FINRA conducts for these exchanges.

FINRA performs, among other things, investigatory and prosecutorial work for Phlx pursuant to a Regulatory Services Agreement between the two parties (the "RSA").⁵

Members and associated persons. Thus, the Exchange is replacing references to "members" in the BX rules with "member organizations" in the New Phlx rules, is replacing references to "persons associated with members" in BX rules with references to "persons associated with member organizations" in the New Phlx rules, and is clarifying any ambiguity in both the proposed New Phlx rules and certain existing Phlx rules that associated persons are associated with member organizations. As discussed above, the Exchange is amending the definition of "Member" to clarify that it is a natural person that is associated with a Member Organization. Accordingly, any references in the rules to an "associated person" or "persons associated with a member organization" also refer to a Member. Thus, any instance where the terms "associated person" or "persons associated with a member organization" occur in the rules and the term "member" is omitted, the rule nonetheless applies to Members. The Exchange is separately reviewing its entire rulebook to determine where other such ambiguities exist and will file a rule change proposal to clarify any additional ambiguities in the rules.

⁴ The BX disciplinary rules were based on those of Nasdaq with minor differences to the process discussed below. The Exchange is basing its new disciplinary rules on those of BX. Nevertheless, the majority of the new disciplinary rules proposed herein are materially identical to those of Nasdaq as well.

⁵ See RSA (January 2013). The Exchange retains ultimate legal responsibility for the regulation of its Members, Member Organizations, and Associated Persons and its market. Both BX and Nasdaq have entered into RSAs with FINRA to perform the work under their respective Rule 8000 and 9000 Series. The Exchange will amend its RSA to include the new processes under New Rule 8000 and 9000 Series, and the related changes proposed herein, thus harmonizing the regulatory work FINRA conducts for all three self-regulatory organizations ("SROs").

Under the RSA, FINRA is responsible for the investigation of potential violations of Phlx rules and the Exchange Act, and for the prosecution of any such violations thereof, by Phlx Members, Member Organizations, and Associated Persons. Moreover, under the RSA, Phlx's Regulation Department staff may elect to exercise jurisdiction over a matter involving a Phlx Member, Member Organization, or Associated Person, performing the investigation and any resulting prosecutorial work without FINRA's involvement. Upon the conclusion of FINRA's or staff's investigation of a matter involving a Member, Member Organization, or Associated Person, a proposed resolution is recommended to the Phlx Business Conduct Committee ("BCC"), which is charged with, among other things, the approval of action against a Member, Member Organization, or Associated Person. When a matter is contested, it may be reviewed by a Phlx Hearing Panel, which is charged with issuing a decision in such matters after reviewing evidence and considering arguments.

As discussed in detail below, Phlx is proposing to eliminate the BCC and the related hearings process, and adopt a new Exchange Review Council and a related adjudicatory process that mirrors that of the Exchange's sister exchanges, BX, and Nasdaq. Under the new process, FINRA's responsibilities will now include the adjudicatory roles currently performed by the BCC⁶ and Hearings Panels⁷ under the Rule

⁶ As described below, case authorization and adjudicatory functions of the BCC and current Hearing Panels will be administered by FINRA's Office of Disciplinary Affairs and Office of Hearing Officers, while other functions of the BCC will be handled by the Phlx Regulation Department, Department of Enforcement, and the Department of Market Regulation. In certain existing rules where the responsibilities under the rule do not fall within the Office of Disciplinary Affairs' purview under the Codes of Procedure for FINRA, BX, Nasdaq or any other exchange, the Exchange is replacing the BCC with the Chief Regulatory Officer instead of the Office of Disciplinary Affairs.

960 Series, and the Exchange Review Council will serve as the appellate body for cases appealed from new Hearing Panels. The Exchange Review Council will also serve as the appellate body for other determinations made by Phlx, such as reviewing appeals of determinations brought by market makers seeking review of a denial of reinstatement pursuant to Rule 3220, which are currently reviewed by the Exchange's Market Operations Review Committee, as discussed below.⁸ The Exchange Review Council will also be responsible for the approval of minor rule violation plan letters and violation letters under New Rule⁹ 9216(b), and appeals of Membership Department determinations (for denials of membership pursuant to Rule 923) under the new process.

Decisions¹⁰ issued by the Exchange Review Council may be reviewed by the Exchange Board of Directors ("Board"), which may also issue a decision in the matter.¹¹ Decisions issued by the Board are considered final action of the Exchange in a matter for purposes of appeals to the Commission.¹² Should the Board decline to review an Exchange Review Council decision, the decision is the final action of the Exchange.¹³

⁷ As described below, the current functions of the Phlx Hearings Panels will be handled by FINRA's Hearing Panels.

⁸ See New Rule 1(k). The Exchange Review Council will also review appeals brought under the New Rule 9280 (Contemptuous Conduct), New Rule 9520 Series (Eligibility Proceedings), New Rule 9550 Series (Expedited Proceedings), and New Rule 9600 Series (Procedure for Exemptions).

⁹ Citation to rules of the proposed 8000 and 9000 Series herein will be preceded by "New Rule."

¹⁰ As defined by New Rule 9349. See also BX Rule 9349 and Nasdaq Rule 9349.

¹¹ See New Rule 9351(d) and (e).

¹² 15 U.S.C. 78s(d).

¹³ See New Rule 9349(c).

Phlx notes that, because the new proposed process is derived from the BX and Nasdaq member investigative and adjudicatory processes, it will provide consistency in the procedure used to investigate and resolve matters concerning members of three of Nasdaq, Inc.'s U.S. exchanges.¹⁴

To implement the proposed change, Phlx is amending Phlx By-Law, Article V, Section 5-3, and its rules to adopt substantially similar text to that of BX and Nasdaq, reflect the changes to the process, and delete old text where necessary. Specifically and as discussed in greater detail below, the Exchange is deleting its current Disciplinary Rules found under the Rule 960 Series and replacing them with new investigatory and disciplinary rule sets under the New Rule 8000 and 9000 Series, which are in nearly all material respects identical¹⁵ to the Rule 8000 and 9000 Series of BX, and substantially

¹⁴ Nasdaq, Inc.'s other three exchanges, Nasdaq ISE, LLC, Nasdaq GEMX, LLC, and Nasdaq MRX, LLC, are in various stages of harmonizing their investigative and disciplinary processes with those of BX, Nasdaq, and FINRA.

¹⁵ The proposed New Rules are based on the BX rule set, which is substantially similar to the corresponding Nasdaq rule set. Significantly, the Nasdaq rules define Special Panelist, which is a category of Hearing Panelist BX does not have. A Special Panelist is an individual approved by the Nasdaq Board of Directors and selected by the Chief Hearing Officer to participate in proceedings in which certain issues arise, about which Nasdaq determined individuals with appropriate expertise and knowledge should be chosen. See Nasdaq Rule 9120(u). Like BX rules, the Exchange's rules do not provide for such a category of Hearing Panelist and the Exchange does not believe that Special Panelists are needed at this juncture. Nasdaq also has a legacy category of Panelist who the Chief Hearing Officer may select, who is a person that served on FINRA's National Adjudicatory Council ("NAC"), or on a disciplinary subcommittee thereof, prior to the date that Nasdaq commenced operation as a national securities exchange. See Nasdaq Rules 9231(b)(1)(D) and 9820(a)(4). Like BX, the Exchange is not adopting this category of person eligible to serve on a Panel.

similar to the Rule 8000 and 9000 Series of Nasdaq.¹⁶ Under the new process, the current BCC and Phlx Hearing Panels are generally being replaced with FINRA's Office of Disciplinary Affairs ("ODA")¹⁷ and new Hearing Panels,¹⁸ although in certain circumstances the BCC is being replaced by the Department of Enforcement,¹⁹ the Department of Market Regulation,²⁰ Phlx Regulation Department²¹ and/or the Chief Regulatory Officer ("CRO").²² As a consequence, the Exchange is also eliminating

¹⁶ As discussed in greater detail below, unlike Nasdaq and BX, the Exchange operates a physical trading floor, which necessitates some changes to accommodate regulation of the floor.

¹⁷ As defined under New Rule 9120(w).

¹⁸ As defined under New Rule 9120(s).

¹⁹ New Rule 9120(f)

²⁰ New Rule 9120(g).

²¹ The Exchange is proposing to adopt a new defined term "Phlx Regulation Department" under New Rule 9120(v), which mirrors the definitions of "the Exchange's Regulation Department" and "Nasdaq Regulation" under BX and Nasdaq Rules 9120(w), respectively, however, the proposed definition also expressly includes the Exchange's Enforcement Department. Options Exchange Officials and Exchange staff acting in certain capacities are also considered staff of the Phlx Regulation Department. See note 47, *infra* for a description of the Phlx Regulation Department. The Exchange's Enforcement Department is specifically charged with pursuing disciplinary action against Members, Member Organizations, Associated Persons and persons subject to the Exchange's jurisdiction, and it is not affiliated with FINRA's Department of Enforcement.

²² The Exchange is replacing the BCC with the CRO instead of the ODA where the responsibilities under the rule do not fall within the ODA's purview under the Codes of Procedure for FINRA, BX, Nasdaq or any other exchange. For example, Rule 777(a) prohibits a branch office manager of any member organization, an employee of any member organization engaged in trading in securities for the organization, and a securities salesman of any member organization, from guaranteeing the payment of the debit balance, in a customer's account, to his employer or to any other creditor carrying such account, without the prior written consent of the BCC. The Exchange is proposing to replace the BCC with the CRO in this instance because this is not a normal function of the

references to the BCC and Phlx Hearings Panels in existing rules, deleting rules specifically relating to the BCC or Phlx Hearings Panels, and in certain cases replacing references to the BCC or Phlx Hearing Panels with the appropriate group or groups responsible for the process. The Exchange notes that, under the proposed New Rules, in certain instances the rules may reference an obligation or right of an Associated Person and not also include such a reference to a Member, notwithstanding that a Member is an Associated Person. In such cases, the obligation or right also applies to the Member unless otherwise expressly noted.

Current Phlx Rules and Adjudicatory Process

Responsibility for the adjudication of Phlx rules is divided into two categories: (1) Rules for which the BCC and Hearing Panels are responsible for adjudicating as formal disciplinary proceedings; and (2) Rules under which fines may be assessed or privileges suspended in lieu of disciplinary action.²³ Specifically, in lieu of conducting a formal disciplinary proceeding, Rules 60 (Sanctions for Breach of Regulations) and 970 (Floor Procedure Advices: Violations, Penalties, and Procedures) provide alternative disposition

ODA and the CRO is in the best position to make such determinations. The Exchange is also replacing the BCC's role in determining penalties under the Advices with the Department of Enforcement, the Department of Market Regulation, and Phlx Regulation Department, which will each individually have the authority to assess, and determine the amount of, fines under the Advices after repeated violations thereof, with the exception of the Advices relating to Order and Decorum for which the Phlx Regulation Department will be solely responsible for assessing and determining the amount of fines thereunder.

²³ Fines may be assessed by an Options Exchange Official or by Exchange staff. In certain circumstances, an Options Exchange Official and an officer of the Exchange, as defined by Rule 60(c)(ii), may exclude a Member from the trading floor.

of violations through assessment of a fine and/or suspension of trading floor privileges.²⁴ Rules 60 and 970 provide the process for administering fines for violations of the Options Floor Procedure Advices and Equity Floor Procedure Advices²⁵ (collectively, the “Advices”), which include regulations that comprise the Exchange’s minor rule violation plan (“MRVP”) as well as violations of Order and Decorum Regulations that are not included in the Exchange’s MRVP but may be considered minor in nature and thus possibly resolved outside of the formal disciplinary process.²⁶

Generally, notice to the SEC of final disciplinary action by an SRO is required pursuant to Rule 19d-1 of the Exchange Act; however, uncontested fines of \$1,000 or less or exclusion of a clerical employee from the trading floor for five days or less for violations of regulations that relate to administration of order, decorum, health, safety, and welfare (“Order and Decorum”) are not required to be reported to the SEC. In addition, uncontested fines of \$2,500 or less assessed for violation of MRVP rules are subject to abbreviated periodic SEC reporting.

²⁴ None of the fines assessed in lieu of formal disciplinary action exceed \$10,000. Under both Rules 60 and 970, matters may alternatively be referred for formal disciplinary proceedings.

²⁵ The Exchange notes that it no longer operates an equity trading floor. The regulations under the Equity Trading Floor Advices relate to requirements such as notices, record retention, and compliance with Exchange inquiries.

²⁶ For example, Options Floor Procedure Advice F-35 concerns violations of exercise and exercise advice rules for noncash-settled equity option contracts imposes a fine of \$1,000 for the first violation of the Advice, a fine of \$2,500 for the second violation of the Advice, and \$5,000 for the third and each subsequent violation of the Advice. The first two fines would fall under the Exchange’s MRVP as they are \$2,500 or less in amount, whereas the third and subsequent violations would not as they are in excess of \$2,500, but may be considered as “minor” and not subject to formal disciplinary action. As is currently the case, the Exchange may choose to pursue formal disciplinary action in lieu of resolving a violation of the Advices through fine and/or suspension.

Rule 60 provides the process for regulating Order and Decorum on the Exchange's trading floor. The Order and Decorum rules are found under Section H of the Options Floor Procedure Advices. Pursuant to Rule 60, both Exchange staff and Options Exchange Officials²⁷ have authority to fine a Member, Member Organization, or Associated Person for violations of any of the Order and Decorum regulations under the Options Floor Procedure Advices in lieu of conducting a formal disciplinary proceeding.

In addition, an Options Exchange Official and an officer of the Exchange may exclude a Member or Associated Person from the trading floor. Both Exchange staff and Options Exchange Officials may alternatively refer the matter to the BCC for formal disciplinary proceeding, which would be charged with determining whether a fine or formal disciplinary proceeding is appropriate.

Under Rule 60, a Member, Member Organization, or Associated Person may contest a fine by requesting a hearing before a Hearing Director appointed by the Chair of the BCC, who may overturn, affirm, or modify the citation. The Hearing Director's

²⁷ The President of the Exchange and his designated staff shall have general supervision over: (i) the options trading floor as well as general supervision of the dealings of members on the trading floor and on Exchange trading systems and of the premises of the Exchange immediately adjacent thereto; (ii) the activities of specialists, registered option traders, floor brokers, or other types of market makers and shall establish standards and procedures for the training and qualification of members active on the trading floor; (iii) all trading floor employees of members, and shall make and enforce such rules with respect to such employees as it may deem necessary; (iv) all connections or means of communications with the options trading floor and may require the discontinuance of any such connection or means of communication when, in the opinion of the President or his designee, it is contrary to the welfare or interest of the Exchange; (v) the location of equipment and the assignment and use of space on the options trading floor; and (vi) relations with other options exchanges. See Rule 1000(e).

determination is final. A determination to exclude a Member, Member Organization, or Associated Person from the trading floor is not appealable.

Rule 970 provides the process for regulating other behavior pursuant to the Advices not related to Order and Decorum through assessment of a fine.²⁸ Fines assessed under the Advices increase with each subsequent violation and after a set number of repeated violations, are thereafter assessed at the discretion of the BCC, which may, as an alternative to assessing a fine, recommend the matter for formal disciplinary proceeding. Notwithstanding, determinations to issue a fine are made on a case by case basis, whereby the Exchange considers the individual facts and circumstances to determine whether a fine of more or less than the recommended amount is appropriate for the violation, or whether the violation requires formal disciplinary action. Fines of \$2,500 or less levied for violations of the Advices, other than Order and Decorum, are included in the Exchange's MRVP, whereas any fine exceeding \$2,500 under the Advices is not. If a Member, Member Organization, or Associated Person contests a fine,

²⁸ Under the Advices, the Exchange assesses fines ranging from \$50 to \$10,000. Pursuant to paragraph (c) of Rule 19d-1 of the Exchange Act, the Commission allows SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions (i.e., an MRVP). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such an MRVP filed with, and declared effective by, the Commission shall not be considered "final" for purposes of Rule 19d-1(c)(1) of the Exchange Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies under Section 19d-1(c)(2). Most fines assessed under both Advices that do not exceed \$2,500 are included in the MRVP pursuant to Exchange Act Rule 19d-1(c)(2). Order and Decorum Regulations under the Option Floor Procedure Advices, however, are not included in the MRVP, but may be subject to an exemption from the notice requirement of Exchange Act Rule 19d-1(c)(1) if the fine does not exceed \$1,000.

it must provide a written response meeting the requirements of an “Answer,” as set forth in Rule 960.4, which is thereafter provided to the BCC for its consideration.

With respect to violations that are adjudicated by the BCC and Hearing Panels, Rule 960.2(f)(i) requires the BCC to direct Exchange staff to initiate a Statement of Charges when it appears that there is probable cause for finding that a violation within the jurisdiction of the Exchange has occurred and disciplinary action is warranted.

The BCC is a Board-appointed committee²⁹ with jurisdiction to monitor compliance with the Act and the rules and regulations thereunder, the By-Laws and rules of the Exchange or any interpretation thereof, and the rules, regulations, resolutions, and stated policies of the Board or any Exchange committee, by Members, Member Organizations, and Associated Persons.³⁰ The BCC reviews disciplinary matters involving Members, Member Organizations, and Associated Persons, which are first identified generally by Phlx’s Market Surveillance group and referred to FINRA to investigate and to propose a recommended resolution pursuant to the RSA.³¹

Under the RSA, FINRA is responsible for, among other things, the investigation of matters referred from the Phlx Market Surveillance and Membership departments, and the performance of routine and cause examinations of Phlx Members, Member Organizations, and Associated Persons. FINRA is also responsible for providing services

²⁹ The BCC meets quarterly and on an as-needed basis.

³⁰ See Phlx By-Law, Article V, Sec. 5-3(b).

³¹ The Phlx Market Surveillance group is responsible for detecting potentially violative conduct among Members, Member Organizations, and Associated Persons and referring such conduct to FINRA for investigation pursuant to the RSA. In a small number of cases, Phlx enforcement staff will investigate potentially violative conduct and recommend a resolution to the BCC.

related to Phlx's formal disciplinary process, including issuance of Wells Notices, Cautionary Action Letters, Statements of Charges, settlements, disciplinary decisions, and prosecution.

Upon completion of an investigation, FINRA analyzes the evidence and applicable law, and makes a preliminary determination of whether or not a violation appears to have occurred. Known as a "Sufficiency of Evidence" review, it is the same process followed by FINRA staff in matters involving Members, Members Organizations and Associated Persons for the Exchange; however, in such matters the BCC provides authorization to proceed as proposed by FINRA instead of the ODA, as described below.³² The Sufficiency of Evidence review determines whether FINRA will recommend that the Exchange negotiate a settlement, issue a Cautionary Action Letter, or pursue formal action against a Member, Member Organization, or Associated Person.³³ FINRA presents its recommendations to the BCC for approval at both periodic and ad hoc meetings. In order to become an official action of the Exchange, FINRA must gain BCC approval of its recommendation.³⁴ The BCC may approve, deny or modify each recommendation presented to it. In cases that FINRA recommends issuance of a Statement of Charges,³⁵ it prepares a memorandum and draft Statement of Charges for review and approval by the BCC. In certain cases, FINRA will also negotiate a settlement with a Respondent in addition to recommending the issuance of a Statement of

³² See FINRA Regulatory Notice 09-17 (March 2009) at 3 (available at <http://www.finra.org/sites/default/files/NoticeDocument/p118171.pdf>).

³³ Id.

³⁴ Rule 960.2.

³⁵ Rule 960.3.

Charges. In such cases, FINRA will provide the BCC with an offer of settlement together with a draft Statement of Charges for the BCC's review and approval.³⁶ If a recommendation to issue a Statement of Charges is approved, FINRA will finalize the approved Statement of Charges based on the BCC's recommendation, which is signed by the BCC's chairperson and then served on the Member, Member Organization, and/or Associated Person.³⁷

In certain cases, a Member, Member Organization, or Associated Person will not accept the allegations made against it in the Statement of Charges. If a Member, Member Organization, or Associated Person does not agree with the allegations, it may request that a Hearing Panel review the matter pursuant to Rule 960.5(a)1. Hearing Panels are charged with reviewing the facts and circumstances of a contested matter, and determining whether the Member, Member Organization, or Associated Person has committed a violation and if so, what the appropriate sanctions are, if any. A Hearing

³⁶ The offer of settlement is negotiated with, and signed by, the Respondent prior to FINRA's presentation of the proposed Statement of Charges to the BCC. Providing a draft Statement of Charges together with the proposed offer of settlement to the BCC at the same meeting facilitates expeditious resolution in cases where both parties have come to an agreement on how to settle the matter. The process also allows the BCC to consider the facts and circumstances of the matter at the time it is presented to it for approval, including that the Respondent has committed to settle the matter based on the Statement of Charges recommended by FINRA. If the BCC approves the issuance of the Statement of Charges in these matters it also accepts the offer of settlement, and considers it the Respondent's Answer. Like other matters involving an offer of settlement, where the BCC accepts an offer of settlement it must issue a decision and impose sanctions consistent with the terms of such offer. See Rule 960.7. Thus, after issuance of the Statement of Charges and acceptance of the offer of settlement, FINRA provides the BCC Chair, or its designee, with a draft Decision informing the Respondent that the BCC has accepted the offer of settlement.

³⁷ Rule 960.3.

Panel also issues a written decision in conformity with its determination.³⁸ Moreover, a Hearing Panel may hold summary disposition hearings and issue a summary decision in cases where any Member, Member Organization, or Associated Person has admitted to a violation, or if there is no dispute concerning those material facts which give rise to such a violation.³⁹ Pursuant to Rule 960.9, a Hearing Panel decision may be appealed to the Board.

The BCC may also examine the business conduct and financial condition of a Member, Member Organization or Associated Person, and may authorize the initiation of any disciplinary actions or proceedings brought by the Exchange.⁴⁰ With respect to disciplinary actions, the BCC or its designee (including a Hearing Panel) shall impose appropriate sanctions of expulsion, suspension, fine, censure or any other fitting sanction where the BCC or its designee finds that a violation within the disciplinary jurisdiction of the Exchange has been committed.⁴¹ The BCC may also direct a general partner(s) or an executive officer(s) of a Member Organization to appear before the BCC or its designee for examination upon forty-eight hours' notice, either oral or in writing and, after such examination, the BCC has authority to suspend such Member Organization until the requirements of the financial responsibility and reporting rule⁴² are fully met.

³⁸ Rule 960.5(a)(3).

³⁹ Rule 960.6.

⁴⁰ Phlx By-Law, Article V, Sec. 5-3(b).

⁴¹ Id.

⁴² See Phlx By-Law, Article V, Sec. 5-3(b)(c); see also Rule 703.

The BCC may also prescribe regulations for the carrying of securities on margin by Members and Member Organizations for customers, and it may also make such regulations in regard to the segregation or hypothecation of securities carried in customers' accounts as it deems advisable.⁴³ The BCC may prohibit trading by a Member or Member Organization that is excessive in view of such person's or organization's capital.⁴⁴ The BCC may require or request detailed financial reports or such other operational reports as it deems necessary,⁴⁵ and supervise the advertising of Members and Member Organizations.⁴⁶

The New Process and FINRA's Role

Resolution by Fine or Acceptance, Waiver, and Consent

Under the proposed new process, the Exchange will continue to have authority to resolve certain violations outside of the formal disciplinary process. Options Exchange Officials and Exchange staff will continue to have authority to investigate possible violations of the Advices, issue fines, and in certain cases suspend trading floor access for violations of the Advices. The authority to resolve violations outside of the formal disciplinary process exists under proposed New Rule 9216. New Rule 9216 provides alternatives to the issuance of a formal complaint and the initiation of a formal disciplinary proceeding, which include the assessment of fines or exclusion from the Exchange's options trading floor. The Exchange is proposing to adopt New Rule 9216(a)

⁴³ Phlx By-Law, Article V, Sec. 5-3(b)(d). Such proscriptive power is subject to the SEC rulemaking process.

⁴⁴ Phlx By-Law, Article V, Sec. 5-3(b)(e).

⁴⁵ Phlx By-Law, Article V, Sec. 5-3(b)(f).

⁴⁶ Phlx By-Law, Article V, Sec. 5-3(b)(g).

(Acceptance, Waiver, and Consent Procedures). It will provide a new process by which the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation⁴⁷ – if they have reason to believe a violation has occurred and the Member, Member Organization or Associated Person does not dispute the violation – may prepare and request that the Member, Member Organization or Associated Person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such Member’s, Member Organization’s or Associated Person’s right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Exchange Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. If the acceptance, waiver and consent is accepted, the matter is resolved without issuance of a complaint. The Exchange does not currently have an analogous process. However, the Exchange believes that providing its Members, Member Organizations and Associated Persons the optionality to dispose of a matter prior to the issuance of a complaint will

⁴⁷ Phlx is adopting new defined terms “Department of Enforcement” the “Department of Market Regulation” under New Rules 9120(f) and (g), respectively, which are also defined in BX and Nasdaq under their respective Rules 9120. These two departments are authorized to act on behalf of BX and Nasdaq in investigating and administering disciplinary matters pursuant to regulatory service agreement, and will do the same for Phlx upon adoption of the new process. Phlx is also adopting a new defined term “Phlx Regulation Department,” which is the department of Phlx that administers the Code, and includes the Phlx Enforcement Department. See New Rule 9120(v); see also note 21, supra. As described above, Options Exchange Officials, and Exchange staff acting in certain capacities are also considered staff of the Phlx Regulation Department. Phlx notes that the Phlx Regulation Department currently exists and is responsible for, among other things, preparing matters for review by the BCC. Under the new process, the Phlx Regulation Department will have the option of investigating and bringing matters to the ODA directly for review and possible authorization of a disciplinary action, or alternatively may provide a matter to the Department of Enforcement or Department of Market Regulation to investigate and present to the ODA for possible authorization of a disciplinary action.

make the process fairer for its participants. In certain respects, the process is similar to the Exchange's current offer of settlement process, discussed above, by which FINRA recommends acceptance of an offer of settlement and provides a draft Statement of Charges to the BCC for its review and approval, together with an executed offer of settlement. This process results from negotiation with the Member, Member Organization or Associated Person prior to the approval of the offer of settlement, like an acceptance, waiver, and consent. An important difference is that, unlike the current offer of settlement process, which requires the issuance of a Statement of Charges and decision, an acceptance, waiver and consent under New Rule 9216(a) is proposed in lieu of a complaint.⁴⁸ Thus, under the new rule, if the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation has reason to believe a violation has occurred and the Member, Member Organization, or Associated Person does not dispute the violation, then the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may prepare and request that the Member, Member Organization, or Associated Person execute a letter accepting the violation, consenting to the imposition of sanctions, and agreeing to waive any right of appeal, if the letter is accepted.⁴⁹ The letter must be approved by the Review

⁴⁸ The Exchange is also adopting New Rule 9270, which provides the settlement process once a complaint has been issued in a matter. Thus, the process under New Rule 9216(a) occurs in lieu of the issuance of a complaint, whereas the process under New Rule 9270 is applicable to Respondents that have been provided notice that a proceeding has been instituted against him or her. New Rule 9270 will replace the settlement process provided under Rule 960.7, as discussed below.

⁴⁹ New Rule 9216(a)(1).

Subcommittee,⁵⁰ FINRA's ODA,⁵¹ or the Exchange Review Council to become a final action of the Exchange.⁵² The process under New Rule 9216(a) is the same process used by BX and Nasdaq under their respective Rules 9216(a).

The Exchange is also adopting New Rule 9216(b) to address the process for administering violations of regulations that are resolved by assessment of a fine, including regulations subject to the Exchange's minor rule violation regulations,⁵³ other than Order and Decorum, in lieu of the current process under Rule 970.⁵⁴ The Exchange is adopting procedures applicable to violations of the Advices subject to the MRVP under New Rule 9216(b)(1), and is adopting procedures applicable to other violations of the Advices not included in the MRVP under New Rule 9216(b)(2). The Exchange notes that neither BX nor Nasdaq have regulations analogous to the Advices with fines up to \$10,000. Therefore, BX and Nasdaq do not need to adopt separate rules addressing how violations resolved through a fine in lieu of formal disciplinary proceedings in excess of \$2,500 are managed. Thus, both BX and Nasdaq Rules 9216(b) solely address the

⁵⁰ As defined in New Rule 9120(bb).

⁵¹ The Office of Disciplinary Affairs is a FINRA group independent of the enforcement function. See discussion infra, p. 25.

⁵² New Rule 9216(a)(3) and (4).

⁵³ The Exchange's minor rule violation regulations include both fines included in its MRVP and other fines up to \$10,000.

⁵⁴ As discussed below, the Exchange is adopting New Rules 9216(b)(1)(E) and 9216(b)(2)(E) to account for the process provided under Rule 970 concerning imposing fines under the Option Floor Procedure Advices, when the number of violations under Exchange Rules is determined based upon an exception-based surveillance program. BX and Nasdaq Rules 9216(b) do not have a similar rule, allowing "batching" of violations under certain conditions. Thus, the Exchange is keeping the process provided by Rule 970, Commentary .01.

procedures for violations of rules subject to their respective MRVPs pursuant to Rule 19d-1(c)(2) of the Exchange Act.

The Exchange is proposing to adopt New Rule 9216(b)(1) to address the process for administering fines included in the Advices that do not exceed \$2,500 and are included in the MRVP. Unlike Rule 970, which provides a process whereby the Exchange issues a citation that may be subsequently contested by the Member, Member Organization, or Associated Person, New Rule 9216(b) does not provide a similar process. Under New Rule 9216(b)(1) and like the comparable rules of BX and Nasdaq, the Department of Enforcement or Department of Market Regulation may prepare and provide an MRVP letter to a Member, Member Organization, or Associated Person for its signature. Unlike the BX and Nasdaq rules, the Exchange is also vesting the Phlx Regulation Department with the same authority given to the Department of Enforcement and Department of Market Regulation to administer the MRVP letter process.⁵⁵ The Exchange notes that a Member, Member Organization, or Associated Person is not obligated to agree to the terms of an MRVP fine or submit an MRVP letter for approval. The Exchange will issue an MRVP letter for execution by the Member, Member Organization, or Associated Person,⁵⁶ and the executed letter must thereafter be approved

⁵⁵ The Phlx Regulation Department would prepare MRVP letters (and violation letters as discussed below) when it is the body that investigated the violation. This would occur commonly with violations of floor-based Advices. Options Exchange Officials are considered members of the Phlx Regulation Department, as are Exchange Staff when acting pursuant to the Advices; thus, Options Exchange Official and Exchange Staff rulings are considered action of the Phlx Regulation Department.

⁵⁶ New Rule 9216(b)(1)(A).

by the Exchange Review Council, Review Subcommittee or the ODA.⁵⁷ If the terms are not accepted, then the Exchange or FINRA on behalf of the Exchange may pursue formal disciplinary proceedings.⁵⁸ As a consequence, under the New Rules there is no ability for a fine to be reversed, modified or affirmed, prior to formal disciplinary proceedings. The Exchange notes that this is consistent with the processes used by BX, Nasdaq, and FINRA.

The Exchange will follow the same process for violations of the Advices not included in the MRVP.⁵⁹ Specifically, the Exchange is proposing to adopt New Rule 9216(b)(2) to address the Exchange's authority to issue fines for violation of the Advices, other than violation of the Order and Decorum regulations, that exceed \$2,500 (and are thus not included in the MRVP), but are not greater than \$10,000. As discussed above, under Rule 970 the Exchange has authority to assess a fine up to \$10,000 under the Advices in lieu of pursuing formal disciplinary proceedings. The Exchange is proposing to provide the same procedures as applied to fines assessed for violations of regulations subject to the MRVP. However, violations of the Advices that result in a fine greater

⁵⁷ New Rule 9216(b)(1)(C). The Exchange notes that, as is the case with BX and Nasdaq Rules 9216(b), a letter issued under New Rule 9216(b) is considered an action of the Review Council; however, the Review Subcommittee of the Review Council or ODA may accept such a letter on behalf of the Review Council by delegated authority. See New Rules 9216(b)(1)(A) and (C), and New Rules 9216(b)(2)(A) and (C).

⁵⁸ New Rule 9216(b)(1)(D).

⁵⁹ Instead of issuing an MRVP letter, letters issued by the Exchange under New Rule 9216(b)(2) are termed "violation letters." As a consequence of the two types of minor rule violation letters, the Exchange is adopting New Rule 9143(e)(3) and New Rule 9144(c)(3), which discuss certain waivers in relation to ex parte communications and separation of functions, to include violation letters in addition to MRVP letters. As a consequence, these two new rules differ from the analogous rules of BX and Nasdaq, neither of which have violation letters.

than \$2,500 up to the maximum fine assessed under the Advices of \$10,000 are not eligible for an exception to the reporting requirements of Rule 19d-1(c)(1) of the Act.⁶⁰

Last, the Exchange is proposing to adopt New Rule 9216(c) to address the process followed for violations of the Order and Decorum regulations under the Advices, none of which are included in the MRVP. The fines assessed for violations of the Order and Decorum Advices range from \$50 to \$10,000. Thus, fines assessed for violation of Order and Decorum regulations of \$1,000 or less may be exempt from the reporting requirements of Rule 19d-1(c)(1) of the Exchange Act.⁶¹ The Exchange notes that, because BX and Nasdaq do not have trading floors, their respective Rules 9216 do not address violations of Order and Decorum. Accordingly, the Exchange is incorporating the provisions of current Rule 60 into proposed New Rule 9216(c), largely unchanged. The Exchange is retaining sole jurisdiction to review violations of Order and Decorum under New Rule 9216(c) because the regulations arise from the operation of the trading floor. Nevertheless, non-compliance with the Order and Decorum regulations may result in referral for formal disciplinary action, which would then proceed pursuant to the New Rule 9000 Series.⁶²

⁶⁰ See 17 CFR 240.19d-1(c)(1); supra note 28.

⁶¹ Id.

⁶² In cases where the Phlx Regulation Department determines that formal disciplinary action is appropriate for a violation of Order and Decorum, it would provide the recommendation to the ODA directly, or may provide it to the Department of Enforcement or Department of Market Regulation to manage the ODA review process. See, e.g., New Rule 9216(c). The Exchange notes that Phlx Regulation Department may provide the recommendation to the ODA directly, or may provide it to the Department of Enforcement or Department of Market Regulation to manage the ODA review process for each of the processes under New Rule 9216(a), (b) and (c). As discussed above, both Options

Disciplinary Process

With respect to the formal disciplinary process, Phlx is retiring the BCC and its related processes and adopting new policy and disciplinary processes that are derived from those of BX and Nasdaq. Phlx and FINRA amended the RSA to include the processes formerly conducted by the BCC and Hearing Panels. As such, FINRA will now not only investigate possible violation of Phlx rules and federal securities laws and recommend action against Members, Member Organizations, and Associated Persons, but FINRA will also adjudicate matters pursuant to the Exchange's new rules.⁶³ In this regard, the case authorization and adjudicatory functions of the BCC and current Hearing Panels will be administered by FINRA's ODA and Office of Hearing Officers ("OHO"), respectively.

The ODA is an office within FINRA, independent of the FINRA enforcement function and not involved in investigating or litigating cases.⁶⁴ Similar to the BCC, the ODA reviews each proposed complaint to determine the legal and evidentiary sufficiency of proposed charges and settlements.⁶⁵ Like matters presented to the BCC for its

Exchange Officials and Exchange Staff are considered members of the Phlx Regulation Department. Supra note 55.

⁶³ In certain instances, as set forth in proposed New Rule 9211(a)(1), Phlx Regulation will retain discretion to investigate potentially violative conduct itself and recommend a resolution to FINRA. In this respect, New Rule 9211(a)(1) will differ from the corresponding provisions of the BX and Nasdaq Rules.

⁶⁴ Supra note 32 at 4.

⁶⁵ Id. The ODA also reviews and accepts uncontested offers of settlement for FINRA matters (FINRA Rule 9270(e)(2)), and for BX and Nasdaq matters pursuant to their respective Rules 9270(e)(2). The ODA also has sole authority to accept or reject uncontested offers of settlement involving affiliates of BX and Nasdaq pursuant to their respective Rules 9270(e). As a practical matter, FINRA has informed the Exchange that the ODA reviews nearly all uncontested offers of

determination of whether to initiate charges,⁶⁶ a recommendation proposed by FINRA staff or the Phlx Regulation Department as proposed herein in a matter involving formal disciplinary action cannot proceed without approval by the ODA.⁶⁷ If a complaint is authorized by the ODA, then FINRA's Department of Enforcement or the Department of Market Regulation or the Phlx Regulation Department as proposed herein⁶⁸ must issue the complaint, which is filed with the OHO.⁶⁹

settlement for possible acceptance, however, the ODAs authority to reject uncontested offers of settlement is limited to those involving affiliates of the Exchange. Accordingly, the Exchange is proposing to make it clear in New Rule 9270(e) and subparagraph (2) thereunder that the ODA may accept an offer of settlement and order of acceptance or refer them to the Exchange Review Council, and it may also reject uncontested offers of settlement in matters involving an affiliate of the Exchange pursuant to New Rule 9270(e).

⁶⁶ See Rule 960.2(f).

⁶⁷ Supra note 32 at 4; see also New Rule 9211(a).

⁶⁸ In addition to retaining discretion to investigate potentially violative conduct and recommending a resolution to FINRA, the Phlx Regulation Department is also retaining discretion to prosecute matters as a party before Hearing Panels. As a consequence, the Exchange has included reference to the Phlx Regulation Department in the New Rule 9200, 9300 and 9800 Series whereas the analogous rules of BX and Nasdaq do not include references to their respective Regulation Departments. Likewise, the Exchange is proposing to include the Phlx Regulation Department in the definition of "Party" under proposed New Rule 9120(z) for purposes of the New Rule 9200, 9300 and 9800 Series. The Exchange is also including the New Rule 9400 Series as covered by the term "Party." Although, omitted from the related definitions of "Party" under the BX, Nasdaq and FINRA rules, the Exchange believes that it is appropriate to include the New Rule 9400 Series because it concerns expedited client suspensions whereby the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation at the direction of the CRO or another senior officer, may initiate expedited suspension proceedings with respect to alleged violations of Rule 774. The New Rule 9400 Series includes a hearings process in which the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation and the Member, Member Organization or Associated Person subject to expedited suspension are considered Parties to the matter. The Exchange notes that, although the BX and Nasdaq rules do not include the Department of Enforcement or the Department of Market Regulation,

The OHO, like the ODA, is an independent office within FINRA not involved in investigating or litigating cases. The OHO is responsible for the administration of the hearing process. Under the new process, hearings will be held before a Hearing Officer and two Panelists, with limited exception.⁷⁰ Panelists are selected by the Chief Hearing Officer and must be a person who: (i) previously served on the Exchange Review Council; (ii) previously served on a disciplinary subcommittee of the Exchange Review Council, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees; (iii) previously served as a Director, or as a Governor of the Exchange prior to its acquisition by Nasdaq, Inc., but does not serve currently in that position; or (iv) is a FINRA Panelist approved by the Board at least annually, including a member of FINRA's Market Regulation Committee or who previously served on the Market Regulation Committee not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being

nor do they mention FINRA, it believes that including FINRA and its departments in proposed New Rule 9400 Series is appropriate because they may be involved in the initiation of such a matter for BX and Nasdaq currently. Thus, the proposed addition is a clarifying change. As such, the Exchange believes that including the New Rule 9400 Series under the definition "Party" is appropriate.

⁶⁹ See New Rule 9212(a)(1).

⁷⁰ New Rule 9231(b). As noted in the New Rule, there are certain limited circumstances whereby a hearing may proceed without the participation of a Hearing Officer or two Panelists, such as when Hearing Officer becomes incapacitated, or otherwise is unable to continue service after being appointed, and the replacement Hearing Officer determines to allow the Panelist to resolve the matter without his or her participation. See New Rule 9231(e)(1). See also New Rule 9234(a), (c), (d), and (e).

appointed, or from other sources the Board deems appropriate given the responsibilities of Panelists.⁷¹

Upon the filing of a complaint, the respondent is afforded time to reply and request a hearing.⁷² The hearing process begins at this juncture, unless the respondent waives a hearing,⁷³ and the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel,⁷⁴ does not order a hearing on his or her own motion.⁷⁵ Should a hearing be waived and the Hearing Officer or Hearing Panel declines to hold a hearing, the matter may be considered by the Hearing Panel on the record, as defined in New Rule 9267.⁷⁶ Should the hearing process proceed, it is governed by the New Rule 9200 Series. The

⁷¹ New Rule 9231(b).

⁷² See New Rules 9215 and 9221.

⁷³ Under New Rule 9221(a), a respondent may waive its right to a hearing if it fails to request a hearing in its answer.

⁷⁴ Under New Rules 9231(c) and 9331(a)(2), the Chief Hearing Officer and Exchange Review Council or Review Subcommittee, respectively, may determine that a matter be designated as an Extended Hearing or Extended Proceeding, and that such matter be considered by an Extended Hearing Panel or Extended Proceeding Committee. Under New Rule 9231(c), in making its determination, the Chief Hearing Officer will consider complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material. Under New Rule 9331(a)(2), in making its determination, the Exchange Review Council or the Review Subcommittee will consider the volume and complexity of the certified record, or other factors that the Exchange Review Council or the Review Subcommittee deems material. For purposes of this filing, references to Hearing Panels and Hearing Panelists include references to Extended Hearing Panels and Extended Hearing Panelists, and references to Subcommittees and Subcommittee members include references to Extended Proceeding Committees and Extended Proceeding Committee members, unless otherwise noted.

⁷⁵ See New Rule 9120 for definitions of these terms.

⁷⁶ New Rule 9221(c).

hearing process concludes with either all of the causes of action in the matter summarily disposed of on motion,⁷⁷ acceptance of an offer of settlement,⁷⁸ or the issuance of a decision by the Hearing Panel.⁷⁹

The Exchange Review Council

The Exchange is eliminating two committees under the By-Laws and adopting the Exchange Review Council in their stead. The Exchange Review Council will have, in all material respects, the same broad authority as the BX and Nasdaq Review Councils.⁸⁰ As such, the new Exchange Review Council will be charged with ensuring the consistent and fair application of the rules pertaining to discipline of Members, Member Organizations,

⁷⁷ After a hearing on the merits has commenced, either the Respondent or the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may make a motion for summary disposition of any or all of the causes of action in the complaint with respect to that Respondent or defenses raised in that Respondent's answer only with leave of the Hearing Officer. See New Rule 9264.

⁷⁸ New Rule 9270.

⁷⁹ New Rule 9268.

⁸⁰ The Review Councils of BX and Nasdaq preside over matters involving appeals of their respective Rules 4612 (Registration as an Equities/Nasdaq Market Maker), 4619 (Withdrawal of Quotations), 4620 (Voluntary Termination of Registration), and 11890 (Clearly Erroneous Transactions). See Rules 0120(m) of BX and Nasdaq. Moreover, the Nasdaq Review Council presides over matters involving appeals of Nasdaq Options Rule Chapter V Section 6 (Obvious and Catastrophic Errors). See Nasdaq Rule 0120(m). The Exchange Review Council presides over matters involving, in part, appeals of Rules 124 (Disputes-Options), 1092 (Obvious Errors and Catastrophic Errors), 3219 (Withdrawal of Quotations), 3220 (Voluntary Termination of Registration), and 3312 (Clearly Erroneous Transactions). See New Rule 1(k). BX and Nasdaq Rules 4619, 4620 and 11890 are materially identical to Exchange Rules 3219, 3220 and 3312, respectively. Nasdaq Options Rule Chapter V, Section 6, and Exchange Rule 1092 both address obvious and catastrophic errors on their respective options markets. Last, Exchange Rule 124 is unique to Phlx as it addresses disputes occurring on and relating to the Exchange's trading floor. Neither BX nor Nasdaq have a physical trading floor.

and Associated Persons, and considering and making recommendations to the Board on policy and rule changes relating to business and sales practices of Members, Member Organizations, and Associated Persons and enforcement policies, including policies with respect to fines and other sanctions.⁸¹ The policy function of the Exchange Review Council is similar to that of the BCC, yet broader in scope.⁸² The Exchange is also eliminating the Market Operations Review Committee, whose duties will be the responsibility of the Exchange Review Council, which is discussed in greater detail below.

⁸¹ See New Phlx By-Law, Article V, Sec. 5-3(b)(i). 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 members, member organizations 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 member, member organization and associated person conduct and trading activities in the national securities exchange operated by the Company. Id. The same provisions of the BX and Nasdaq by-laws only apply this role as it relates to their respective members. The Exchange notes that programs and systems for the surveillance and enforcement of rules governing member conduct and trading activities, as described in the BX and Nasdaq by-laws, implicitly apply to such conduct and activity of associated persons. Thus, the proposed addition of Members and Associated Persons to this provision of New Phlx By-Law, Article V, Sec. 5-3(b)(i), is done for clarification purposes.

⁸² Specifically, the proposed amended By-Laws provide that the Exchange Review Council may be authorized to: act for the Board with respect to appeals or reviews of disciplinary proceedings; act for the Board with respect to statutory disqualification proceedings; act for the Board with respect to membership proceedings; review offers of settlement, letters of acceptance, waiver and consent, and minor rule violation plan letters; exercise exemptive authority; consider and make recommendations to the Board on policy and rule changes relating to business and sales practices of Members, Member Organizations and Associated Persons and enforcement policies, including policies with respect to fines and other sanctions; exercise other such powers and duties as the Board deems appropriate. See New Phlx By-Law, Article V, Sec. 5-3(b)(i).

In its adjudicatory role, the Exchange Review Council will serve as an appellate body, with jurisdiction to: (i) review decisions issued in disciplinary proceedings,⁸³ statutory disqualification proceedings, or membership proceedings;⁸⁴ (ii) review an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter;⁸⁵ (iii) review the exercise of exemptive authority;⁸⁶ and (iv) review such other proceedings or actions as may be authorized by the Exchange rules.⁸⁷ As such, the Exchange Review Council will perform a role identical to that of the Review Councils of BX and Nasdaq, and FINRA's NAC. The NAC reviews decisions rendered by Hearing Panels in FINRA disciplinary proceedings and Member Regulation Department decisions rendered in membership proceedings involving FINRA members, among other things.⁸⁸

Likewise, the Exchange Review Council will review decisions issued by Hearing Panels concerning disciplinary matters and Membership Department decisions in membership proceedings concerning Members, Member Organizations, Associated Persons.⁸⁹ Hearing Panel decisions may be appealed to the Exchange Review Council by either the respondent or the Phlx Regulation Department, the Department of Enforcement

⁸³ See New Rule 9300 Series.

⁸⁴ See New Rule 9520 Series.

⁸⁵ See New Rule 9216.

⁸⁶ New Rule 9600 Series.

⁸⁷ New Phlx By-Law, Article V, Sec. 5-3(b)(i).

⁸⁸ FINRA Regulation, Inc. By-Law, Article V, Sec. 5.1.

⁸⁹ New Phlx By-Law, Article V, Sec. 5-3(b)(i).

or the Department of Market Regulation.⁹⁰ Appeals must be made in writing within 25 days after service of the decision.⁹¹

The Exchange Review Council may also call a Hearing Panel decision for review on its own motion, except that default decisions issued pursuant to New Rule 9269 shall be subject to a call for review by the CRO and a decision with respect to a Member, Member Organization, or Associated Person that is an affiliate of the Exchange within the meaning of Rule 985 may not be called for review.⁹² Decisions of the Exchange Review Council are final unless called for review by the Board.⁹³ This process is consistent with the current process by which the BX and Nasdaq Boards may call for review a decision made by their Review Councils arising from their respective disciplinary and membership rules, as well as the process followed by the FINRA Board of Directors in its review of such decisions issued by the NAC.⁹⁴

The Exchange notes that both Nasdaq and BX eliminated their respective Market Operations Review Committees and transferred those committees' responsibilities to their Review Councils.⁹⁵ Accordingly, the Exchange is proposing to eliminate its Market Operations Review Committee ("MORC") and include its responsibilities within those of

⁹⁰ New Rule 9311(a).

⁹¹ Id.

⁹² New Rule 9312.

⁹³ New Rules 923(a)(x)(C), 9349(c), and 9351.

⁹⁴ See Nasdaq Rules 1016, 9349(c) and 9351, BX Rules 1016, 9349(c) and 9351, and FINRA Rules 1016, 9349(c) and 9351.

⁹⁵ See Securities Exchange Act Release No. 72151 (May 12, 2014), 79 FR 28571 (May 16, 2014) (SR-NASDAQ-2014-048) and Securities Exchange Act Release No. 72149 (May 12, 2014), 79 FR 28564 (May 16, 2014) (SR-BX-2014-024).

the new Exchange Review Council. The MORC is responsible for considering appeals of determinations made pursuant to Exchange Rules 124, 1092, 3219, 3220, and 3312.

Decisions of the MORC in these matters are not appealable,⁹⁶ however, determinations of the MORC with respect to Rule 3312 may be arbitrated.⁹⁷ The By-Laws require that the MORC be comprised of a number of Member Representative members that is equal to at least 20 percent of the total number of members of the MORC.⁹⁸ Moreover, the By-Laws require that no more than 50 percent of the members of the MORC be engaged in market making activity or employed by a Member whose revenues from market making exceed 10 percent of its total revenues.⁹⁹ The By-Laws do not provide a description of what is a quorum for purposes of holding a meeting of the MORC, however, the committee has adopted a three member quorum requirement.¹⁰⁰

⁹⁶ Unlike disciplinary proceedings under the New Rule 9000 Series, speedy resolution of matters under the MORC's jurisdiction is important to ensuring fair and equitable treatment of Members.

⁹⁷ See Rule 3312(c)(3).

⁹⁸ Phlx By-Law, Article V, Sec. 5-3(d).

⁹⁹ Id.

¹⁰⁰ Rule 3312(c)(2) expressly requires a panel to consist of three or more members of the MORC, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a Member firm whose revenues from market making activity exceed ten percent of its total revenues. The rule also states that in no case shall a MORC Panel include a person affiliated with a party to the trade in question. The amended Exchange By-Laws define an Exchange Review Council quorum for the transaction of business with regard to an appeal of proceedings involving Exchange Rules 124, 1092, 3219, 3220, and 3312 (currently under the MORC's jurisdiction) shall consist of three members of the Exchange Review Council.

Structure of the New Rules

The Exchange is adopting a New Rule 8000 and 9000 Series, which are modeled on the BX and Nasdaq Rules, and which replace the current Rule 960 Series.

The New Rule 8000 Series is titled “Investigations and Sanctions,” and it governs the regulation of Member Organizations, Members and Associated Persons, investigations and sanctions. With respect to regulation of Member Organizations, Members and Associated Persons, the New Rule 8000 Series generally describes the regulatory contract between the Exchange and FINRA,¹⁰¹ and requires Member Organizations to keep and maintain current paper or electronic copies of both the FINRA and Exchange manuals.¹⁰²

The New Rule 8200 Series concerns the investigative process. It grants the Phlx Regulation Department, including FINRA staff, the right to require Members, Member Organizations, Associated Persons and persons subject to the Exchange’s jurisdiction to provide information and to testify under oath,¹⁰³ and to permit inspections of their books and records, and accounts with respect to any matter involved in the investigation, complaint, examination, or proceeding.¹⁰⁴ The New Rule 8200 Series also extends this authority to investigations conducted by a domestic or foreign SRO, association, securities or contract market, or regulator of such markets with which the Exchange has entered into an agreement providing for the exchange of information and other forms of

¹⁰¹ New Rule 8001.

¹⁰² New Rule 8110.

¹⁰³ New Rule 8210(a)(1).

¹⁰⁴ New Rule 8210(a)(2).

material assistance solely for market surveillance, investigative, enforcement, or other regulatory purposes.¹⁰⁵ The New Rule 8211 Series imposes a new obligation on member organizations to submit certain trade data¹⁰⁶ to the Phlx Regulation Department, including FINRA staff, in such an automated format as the New Rule prescribes. Pursuant to the New Rule 9600 Series, the Exchange may exempt a Member Organization from this requirement for good cause shown.

The New Rule 8300 Series describes the nature and effect of sanctions the Exchange may impose on a Member, Member Organization or Associated Person after compliance with the New Rule 9000 Series, including the circumstances under which the Exchange will release information concerning a disciplinary matter.¹⁰⁷ The New Rule 8300 Series also provides the requirements concerning payment of fines, other monetary sanctions, and the consequences of non-payment.¹⁰⁸

The New Rule 9000 Series is titled “Code of Procedure.” It governs proceedings for: disciplining Members, Member Organizations, and Associated Persons; regulating Member Organizations experiencing financial or operational difficulties; summary or non-summary suspensions, cancellations, bars, prohibitions, or limitations; and obtaining

¹⁰⁵ New Rule 8210(b).

¹⁰⁶ The data required is based on whether the transaction was proprietary or effected for a customer, however, the Phlx Regulatory Department also may require a member organization to submit other information in an automated format. See New Rule 8211(b) – (d).

¹⁰⁷ New IM-8310-3.

¹⁰⁸ See New Rule 8320. New Rule 8330 provides that a Member, Member Organization or Associated Person that is disciplined pursuant to New Rule 8310 shall bear such costs of the proceeding, as the Adjudicator deems fair and appropriate under the circumstances.

relief from the eligibility requirements of the Exchange By-Laws and the Exchange Rules. The New Rule 9000 Series generally describes the RSA between the Exchange and FINRA.¹⁰⁹

The New Rule 9100 Series describes the application and purpose of the New Rule 9000 Series, including the types of proceedings covered by the New Rules,¹¹⁰ the rights, duties, and obligations of Members, Member Organizations and Associated Persons,¹¹¹ jurisdiction,¹¹² defined terms,¹¹³ and rules concerning the filing and service of papers.¹¹⁴ The New Rule 9100 Series also provides rules concerning proceedings, including appearance and practice,¹¹⁵ withdrawal by attorney or representative,¹¹⁶ ex parte communications,¹¹⁷ separation of functions among Adjudicators and Interested Staff,¹¹⁸

¹⁰⁹ See New Rule 9001.

¹¹⁰ See New Rule 9110.

¹¹¹ Id.

¹¹² Id.

¹¹³ See New Rule 9120. The Exchange notes that it is adopting a more comprehensive definition of “Interested Staff” under New Rule 9120(t) than the comparable definitions under BX and Nasdaq. Specifically, the Exchange is adopting new text that accounts for the role of the Phlx Regulation Department, including the involvement of employees thereof. Thus, the proposed new definition will include all individuals that should be considered as “Interested Staff” for purposes of the New Rule 9000 Series.

¹¹⁴ See New Rules 9131 – 9138.

¹¹⁵ See New Rule 9141.

¹¹⁶ See New Rule 9142.

¹¹⁷ See New Rule 9143.

¹¹⁸ See New Rule 9144.

rules of evidence and official notice,¹¹⁹ motions,¹²⁰ rulings on procedural matters,¹²¹ and interlocutory review.¹²²

The New Rule 9200 Series sets forth the disciplinary process, including rules concerning the authorization and issuance of a complaint,¹²³ the briefing and hearings process,¹²⁴ issuance of a decision,¹²⁵ the settlement process,¹²⁶ and sanctions for contemptuous conduct.¹²⁷ The New Rule 9200 Series also includes rules concerning adjudication that imposes a temporary or permanent cease-and-desist order.¹²⁸

The New Rule 9300 Series sets forth the process for review of disciplinary proceedings by the Exchange Review Council and the Board.¹²⁹ The New Rule 9300 Series also describes the role of Counsel to the Exchange Review Council, review of

¹¹⁹ See New Rule 9145.

¹²⁰ See New Rule 9146.

¹²¹ See New Rule 9147.

¹²² See New Rule 9148.

¹²³ See New Rules 9211 and 9212.

¹²⁴ See New Rules 9215 – 9267.

¹²⁵ See New Rules 9268 and 9269.

¹²⁶ See New Rule 9270.

¹²⁷ See New Rule 9280.

¹²⁸ See New Rules 9290 and 9291.

¹²⁹ The New Rules include provisions for the appeal of a matter to the Exchange Review Council (New Rule 9311), review proceedings initiated by the Exchange Review Council (New Rule 9312), and discretionary review by the Board (New Rule 9350 Series).

Counsel decisions,¹³⁰ and the time when sanctions become effective,¹³¹ including when a Respondent appeals a decision to the Securities and Exchange Commission.¹³²

The New Rule 9400 Series provides the process for expedited client suspension proceedings, involving alleged violations of New Rule 774 (Disruptive Quoting and Trading Activity Prohibited).

The New Rule 9500 Series provides the process for proceedings other than formal disciplinary proceedings. The New Rule 9520 Series sets forth procedures for a person to become or remain associated with a Member Organization, notwithstanding the existence of a statutory disqualification, and provides the process for a Member, Member Organization, or Associated Person to obtain relief from the eligibility or qualification requirements. The New Rule 9550 Series¹³³ provides the process followed for violations

¹³⁰ See New Rule 9313.

¹³¹ See New Rule 9360.

¹³² See New Rule 9370.

¹³³ The Exchange is proposing to include both the Phlx Regulation Department and FINRA as authorized to provide notice under the various expedited proceedings Rules. The Exchange notes that the analogous BX and Nasdaq expedited proceedings Rules state that notice is to be provided by those exchanges' respective Regulation Department staff only. See, e.g., BX and Nasdaq Rules 9553(b). FINRA, acting on behalf of the Exchange, is authorized to provide such notice under BX and Nasdaq rules, notwithstanding the omission in the rule text. Thus, including both Phlx Regulation Department staff as well as FINRA under the service of notice provisions of the expedited hearings rules will avoid any confusion caused by the omissions in the BX and Nasdaq rule text, and will make it clear that such notices may be issued by either the Exchange or FINRA. Similarly, the Exchange is proposing to adopt consistent notification requirements under New Rule 9550 Series. BX and Nasdaq Rules 9555(g) and 9556(g) provide a process by which a member or person subject to a limitation or suspension, respectively, may seek termination of the limitation or suspension. Under those rules, a written request for such a termination must be filed with "the head of the Exchange department or office that issued the notice or, if another Exchange department or office is named as the party handling the matter on behalf of the

of Phlx rules subject to expedited proceedings, including: failures to provide information or keep information current (New Rule 9552); failures to pay Exchange dues, fees and other charges (New Rule 9553); failures to comply with an arbitration award or related settlement or an order of restitution or settlement providing for restitution (New Rule 9554); failures to meet the eligibility or qualification standards or prerequisites for access to services (New Rule 9555); failures to comply with temporary and permanent cease-and-desist orders (New Rule 9556); procedures for regulating activities under Rule 703 regarding a Member Organization experiencing financial or operational difficulties (New Rule 9557);¹³⁴ summary proceedings for actions authorized by Section 6(d)(3) of the Act

issuing department or office, with the head of the Exchange department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.” By contrast, BX and Nasdaq Rules 9552(f), 9553(g), 9554(g), and 9558(g) speak of filing a request for termination a limitation, prohibition or suspension, as applicable, with “the head of the FINRA department or office that issued the notice or, if another FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.” The Exchange is proposing to adopt a consistent notification requirement under the respective New Rule 9550 Series by requiring notice to the “Exchange department or FINRA department.” The Exchange notes that, in practice, a FINRA department may be included as the proper department for notice based on the respective RSAs of BX, Nasdaq and the Exchange. See BX Rule 9001, Nasdaq Rule 9001, and proposed New Rule 9001.

¹³⁴ Currently, the Exchange has emergency authority to suspend a member organization pursuant to Phlx By-Law, Article VII, Sec. 7-5(b), which provides “The Board of Directors, or such person or persons or committee as may be designated by the Board of Directors, in the event of an emergency or extraordinary market conditions, shall have the authority to take any action regarding...the operation of any or all offices or systems of Members and Member Organizations, if, in the opinion of the Board of Directors or the person or persons hereby designated, such action is necessary or appropriate for the protection of investors or the public interest or for the orderly operation of the marketplace or the system.” The Exchange does not have an analogous rule that relates to this authority. As such, New Rule 9557 provides a more specific description of the exercise of this authority in instances where a Member

(New Rule 9558); and the hearing procedures for expedited proceedings under the New Rule 9550 Series.

The New Rule 9600 Series provides procedures followed when a Member Organization seeks exemptive relief pursuant to any Exchange Rule that references the New Rule 9600 Series.

The New Rule 9800 Series provides the process followed by the Exchange in administering temporary cease-and-desist orders, including the initiation of proceeding to issue such an order,¹³⁵ service thereof,¹³⁶ subsequent review of the order by the Hearing Panel,¹³⁷ the consequences of non-compliance,¹³⁸ and the process for seeking Commission review of the order.¹³⁹

Specific Rule Changes

As discussed above, the Exchange is amending its By-Laws, deleting the Rule 960 Series, and adopting the New Rule 8000 and 9000 Series. As a consequence of these changes, the Exchange has amended or deleted other Rules, which are either not needed, duplicated elsewhere, or referenced the deleted rules or the BCC. Below is a description of the individual changes the Exchange is making to its Rules. The descriptions describe

Organization is experiencing financial or operational difficulties, including notice requirements, a hearing process, and a process for the removal or reduction of a requirement or restriction.

¹³⁵ New Rule 9810.

¹³⁶ Id.

¹³⁷ New Rule 9850.

¹³⁸ New Rule 9860.

¹³⁹ New Rule 9870.

the current Rule, where the rule resides in the New Rules, and any differences between the current and New Rule.

- Phlx is proposing to amend its By-Laws by deleting Article V, Section 5-3(b), “The Board shall appoint a Business Conduct Committee” and replace it with a new Section 5-3(b) titled “The Board shall appoint an Exchange Review Council.” Current Section 5-3(b) describes the jurisdiction and composition requirements of the BCC. New Section 5-3(b), which is copied from Article VII of the BX By-Laws and Article VI of the Nasdaq By-Laws, describes the jurisdiction and composition requirements of the Exchange Review Council. The new rule text of Section 5-3(b) materially differs from Article VII of the BX By-Laws and Article VI of the Nasdaq By-Laws in that new Phlx By-Law expressly provides that the Exchange Review Council may advise the Board in its administration of programs and systems for the surveillance and enforcement of rules governing Member, Member Organization and Associated Person conduct and trading activities in the national securities exchange operated by Phlx. In contrast, the related provisions of the BX and Nasdaq By-Laws only describe such an advisory role with respect to their members. The Exchange believes that BX and Nasdaq consider this Exchange Review Council advisory role to their respective boards to implicitly extend to associated persons. The Exchange also believes that this Exchange Review Council advisory role should include both Member Organizations and their Associated Persons, including Members. Consequently, the Exchange is expressly including Members and Associated

Persons in this provision. Otherwise, the new rule text of Section 5-3(b) is identical in all material respects to that of Article VII of the BX By-Laws and Article VI of the Nasdaq By-Laws, differing in the By-Laws and rule numbers cited due to the Exchange's different numbering conventions. The Exchange notes that the majority of these Rules align with the comparable rules of BX and Nasdaq (compare, e.g. Phlx Rule 3312 "Clearly Erroneous Transactions" with BX and Nasdaq Rules 11890 "Clearly Erroneous Transactions"); however, the Exchange includes Rule 124 "Disputes-Options" under the Exchange Review Council's jurisdiction, which is currently under the jurisdiction of the MORC as discussed above and which neither BX nor Nasdaq have. In addition, BX and Nasdaq have a Rule 4612, which concerns registration as a market maker and which the Exchange does not have an analogue. The Exchange notes that appeals of determinations made pursuant to BX and Nasdaq Rules 4612 were reviewed by their respective MORCs prior to consolidation into their Review Councils. Similarly, appeals of determinations made pursuant to Exchange Rule 124 are currently reviewed by the Exchange's MORC. The Exchange notes that Section 5-3(b)(iv) of the amended By-Laws provides that 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. Further, Section 5-3(b)(iv) provides that the Exchange Review Council shall be divided into three classes. To simplify the process of appointing Exchange

Review Council members, the Exchange is proposing to use the members of the BX and Nasdaq Review Councils as the members of the Exchange Review Council, with the same terms and classes as those members have on the BX Review Council. The Exchange notes that this will ease the administration and recruitment of members by harmonizing their terms, and thus when new members must be approved by the exchange boards.

- Phlx is proposing to amend its By-Laws by deleting Article V, Section 5-3(d), and holding it in reserve. Section 5-3(d) establishes the MORC and its functions, which have been incorporated into new Section 5-3(b).
- Existing Rule 1 provides definitions for purposes of the rules of the Board, and rules and regulations of standing committees of the Exchange.
 - The Exchange is amending the definition of the terms “Associated Person” and “Person Associated with a Member Organization” to include, for purposes of the New Rule 8000 and 9000 Series, an amended definition of what currently resides at Rule 960.1, Interpretation and Policies .01. The Exchange is proposing to replace use of the term “associated person of a member,” which as described below is incorrectly used at Rule 960.1, Interpretation and Policies .01 since there are no persons associated with a Member, with the defined term “associated person.” The Exchange is also proposing to make it clear that, for purposes of the 8000 and 9000 Rule Series, the term “person associated with a member organization” or “associated person” shall have the same meaning as the term “persons associated with a member” or “associated person of a member.”

respectively, as provided in Section 3(a)(21) of the Exchange Act. The Exchange notes that the proposed changes to the defined terms does not change how they are presently applied.

- The Exchange is defining the new term “Code of Procedure” as the procedural rules contained in the New Rule 9000 Series.
- The Exchange is amending the definition of the term “Commission” to include the term “SEC.”
- The Exchange is defining the new term “Exchange Review Council,” which is copied from BX and Nasdaq Rules 0120(m). The Exchange notes that item (6) of the new definition differs from the BX and Nasdaq items (6) in that it cites the analogous Rules of the Exchange, which have different rule numbers. In addition, and as noted above in the By-Laws discussion, the rules for which the Exchange Review Council is the appellate body, which are listed under item (6) of each of the three exchanges, derive from the responsibilities of the former BX and Nasdaq MORCs that were incorporated into their Review Councils, and such responsibilities of the Exchange’s current MORC. Accordingly, to the extent those rules differ, so do the citations under the Exchange Review Council definitions of the three exchanges.
- The Exchange is amending the definition of “Member” to add rule text that clarifies that a Member is a natural person and must be a person associated with a Member Organization, and, as such, any references to

Exchange to the rights or obligations of an Associated Person or person associated with a Member Organization also includes a Member.

- The Exchange is eliminating references to the phase-in period of Rule 611 of Regulation NMS under the definition of “Protected Bid,” since the phase-in period has since past. As a consequence, the Exchange is also deleting definitions of “Nasdaq Global Market Security” and “Nasdaq Capital Market Security,” which were solely referenced under the deleted portions of the definition of “Protected Bid.”
- Rule 50 concerns the consequences of a Member’s, Member Organization’s, or Associated Person’s failure to pay dues, fees, and other charges. Phlx is replacing the Rule with New Rule 9553, which is materially identical to the old Rule, except for the notice provisions under Rule 50(b), which require that service of a notice of suspension, cancellation or bar be done in accordance with Rule 960.6 (Summary Disposition Proceedings). Rule 960.6(b) requires that notice and a copy of a summary decision is provided to Respondents in accordance with Rule 960.11. Rule 960.11, in turn, allows service on a Respondent or Respondent’s Counsel either personally or by deposit with the United States Postal Service (postage pre-paid via registered or certified mail), by courier service addressed to Respondent’s Counsel or the Respondent at his address (as it appears on the books and records of the Exchange), or, upon mutual written consent of the parties, by electronic delivery. By contrast, New Rule 9553(b) requires notice in accordance with Rule 9134 (Methods of, Procedures for Service) or by facsimile or email. Rule 9134 is generally

consistent with current requirements under Rule 50; however, Rule 9134 provides more specificity on the source of the addresses that may be used for service, types of allowable service by U.S. Postal Service, and when service is complete.

- Rule 60 provides the process for assessing fines pursuant to the Order and Decorum regulations under Section H of the Option Floor Procedure Advices and Order & Decorum Regulations. The Order and Decorum regulations provide fines assessed in lieu of formal disciplinary proceedings for conduct relating to the administration of order, decorum, health, safety and welfare on the Exchange. The Exchange is proposing to adopt Rules 9216(c)(1) and (2) to address the process for administering violations of the Order and Decorum regulations under Section H of the Option Floor Procedure Advices.
 - Rule 60(a)(i) provides an Options Exchange Official authority to assess fines on Members, Member Organizations, and Associated Persons for breaches of the Order and Decorum regulations. In addition, the rule permits the Options Exchange Official to refer the matter to the BCC, where it will proceed in accordance with the Rule 960 Series. The Exchange is moving Rule 60(a)(i) to New Rule 9216(c)(1) with minor changes. Specifically, the Exchange is replacing reference to the BCC with reference to the Department of Enforcement or the Department of Market Regulation, which are the bodies responsible for bringing formal disciplinary action under the BX and Nasdaq rules. The Exchange is also providing that an Options Exchange Official, as a representative of the

Phlx Regulation Department, may instead request authorization for the issuance of a complaint from the ODA directly.¹⁴⁰ In addition, the Exchange is replacing a reference to its current disciplinary Rules 960.1 – 960.12 with reference to the New Rule 8000 and 9000 Series.

- Rule 60(a)(ii) provides Exchange staff authority to assess fines on Members, Member Organizations, or persons associated with Member Organizations for breaches of the Order and Decorum regulations and is otherwise identical in all respects to Rule 60(a)(i), including permitting Exchange staff to refer the matter to the BCC, where it will proceed in accordance with the Rule 960 Series. The Exchange is moving Rule 60(a)(ii) to New Rule 9216(c)(1), which combines Rules 60(a)(i) and (ii), as modified by the minor changes described above. The Exchange is also providing that Exchange staff, acting as a representative of the Phlx Regulation Department, may instead request authorization of a complaint from the ODA directly.¹⁴¹
- Rule 60(b)(i) provides Options Exchange Officials and officers of the Exchange authority exclude a Member or Associated Person from the trading floor for breaches of Order and Decorum regulations that occurred on the trading floor, or on the premises immediately adjacent to the trading floor. In particular, Members and Associated Persons are excluded if they pose an immediate threat to the safety of persons or property, are

¹⁴⁰ See notes 47 and 55, supra.

¹⁴¹ Id.

seriously disrupting Exchange operations, or are in possession of a firearm. Under the rule, Members or Associated Persons so excluded may be excluded for a period of up to five business days. The Exchange is moving the Rule to New Rule 9216(c)(2), with only a minor change to delete text that defines a “Member” as either a Member or a person associated with a Member Organization. As described above, a Member must be a person associated with a Member Organization; however, use of the term to refer to both types of Associated Persons may be confusing. Thus, the Exchange is instead including both terms individually.

- Rule 60(b)(ii)¹⁴² defines an “officer of the Exchange” for purposes of Rule 60 to mean an officer who is a vice president or higher. The Exchange is moving the rule unchanged to New Rule 9216(c)(2)(A).
 - Rule 60(b)(iii) defines the “premises immediately adjacent to the trading floor” to include: (1) all premises other than the trading floor that are under Exchange control, and (2) premises in the building where the Exchange maintains its principal office and place of business, namely FMC Tower, 2929 Walnut Street, Philadelphia, Pennsylvania. The Exchange is moving the rule unchanged to New Rule 9216(c)(2)(B).
- Rule 60(b)(iv) provides that exclusion from the floor may not be the exclusive sanction for breaches of the Order and Decorum regulations,

¹⁴² The Exchange notes that Rule 60(c) was mistakenly placed between Rules 60(b)(i) and (ii). See Securities Exchange Act Release No. 61207 (December 18, 2009), 74 FR 69185 (December 30, 2009)(SR-Phlx-2009-84).

which include, in addition to exclusion, a fine or referral to the BCC, where it shall proceed in accordance with the Rule 960 Series. The Exchange is moving the Rule to New Rule 9216(c)(2)(C) with minor changes. Specifically, the Exchange is replacing reference to referring matters to the BCC with reference to the Department of Enforcement or the Department of Market Regulation, which are the appropriate bodies responsible for bringing formal disciplinary action under the BX and Nasdaq rules. The Exchange is also providing that the Phlx Regulation Department may instead request authorization of a complaint from the ODA directly.¹⁴³ In addition, the Exchange is replacing references to its current disciplinary rules with the New Rule 8000 and 9000 Series.

- Rule 60(c) provides the process for Expedited Hearings for Members and Associated Persons that are excluded for a period exceeding forty-eight hours. Pursuant to the Rule, an expedited hearing will be held before the Chair of the BCC or a member of the Committee designated by the Chair within forty-eight business hours after the Member's or Associated Person's exclusion from the trading floor. The Rule further provides the required contents of the notice to the Member or Associated Person and sets forth the Member's or Associated Person's right to be represented by counsel. The Rule also provides the hearing process, issues to be considered by the adjudicator, and the timing and form of the determination. The Exchange is moving the Rule to New Rule

¹⁴³ See notes 47 and 55, supra.

9216(c)(2)(D) with minor changes. Specifically, the Exchange is changing who is authorized to be an Expedited Hearing Officer to either the Chair of the Exchange Review Council or a member thereof. The Exchange believes that members of the Exchange Review Council are best suited to be Expedited Hearings panelist because of their expertise. Moreover, violations of Order and Decorum rules are not appealable to the Exchange Review Council, thus members thereof will not be conflicted in any subsequent appeal. The Exchange is also adding clarifying text to New Rule 9216(c)(2)(E)(ii) that describes in greater detail the exception to reporting provided by Rule 19b-1(c).

- Rule 60, Commentary (a) provides the procedures to be followed in cases where a pre-set fine of up to \$10,000 is summarily assessed. The Exchange is moving the Commentary under New Rule 9216(c)(1).
 - Rule 60, Commentary (a).01 requires the notice of the fine for breach of such regulations to be given by the issuance of a written citation, served by Exchange staff. The commentary provides that the cited party may accept or contest the written citation. The Exchange is moving the Commentary unchanged to New Rule 9216(c)(1)(A).
 - Rule 60, Commentary (a).02 provides the notice requirements for hearings arising from contested citations. The Exchange is moving the Commentary unchanged to New Rule 9216(c)(1)(B).

- Rule 60, Commentary (a).03 provides the hearing recordation requirements. The Exchange is moving the Commentary unchanged to New Rule 9216(c)(1)(C).
- Rule 60, Commentary (a).04 provides the procedure for hearings of contested fines. The Exchange is moving the Commentary with minor changes to New Rule 9216(c)(1)(D). Specifically, the Exchange is replacing the Chair of the BCC as the individual responsible for appointing a Hearing Director under the Rule with the Chair of the Exchange Review Council.
- Rule 60, Commentary (a).05 provides the nature and timing of the Hearing Director's determination upon conclusion of the hearing. The Exchange is moving the Commentary unchanged to New Rule 9216(c)(1)(E).
- Rule 60, Commentary (a).06 provides the conditions for assessing a forum fee. The Exchange is moving the Commentary to New Rule 9216(c)(1)(F), with only a minor change to update a citation to Rule 60 with New Rule 9216(c).
- Rule 60, Commentary (a).07 states that there is no right of appeal of a hearing determination under the Rule. The Exchange is moving the Commentary unchanged to New Rule 9216(c)(1)(G).
- Rule 60, Commentary (a).08 states that the Exchange will file a report in appropriate form with the SEC for any fine assessed under the Rule that is not contested and does not exceed \$1,000. The Exchange is

moving the Commentary, with only minor changes, to New Rule 9216(c)(1)(H) to clarify that the exemption to SEC reporting arises from SEC Rule 19d-1(c)(1).

- Rule 60, Commentary (b) provides the procedures to be followed when a Member or an Associated Person is to be excluded from the trading floor. The Exchange is moving the rule to New Rule 9216(c)(2)(E).
 - Rule 60, Commentary (b).01 provides that the determination that a Member or an Associated Person shall be excluded is final and that there shall be no appeal from such determination. The Exchange is moving the Rule unchanged to New Rule 9216(c)(2)(E)(i).
 - Rule 60, Commentary (b).02 notes that the Exchange will file a report in appropriate form with the SEC, except in cases where a clerical employee is excluded for a breach of the Order and Decorum regulations. The Exchange is moving the Rule unchanged to New Rule 9216(c)(2)(E)(ii).
- RULE 60—REGULATION AND FINE SCHEDULE provides that most violations of the Order and Decorum Code are handled by a pre-set fine and/or sanction, and an Options Exchange Official or Exchange staff may refer the matter to the BCC for formal disciplinary proceedings. The Rule also provides that in the case of repeat violations of a regulation by the same individual, the amount of the fine is determined by the number of such violations which have occurred within the year immediately preceding the current violation. The Exchange is moving the Rule to New

Rule 9216(c), with minor changes to cite the new disciplinary rules and to note that referrals for formal disciplinary proceedings are made to either the Department of Enforcement or the Department of Market Regulation. The Exchange is also providing that an Options Exchange Official or Exchange Staff, as a representative of the Phlx Regulation Department, may instead request authorization of a complaint from the ODA directly.¹⁴⁴

- The Rule 70 Series concerns insolvency of Members and Member Organizations, providing the Exchange with authority to suspend the permit of a Member that fails to perform its contracts or is deemed insolvent, and to suspend the permit of a Member or Member Organization that has failed to meet his or its engagements or is insolvent. See Rules 70 and 71. The Rule 70 Series consists of Rules 70 through 76, which provide the processes for suspending and resolving suspensions due to insolvency. These rules also provide the rights and obligations of those subject to suspension. This series of rules were significantly more important in the days when the Exchange required seats to transact on the Exchange. Prior to demutualization, when the Exchange issued seats, those seats could be leased. As a consequence, Members could be indebted to other Members for the right to lease a seat. Since the Exchange demutualized, there are no longer any seats, owners or lessors thereof. Today permits provide trading rights to Members and Member Organizations in lieu of the issuance of seats as property. Moreover,

¹⁴⁴ See notes 47 and 55, supra.

the Exchange collects fees owed by Members and Member Organizations via direct debit each month. Thus, these rules were designed to protect Members and the Exchange during a time when the relationships among Members, and between Members and the Exchange, resulted in much greater risk exposure if a Member became insolvent than is the case today. Under the New Rules, the Exchange will continue to have the authority to suspend a Member, Member Organization, or an Associated Person, which would include the ability to suspend the permit(s) associated with a Member Organization. Specifically, New Rule 9558(a)(2), which provides the Exchange's CRO with authority to provide written authorization to FINRA staff to issue on a case-by-case basis a written notice that summarily suspends a Member Organization, and its associated permit(s), who is in such financial or operating difficulty that FINRA staff determines and so notifies the Commission that the Member Organization cannot be permitted to continue to do business as a Member Organization with safety to investors, creditors, other Member Organizations, or the Exchange.¹⁴⁵ New Rule 9558 provides protections similar to the Rule 70 Series by preventing a Member Organization, and by extension its Associated Persons (including the Member(s) holding the permit(s)), from transacting on the Exchange while it is having financial or operating

¹⁴⁵ Unlike the Rules 9558(a)(2) of BX and Nasdaq, the Exchange is including authority to suspend a Member Organization's associated permit. The Exchange notes that neither BX nor Nasdaq have trading permits. Permits allow Members and Member Organizations the ability to trade on the Exchange's. Consequently, suspension of a permit is vital to suspending a Member Organization, and its Associated Persons' ability to trade on the Exchange when subject to a suspension under Rule 9558(a)(2).

difficulty. Such financial or operating difficulty includes insolvency, which is what the Rule 70 Series concerns. Accordingly, the Exchange is proposing to delete the Rule 70 Series.

- Rule 70 permits the Exchange to suspend the permit of a Member upon notice of insolvency to the Exchange. Rule 71 permits the Exchange to suspend the permit of a Member if it appears to the BCC that the Member or its Member Organization has failed to meet its engagements or is insolvent. New Rule 9558(a) provides the CRO authority to direct FINRA to suspend a Member Organization, together with its permit(s), that is in such financial or operating difficulty that FINRA staff determines and so notifies the Commission that the Member Organization cannot be permitted to continue to do business as a Member Organization with safety to investors, creditors, other Member Organizations, or the Exchange. The Exchange notes that, although New Rule 9558 does not provide an affirmative obligation of Member Organizations to notify the Exchange that it is having financial difficulties, the Exchange does not believe that such an obligation is needed in light of the direct debit of Member Organization obligations and the prompt notice of a deficit in a Member Organization's account.
- Rule 72 concerns investigation of insolvency, and describes the Member's and Member Organization's obligation to cooperate with the BCC's investigation of insolvency. New Rule 8210 provides the Exchange similar authority to conduct an investigation and obligates a Member,

Member Organization and Associated Person to provide information and allow Phlx Regulation Department and FINRA staff to inspect and copy books and records and accounts of such Member, Member Organization or person.

- Rule 73 concerns the time for settlement of an insolvent Member, and allows the Membership Department to terminate a Member's permit if the Member fails to settle with its creditors and apply for reinstatement within six months from the time of such suspension, and permits the Board of Directors or their designee to extend the time of settlement for periods not exceeding one year each. In lieu of this process, the Exchange is instead applying the process under New Rule 9558, which provides an expedited process for resolving suspensions issued to Member Organizations having financial or operating difficulties that places the safety of investors, creditors other Member Organizations, or the Exchange at risk. In terms of settlement with its creditors, the Exchange, FINRA acting on behalf of the Exchange, or to the extent a hearing is held, a Hearing Panel, may determine the steps necessary to lift the suspension. If a Member Organization fails to satisfy those prerequisites, the Exchange may terminate the Member Organization and its permit(s).¹⁴⁶

¹⁴⁶ As discussed, a Member Organization may appeal a suspension issued pursuant to New Rule 9558(a)(2) to a Hearing Panel. Any decision thereof may be called for review by the Review Council pursuant to New Rule 9559(q). If a Member Organization fails to request a hearing timely, the suspension is final action of the Exchange.

- Rule 74 concerns reinstatement of an insolvent Member, and requires Members applying for reinstatement of their permits to provide proof of settlement with their creditors, and provides the right to appeal a denial of reinstatement to the Board of Directors. New Rule 9558(d) provides that that a Member Organization may submit a written request for a hearing and written request for a stay, the Chief Hearing Officer or Hearing Officer assigned to the matter finds good cause exists to stay the limitation, prohibition or suspension.¹⁴⁷ Under New Rule 9558(g), a Member Organization may file a written request for termination of the limitation, prohibition or suspension on the ground of full compliance with the notice or decision. The appropriate head of the Exchange or FINRA department or office may grant relief for good cause shown.
- Rule 75 allows the Exchange to proceed with against a Member whose permit is suspended, or its affiliated Member Organization, for any offense committed by the Member either before or after the announcement of the suspension as if the suspension had not occurred. New Rule 9110(d) sets forth the disciplinary jurisdiction of the Exchange, which provides similarly broad jurisdiction. Specifically, Rule 9110(d) provides that any Member, Member Organization, or any partner, officer, director or person employed by or associated with any Member Organization (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities Exchange Act of 1934 (Exchange Act), the rules

¹⁴⁷ A Hearing held pursuant to New Rule 9558 follows the expedited hearing procedures provided by New Rule 9559.

and regulations thereunder, the By-Laws and Rules of the Exchange or any interpretation thereof, and the Rules, Regulations, resolutions and stated policies of the Board of Directors or any Committee of the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange. Moreover, the rule further provides that disciplinary jurisdiction applies to any Member, or any partner, officer, director, or person employed by or associated with a Member Organization, and any Member Organization following the termination of such person's permit or the termination of the employment by or the association with a Member Organization of such Member or partner, officer, director or person, or following the deregistration of a Member Organization from the Exchange.

- Rule 76 concerns the rights of a Member suspended for insolvency, and provides that such a Member and its affiliated Member Organization shall be deprived during the suspension of all rights and privileges of a Member or Member Organization, except the right to have its business transacted at Members' commission rates. As described above, New Rule 9558(a) provides that a Member Organization, together with its associated permit(s), may be suspended. This effectively ensures that it is unable to conduct business on the Exchange. New Rule 9558(d) provides that such a suspension shall remain in effect unless, after a timely written request for a hearing and written request for a stay, the Chief Hearing Officer or Hearing Officer assigned to the matter finds good cause exists to stay the limitation, prohibition or suspension. New Rule 9558(g) provides the

process by which a Member Organization subject to a suspension may request termination of the suspension. Last, the Exchange notes that the concept of allowing a Member or Member Organization the right to transact at Members' commission rates applied to the time when the Exchange had seats, and thus is no longer applicable.

- Rule 124 concerns disputes that occur on or relate to the Phlx options trading floor. Under subparagraph (b) of the Rule, a Member's, Member Organization's, or Associated Person's failure to comply with an initial Options Exchange Official ruling may result in a referral to the BCC. Phlx is replacing reference to the BCC with reference to the Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement, which will be charged with the review of any such referred non-compliance. Phlx is proposing that the Phlx Regulation Department, Department of Market Regulation, and Department of Enforcement have this discretion under the proposed Rules because these departments may exercise prosecutorial discretion to determine if formal disciplinary action is warranted. To the extent the Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement determines that formal disciplinary action is warranted, the department must gain approval from the ODA to issue a complaint. As described above, the ODA is an office within FINRA, independent of the enforcement function and not involved in investigating or litigating cases. Thus, ultimately the referred non-compliance will be reviewed by a committee independent of the enforcement function.

Phlx is also replacing references to Rules 60 and 970 in subparagraphs (b) and (c) of the rule with references to New Rules 9216(c) and (b), respectively, which have replaced those Rules as discussed both above and below. Phlx is also making it clear under Rule 124(c) that Options Exchange Official rulings issued pursuant to Floor Procedure Advices not related to Order and Decorum are subject to the 9000 Series. As described below in relation to Rule 970, Phlx is adopting the process used by BX and Nasdaq in administering their MRVPs.¹⁴⁸ Specifically, once the Phlx Regulation Department,¹⁴⁹ the Department of Enforcement or the Department of Market Regulation determine that a fine should be levied against a Member, Member Organization, or an Associated Person, a draft letter is provided to the Member, Member Organization, or Associated Person. If a Member, Member Organization, or Associated Person does not agree to the terms of a minor rule violation letter or violation letter proposed by the Exchange pursuant to the Advices, then it is not compelled to accept the letter. As a consequence, however, the Exchange or FINRA acting on its behalf may pursue formal disciplinary action. Phlx notes that assessing a fine pursuant to the Advices in lieu of pursuing formal disciplinary action is always discretionary. Thus, if a Member, Member Organization, or Associated Person does not agree to the terms of a minor rule violation plan letter or violation letter provided, then the matter may be resolved through the formal disciplinary process, through which the Member,

¹⁴⁸ New Rule 9216(b).

¹⁴⁹ See notes 47 and 55, supra.

Member Organization, or Associated Person may submit arguments in its defense through an Answer. Phlx is also replacing references to the Market Operations Review Committee in subparagraph (d) with references to the Exchange Review Council, which is the committee responsible for reviewing disputed rulings under the New Rules. Under subparagraph (d)(v) of the Rule, all decisions of the Market Operations Review Committee that are not complied with promptly by a Member, Member Organization, or Associated Person may result in referral to the BCC. Phlx is replacing reference to the BCC with reference to the Phlx Regulation Department, Department of Market Regulation, and Department of Enforcement, each of which will have authority to review of any such referred non-compliance since each of these departments may exercise their prosecutorial discretion to determine if formal disciplinary action is warranted. To the extent the Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement determines that formal disciplinary action is warranted, the department must gain approval from the ODA to issue a complaint pursuant to New Rule 9211(a)(1). As described above, the ODA is an office within FINRA, independent of the enforcement function and not involved in investigating or litigating cases. Thus, ultimately the referred non-compliance will be reviewed by a committee independent of the enforcement function.

- Rule 600 concerns a Member's and Member Organization's obligation to provide notice to the Exchange of its address and any changes thereto. The Rule also requires Members and Member Organizations to use FINRA's Web

Central Registration Depository for reporting obligations. Rule 600(c) requires each Member and Member Organization applicant that is a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934 must use Web CRD to submit a Uniform Application for Broker-Dealer Registration, Form BD. The Exchange is deleting the term “member” from Rule 600(c) because it erroneously applies the requirement to Members, which, as discussed above, cannot be registered brokers or dealers. The Exchange is also adopting a new paragraph (d) to the Rule, which requires Member Organizations to report all contact information required by the Exchange to the FINRA Contact System. FINRA uses the FINRA Contact System as the repository of member firm contact information for its members, as do BX and Nasdaq under their respective Rule 1160. The Exchange is adopting this requirement to facilitate FINRA’s execution of its responsibilities under the RSA.

- Rule 615 concerns the Exchange’s authority to waive the applicable Qualification Examination and accept other standards as evidence of an applicant’s qualifications for registration. The Exchange is amending this Rule to make clear that the New Rule 9600 Series process for receiving a waiver is followed for such requests. The New Rule 9600 Series concerns the procedures for Member Organizations to request exemptions, and the appeal of adverse decisions regarding an exemptive request. Thus, Member Organizations may request an exemption to a Qualification Examination on behalf of their Associated Persons. The Exchange notes that text of Rule 615

currently closely mirrors BX and Nasdaq Rule 1070(d) and that the new language added to Rule 615 is taken from these BX and Nasdaq Rules.

- Rule 712 concerns the Exchange's requirement that each Member Organization doing business with the public have an independent audit of its affairs at least once a year. Under the Supplementary Material to the Rule, the BCC provided guidance to Member Organizations on the textual requirements of the agreement between the Member Organization and its accountant, which is provided in supplementary material to the Rule and is cited as a directive of the BCC. In such references to the BCC, the Exchange is replacing it with references to the Exchange. With the retirement of the BCC, the Exchange is adopting the directive as a directive of the Exchange. The guidance requires accountants to Member Organizations to agree to provide notice of the commencement of an audit, and provide certain documents to the BCC. The Exchange is replacing references in the guidance to the BCC with references to the Membership Department, which the Exchange has determined is the best entity within the Exchange to receive such notice and documents in the absence of the BCC. The purpose of the guidance is to ensure that the Exchange is notified of the initiation of the required annual audit, thus aiding the Exchange in its oversight responsibilities. Likewise, the documents required to be provided by the auditing accountant ensures that the Exchange is aware of any identified deficiencies. The Exchange is now requiring that accountants performing annual audits provide the notice discussed above to the Membership Department.

- Rule 722 concerns requirements for margin accounts in miscellaneous securities. Subparagraph (d) of the rule provides that the BCC may appoint a World Currency Options Margin Subcommittee, charged with the monitoring of the use of letters of credit by world currency option writers, monitoring the volatility of each world currency underlying a class of world currency options traded on the Exchange and for recommending to the Exchange that higher margin requirements be imposed with respect to any world currency option position(s) whenever such Subcommittee deems such higher margin requirements advisable. The Exchange is replacing references to the BCC and Subcommittee with reference to the CRO and Committee, respectively. The Exchange believes that the CRO is best suited to select members of such a committee to make these determinations in light of the retirement of the BCC because the CRO has general supervision of the Exchange's regulatory operations, including the responsibility for overseeing its surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another self-regulatory organization to which the Exchange is a party. The CRO meets with the regulatory oversight committee of the Board of Directors. As such, the Board will remain apprised of the formation of, and any decisions made by, the new Committee. The Exchange notes that the new Committee will have the same responsibilities under the amended rule as the Subcommittee does currently.
- Rule 774 is currently held in reserve. The Exchange is amending Rule 774 to now include an express requirement that Member Organizations and Members not engage in disruptive quoting and trading activity. BX and Nasdaq adopted

this authority under their respective Equities Rule 2170 and Options Rule Chapter III, Section 16 to clearly prohibit disruptive quoting and trading activity on both the equities and options markets.¹⁵⁰ BX and Nasdaq also adopted new Rules 9400 to permit them to take prompt action to suspend their members or their clients that violate such rule. The Exchange is amending Rule 774 to house the obligation of its Member Organizations and Members, which will apply to both participation in the Exchange's equity and options markets. The Exchange is amending Rule 3202 to include Rule 774 as a rule that applies to the Nasdaq PSX ("PSX") equities market. The Exchange notes that Rules 600 through 799 concern the regulation of Members and Member Organizations (including associated persons thereof), and their participation on both the Exchange's equity and options markets. The Exchange is likewise adopting New Rule 9400 as adopted by BX and Nasdaq except that the Exchange rule includes the Department of Enforcement and the Department of

¹⁵⁰ See Securities Exchange Act Release No. 77913 (May 25, 2016), 81 FR 35081 (June 1, 2016) (SR-NASDAQ-2016-074) (adopting the prohibition applied to the equity market and the disciplinary process) and Securities Exchange Act Release No. 77914 (May 25, 2016), 81 FR 35106 (June 1, 2016) (SR-BX-2016-028) (adopting the prohibition applied to the equity market and the disciplinary process); see also Securities Exchange Act Release No. 78208 (June 30, 2016), 81 FR 44366 (July 7, 2016) (SR-NASDAQ-2016-092) (extending the prohibition to the options market) and Securities Exchange Act Release No. 78107 (June 21, 2016), 81 FR 41619 (June 27, 2016) (SR-BX-2016-036) (extending the prohibition to the options market). Nasdaq and BX filed immediately effective rule changes to make a technical correction to their respective Rules 9400 to include reference to their respective Options Rules Chapter III, Section 16, which were inadvertently not updated when Nasdaq and BX extended the prohibition on engaging in disruptive quoting and trading activity their options markets. See Securities Exchange Act Release No. 79240 (November 4, 2016), 81 FR 79068 (November 10, 2016) (SR-NASDAQ-2016-146) and Securities Exchange Act Release No. 79241 (November 4, 2016), 81 FR 79534 (November 14, 2016) (SR-BX-2016-056).

Market Regulation as potential parties to the matter. As discussed above, the Exchange believes that including these departments in proposed New Rule 9400 Series is appropriate because they may be involved in the initiation of such a matter for BX and Nasdaq currently. The Exchange is also adding FINRA to other parts of New Rule 9400 where it is appropriate to show that FINRA may be the entity that initiated an action under the rule.

- Rule 777 prohibits certain guarantees made by Member Organizations or persons employed by them. Subparagraph (a) of the rule prohibits a guarantee of payment of the debit balance, in a customer's account, to his employer or to any other creditor carrying such account, without the prior written consent of the BCC. The Exchange is replacing reference to the BCC with reference to the CRO, who Phlx believes is best suited to make such determinations in light of the elimination of the BCC.
- Rule 923 sets forth an applicant's right to appeal an adverse action with respect to a membership application, permit application, or other matter for which the Membership Department has responsibility. The Exchange is retaining this right under the Rule, but is replacing the current Board subcommittee appeals process with an Exchange Review Council appeals process with discretionary review by the Board based on the processes of BX and Nasdaq under their respective Rules 1016 and 1015. In adopting the new rule text under Rule 923, the Exchange is not copying the term "Applicant," which is a defined term under BX and Nasdaq membership proceedings rules. The Exchange is rather using the term "applicant" as it is represented in

current Rule 923, which applies to membership applications, permit applications, or other matters for which the Membership Department has responsibility.

- The Rule 960 series sets forth the Exchange's current Disciplinary Rules. The Exchange is deleting the entire rule series¹⁵¹ and replacing it with the New Rule 8000 and 9000 Series. Specifically:
 - Rule 960.1 concerns the jurisdiction of the Exchange in disciplinary matters.
 - Rule 960.1(a) defines who is subject to the disciplinary jurisdiction of the Exchange as any Member, Member Organization, or any partner, officer, director or person employed by or associated with any Member or Member Organization (the Respondent) who is alleged to have violated or aided and abetted a violation of the Act, rules and regulations thereunder, the By-Laws and rules of the Exchange or any interpretation thereof, and the rules, regulations, resolutions and stated policies of the Board or any committee of the Exchange. After notice and opportunity for a hearing, such a Respondent may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a Member or Member Organization, or any other fitting sanction in accordance with the provisions of the disciplinary rules. The

¹⁵¹ As discussed below, the Exchange will retain a transitional rule book that will contain the Exchange's rules as they are at the time of this filing, including the Rule 960 series. This transitional rule book will apply only to matters initiated prior to the operational date of the changes proposed herein.

Exchange is moving this rule to New Rule 9110(d), which is not included in Rule 9110 of either BX or Nasdaq, but will preserve the Exchange's current jurisdiction under its rules.

- Rule 960.1(b) permits the Exchange to charge a supervisor with a violation of a rule within the disciplinary jurisdiction of the Exchange committed by an employee under his supervision or by the Member Organization with which he is associated, as though such violations were his own. Similarly, the rule permits the Exchange to charge a Member Organization with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or employees or by a Member or Associated Person, as though such violation were its own. The Exchange is moving this rule to New Rule 9110(d), which is not included in Rule 9110 of either BX or Nasdaq, but will preserve the Exchange's current jurisdiction under its rules.
- Rule 960.1(c) extends the disciplinary jurisdiction of the Exchange to continue after the termination of a Member's permit or employment or association with the firm, or following deregistration of the Member from the Exchange. Staff must serve written notice to the former Member within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters, which occurred prior to the termination or deregistration. The Exchange is moving this Rule to New Rule

9110(d), which is not included in Rule 9110 of either BX or Nasdaq but will preserve the Exchange's current jurisdiction under its rules.

- Rule 960.1, Interpretations and Policies .01 defines the term “person associated with a member” or “associated person of a member” as the same meaning as Section 3(a)(21) of the Act. The Exchange is retaining this definition by amending Rule 1(b), which currently defines “associated person” or “person associated with a member organization,” but is making a corrective change to the rule text by making it clear that the Rule applies to persons associated with a “member organization” instead of a “member.” As discussed above, there are no persons associated with a Member. Therefore, under amended Rule 1(b), the Exchange is noting that, for purposes of the Rule 8000 and 9000 Series, the terms “person associated with a member organization” or “associated person” have the same meaning as the terms “persons associated with a member” or “associated person of a member,” respectively, as provided in Section 3(a)(21) of the Act.
- Rule 960.1, Interpretations and Policies .02 notes that summary suspension or other action taken pursuant to Exchange By-Laws or rules, or Section 6(d)(3) of the Act is not deemed to be disciplinary action under the disciplinary rules. The Exchange is replacing this Rule with New Rule 9558, which concerns summary proceedings authorized by Section 6(d)(3) of the Act. Although not explicitly noted in the New Rule, action taken under the rule is not defined as

disciplinary action, but rather summary action to impose limitation, prohibition or suspension on a Member, Member Organization, or Associated Person, pending the opportunity for a hearing.

- Rule 960.2 concerns the investigative process and authorization of complaints. The Exchange is replacing this Rule with New Rules under the Rule 8000 and 9000 Series.
 - Rule 960.2(a) requires that the Exchange investigate possible violations within its disciplinary jurisdiction upon instruction of the Board, BCC, or other Exchange official or upon receipt by the Exchange of a written accusation from a Member, Member Organization, or Associated Person, which specifies in reasonable detail the facts that are subject to the accusation. The Exchange is replacing this Rule with New Rule 8210, which sets forth staff's (including FINRA staff's) authority to examine and investigate potential violations of the Exchange rules.
 - Rule 960.2(b) requires a Member, Member Organization, or Associated Person to cooperate with Exchange staff in the investigative process, and to not otherwise impede or delay an Exchange investigation into matters within its disciplinary jurisdiction. The Exchange is replacing this Rule with New Rule 8210, which specifically sets forth the Member's, Member Organization's, Associated Person's, or person subject to the Exchange's jurisdiction's

obligation to cooperate with the Exchange and FINRA in the investigative process.

- Rule 960.2(c) sets forth a Member's, Member Organization's or Associated Person's right to counsel in connection with requests for information, documents or testimony and throughout the course of any disciplinary proceeding and the review thereof, or any hearing concerning a summary action. The Exchange is replacing this Rule with New Rule 9141(b), which provides that a Member, Member Organization, or Associated Person may be represented in any proceeding by an attorney, so long as the attorney has not been barred pursuant to New Rules 9150 or 9280. Although not explicitly stated in the rules, as is the case for BX and Nasdaq, FINRA allows a member or person associated with a member to be represented by counsel in an investigation.¹⁵²
- Rule 960.2(d) requires staff to, upon forming a reasonable basis that a violation with the disciplinary jurisdiction of the Exchange has occurred, submit a written report to the BCC that specifies the violations and the facts that gave rise to the violations. The Exchange is replacing this Rule with New Rule 9211(a)(1), which provides a process whereby staff may seek approval from the ODA to issue a complaint in a matter when staff believes that any Member, Member

¹⁵² See FINRA Regulatory Notice 09-17 (March 2009) (stating, "All FINRA investigations are non-public and confidential, and firms and individuals are entitled to be represented by counsel.").

Organization, or Associated Person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Exchange has jurisdiction to enforce.

- Rule 960.2(e) requires staff, prior to submitting its report pursuant to subparagraph (d), to provide notice to the person who is the subject of the report of the nature of the allegations and specific rule(s) and/or law(s) that appear to have been violated. Such notice must also state that report will be reviewed by the BCC. The subject of the report may submit a written statement to the BCC stating why no disciplinary action should be taken. Staff must provide the subject with access to any documents and other materials in the Exchange's investigative file that were furnished by the subject or his agents. This Rule describes the "Wells Notice" process and, although there is no explicit rule under the New Rule 8000 and 9000 Series that describes the Wells Notice process, FINRA uses this process in its disciplinary process.¹⁵³
- Rule 960.2(f)(i) requires the BCC to direct staff to prepare a Statement of Charges when it appears that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange. Should the BCC determine there is not such probable cause, or disciplinary action is not warranted, it shall inform staff and instruct them not to initiate action. In such a case, the BCC must document its basis for its

¹⁵³

Id.

determination in its meeting minutes. This process is generally subsumed in the ODA approval process noted under New Rule 9211(a)(1). Under the new process, however, a complaint is required only if a settlement is unable to be reached. Although not noted in New Rule 9211(a)(1), FINRA represented to the Exchange that the ODA memorializes in writing all decisions not to authorize a complaint or accept a settlement.

- Rule 960.2(f)(ii) permits the Exchange, in the case of violations determined based on an exception-based surveillance program, to aggregate individual violations of the Exchange order handling rules and consider such violations as a single offense only in accordance with the guidelines set forth in the Exchange's Numerical Criteria for Bringing Cases for Violations of Exchange Order Handling Rules. The Rule also provides that the Exchange may batch individual violations of Rule 1014(c)(i)(A) pertaining to quote spread parameters (and corresponding Options Floor Procedure Advice F-6). In the alternative, the Exchange may refer the matter to the Business Conduct Committee for possible disciplinary action when: (i) the Exchange determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be so egregious that referral to the Business Conduct Committee for possible disciplinary action is appropriate. The Exchange is proposing

to move the language under Rule 960.2(f)(ii) to New Rule 9211(a)(1), which discusses the authorization of complaints, with minor changes. Specifically, the Exchange is replacing text concerning referring matters to the BCC with requesting authorization from the ODA, which is the appropriate body responsible for authorizing the issuance of a complaint for conduct arising from violations under the Advices. The Exchange is also replacing references to the “Exchange” with references to the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation. The Exchange is also being more specific under the New Rules by noting that Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may seek authorization to take formal disciplinary action from the ODA.

- Rule 960.3 concerns the contents and required service of Statements of Charges. The Rule requires Statements of Charges to include the specific provisions within the Exchange’s disciplinary jurisdiction alleged to have been violated, the persons or organizations alleged to have committed each of the violations (the “Respondents”), and the specific acts that give rise to the alleged violations. New Rule 9212(a)(1) sets forth the required contents of a complaint. In this regard, the new requirements are substantially similar to the old rule. Specifically, both rules require the Exchange to name the specific provision(s) of the rules purported to have been violated by the respondent(s), and the specific conduct that gave rise

to the alleged violations. In addition, Rule 960.3 provides a definition of the term “Respondents” as noted above, whereas New Rule 9212 does not; however, New Rule 9120(aa) provides a definition of the term “Respondents,” which is materially identical to the definition in Rule 960.3 and is designed to encompass the same entity in the process.

Specifically, New Rule 9120(aa) defines “Respondent” as an Exchange Member, Member Organization or Associated Person against whom a complaint is issued in a disciplinary proceeding governed by the New Rule 9200 Series and in an appeal or review governed by the New Rule 9300 Series. Moreover, the definition notes that in a proceeding governed by the Rule 9800 Series, the term “Respondent” means an Exchange Member, Member Organization or Associated Person that has been served a notice initiating a cease and desist proceeding. Rule 960.3 also requires that a copy of the Statement of Charges be served on each of the Respondents. The Exchange is replacing this Rule with New Rule 9130 Series, which concerns the service and filing of papers in a matter. New Rule 9131 specifically sets forth the process for service of complaints and documents initiating proceedings.

- Rule 960.4 concerns the content and timing of submission of an Answer to a Statement of Charges. The Rule requires a Respondent to file an Answer within 15 business days after service of the Statement of Charges. The Rule allows a Member, Member Organization, or Associated Person to request a hearing or alternatively request that a decision be rendered

based upon the written submissions. The Rule also provides that the charges shall be considered admitted by a Member, Member Organization, or Associated Person that fails to submit an Answer within the specified time, or failed to receive an extension from Exchange staff prior to the expiration of the 15 business day deadline. The Exchange is generally replacing this Rule with rules found in the New Rule 9220 Series, which concern requests for hearings. New Rule 9215 concerns Answers to Complaints and requires Respondents to file an Answer within 25 days after service of a complaint. New Rule 9138(a) defines a “day,” for purposes of the New Rule 9000 Series, as a calendar day. Like the old Rule, New Rule 9269 provides for the issuance of a default decision against a Respondent that fails to answer the complaint within the time afforded under New Rule 9215. Under New Rule 9221, a Respondent may request hearing, and if it does not request a hearing, subparagraph (c) of the rule permits a Hearing Panel or Extended Hearing Panel to consider the matter on the record.

- Rule 960.5 concerns the hearings process, and sets forth, among other things, the process for requesting a hearing, how Hearings Panels are selected, and the roles and responsibilities of Hearing Panel members and counsel thereto, the pre-hearing and hearing procedures, and the conduct of hearings. The Exchange is replacing this Rule with the New Rule 9200 Series, which provides a more comprehensive process than the existing rule.

- Rule 960.5(a)1. allows a hearing to be held on a Statement of Charges if requested by the Respondent in its Answer or upon motion of the BCC or staff. The Rule requires hearings to be presided over by three Hearing Panelists. New Rule 9221 provides a Respondent with the right to request a hearing in its answer. If a Respondent does not request a hearing in its answer and, in the absence of a waiver by an adjudicator for a hearing request submitted after submission of the answer, the decision may be made on the record, as defined in New Rule 9267. Pursuant to New Rule 9221(b), in the absence of a request for a hearing from any Respondent, the Hearing Officer may order any complaint set down for hearing. Pursuant to New Rule 9221(c), if all respondents waive a hearing, and the Hearing Officer does not order a hearing on his or her own motion, a Hearing Panel or, if applicable, the Extended Hearing Panel may order a hearing or may consider the matter on the record. Further, if fewer than all Respondents waive a hearing, a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, may exercise its discretion to order that a hearing be held as to all Respondents or, alternatively, conduct a hearing as to only those Respondents who requested a hearing and consider the matter on the record as to those Respondents who waived a hearing. Consequently, the new rule will preserve the ability for a Respondent to request a hearing, and for an adjudicator to order a hearing, however, staff will no longer have the authority to request a

hearing. The Exchange notes that both the Hearing Officer and Hearing Panel may exercise discretion to order a hearing, thereby providing unbiased judgement on whether a hearing is warranted.

- Rule 960.5(a)2. requires that the Chair of the BCC or its designee name a Hearing Panel within ten business days of receipt of notice that the Respondent has requested a hearing, upon motion of the BCC for naming of a Hearing Panel, or upon Respondent's request that the matter be decided on written submissions. Under the Rule, the BCC Chair or its designee must promptly notify staff and the Respondent of the selection. New Rule 9213(a) provides that a Hearing Officer must be assigned to preside over the matter as soon as practicable after staff files a complaint, and requires that Parties are provided with notice of the Hearing Officer's assignment pursuant to New Rule 9132. New Rule 9213(b) provides that the Chief Hearing Officer must appoint Hearing Panelists pursuant to New Rules 9231 and 9232 as soon as practicable after assigning the Hearing Officer in the matter.
- Rule 960.5(a)3. sets forth the responsibilities of the Hearing Panel, which include but are not limited to presiding over hearings in contested disciplinary cases, conducting pre-hearing conferences, ruling on procedural or discovery matters, making all necessary evidentiary or other rulings, regulating the conduct of a hearing, imposing appropriate sanctions for improper conduct by a party or a party's representative, issuing decisions, and rendering decisions in

connection with Summary Disposition Proceedings. The Rule also prohibits Hearing Panelists from involvement with the investigative process, participation in the decision to institute disciplinary proceedings, issue decisions without a majority concurrence of the Hearing Panel, rule on requests to disqualify a member of the Hearing Panel, or issue citations for violations of Exchange Rules and Floor Procedure Advices. Hearing Panelists under the current Rule may be Members, general partners or officers of Member Organizations, or other individuals that the BCC Chair or its designee deems qualified. New Rule 9231(b) describes the compositional requirements of Hearing Panels. Under the New Rule, the Hearing Panel generally must consist of a Hearing Officer and two Hearing Panelists. The Chief Hearing Officer is responsible for selecting the Panelists, who must be associated with a Member Organization or retired therefrom. New Rule 9233(a) requires a Hearing Officer to recuse himself if he determines that he has a conflict of interest or bias or circumstances otherwise exist where his fairness might reasonably be questioned. Subparagraph (b) of the New Rule provides that a Party may move for the disqualification of a Hearing Officer. New Rule 9234(a) applies the same recusal standard as New Rule 9233(a) to Hearing Panelists. Likewise, New Rule 9234(b) provides parties with a process identical to New Rule 9233(b), yet also provides that the Chief Hearing Officer may order the disqualification of a Hearing Panelist if he determines

that the Panelist has a conflict of interest or bias or circumstances otherwise exist where his fairness might reasonably be questioned. New Rule 9231(b)(1) permits the Chief Hearing Officer to select as a Panelist a person who: (A) previously served on the Exchange Review Council; (B) previously served on a disciplinary subcommittee of the Exchange Review Council, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees; (C) previously served as a Director, or as a Governor of the Exchange prior to its acquisition by Nasdaq, Inc., but does not serve currently in that position; or (D) is a FINRA Panelist approved by the Exchange Board at least annually, including a member of FINRA's Market Regulation Committee or who previously served on the Market Regulation Committee not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed, or from other sources the Board deems appropriate given the responsibilities of Panelists. For purposes of initially applying New Rule 9231(b)(1)(B), the Exchange will allow former BCC members and former MORC members to serve as Panelist under the Rule. The Exchange believes that this is appropriate because it will be drawing from both of the groups for Exchange Review Council members.

- Rule 960.5(a)4. describes the role of the Hearing Attorney. The Hearing Attorney assists a Hearing Panel in the discharge of its duties. The Hearing Attorney advises the Hearing Panel on application of rules, sanctions and relevant precedent, yet may not vote in the disposition of a matter. Under the existing Rule, the Hearing Attorney is subject to the same conflict of interest prohibitions as Hearing Panelists. Under the New Rules, hearings will be conducted by FINRA's OHO, which is responsible for the adjudication of matters. Hearings conducted by the OHO are managed by a Hearing Officer, who is an attorney appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties set forth in the New Rule 9200, 9550, and 9800 Series (see New Rule 9120(r)). Hearing Officers are subject to the same conflicts of interest standard as a Hearing Panelist. This standard requires a Hearing Officer to withdraw from a matter any time he or she determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned (see New Rule 9233(a)). Similarly, in appellate matters, the Exchange Review Council is assigned counsel. New Rule 9120(e) defines the term "Counsel to the Exchange Review Committee" as an attorney that reports to the Chief Regulatory Officer of the Exchange who is responsible for advising the Exchange Review Council, the Review Subcommittee, a Subcommittee, or an Extended

Proceeding Committee regarding a disciplinary proceeding on appeal or review before the Exchange Review Council. Counsel also may decide a motion on a procedural matter in the Rule 9300 Series (see New Rule 9146(j)). New Rule 9313 describes the authority of the Counsel and the process for seeking the review of a Counsel decision. Under New Rule 9313(a), Counsel has authority to take ministerial and administrative actions to further the efficient administration of a proceeding. A Party may seek review of a Counsel decision on motion to the Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee. Similar to the Hearing Attorney, Counsel is subject to the same conflict of interest prohibitions as the Exchange Review Council (see New Rule 9332), which requires that if a member of the Exchange Review Council, including a member of the Review Subcommittee, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the Exchange Review Council determines that the member, the Panelist, or the Counsel to the Exchange Review Council has a conflict of interest or bias or circumstances otherwise exist where the fairness of the member, the Panelist, or the Counsel to the Exchange Review Council might reasonably be questioned, the member, the Panelist, or the Counsel to the Exchange Review Council shall notify the Chair of the Exchange Review Council, and the Chair of the Exchange Review Council shall issue and serve on the Parties a

notice stating that the member, the Panelist, or the Counsel to the Exchange Review Council has withdrawn from the matter.

- Rule 960.5(a)5. requires written notice of the Hearing Panelist selection to be given to the Respondent. The Rule provides opportunity for any person involved in the disciplinary proceeding to disclose any relationship with a Hearing Panelist, which might result in such Panelist being unable to render a fair and impartial decision. New Rule 9233(b) permits a Party to move for the disqualification of a Hearing Officer not later than 15 days after the later of: (1) when the Party learned of the facts believed to constitute the disqualification; or (2) when the Party was notified of the assignment of the Hearing Officer. Similarly, New Rule 9234(b) permits a Party to move for the disqualification of a Hearing Panelist within 15 days after the later of: (1) when the Party learned of the facts believed to constitute the disqualification; or (2) when the Party was notified of the assignment of the Hearing Panelist.
- Rule 960.5(a)6. outlines Hearing Panelist compensation, including additional compensation in extraordinary cases. Under New Rule 9231(c), the Chief Hearing Officer may determine based on the complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material, that a matter be designated as an Extended Hearing, and that such matter be considered by an Extended Hearing Panel. Similarly, under New Rule

9331(a)(2) the Exchange Review Council or Review Subcommittee may designate a matter as an Extended Proceeding and that such matter be considered by an Extended Proceeding Committee based upon consideration of the volume and complexity of the certified record, or other factors deemed material by the Exchange Review Council or Review Subcommittee. The primary significance of such a designation is to allow the compensation of Extended Hearing Panelists at the rate then in effect for arbitrators appointed under the FINRA Rule 12000 and 13000 Series.

- Rule 960.5(a)7. vests the BCC Chair with authority to appoint a qualified replacement Hearing Panelist should a Hearing Panelist become unavailable. New Rule 9231(e) provides that the Chief Hearing Officer may replace a Hearing Officer if the Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed. Similarly, New Rule 9234 provides the Chief Hearing Officer the authority to appoint new Hearing Panelists.
- Rule 960.5(b)1. requires a hearing on the Statement of Charges to be held no later than 120 days after the earlier of the filing date of the Answer or the date the BCC requests a hearing. The hearing date may be extended by Hearing Panel for good cause. New Rule 9221(d) provides that the Hearing Officer must issue a notice stating the date, time, and place of the hearing, and whether the hearing shall be held before a Hearing Panel or an Extended Hearing Panel, and shall serve

such notice on the Parties at least 28 days before the hearing, unless: (1) in the discretion of the Hearing Officer, he or she determines that extraordinary circumstances require a shorter notice period; or (2) the Parties waive the notice period. Unlike Rule 960.5(b)1., New Rule 9221(d) does not impose a deadline by which a hearing must be held but the Exchange anticipates hearings will generally be held within 120 days.

- Rule 960.5(b)2. requires that the Respondent be given notice at least 15 business days before the hearing of the time and place of the hearing. As noted above, New Rule 9221(d) provides that notice of the hearing date and location must be provided to the Parties at least 28 days before the hearing.
- Rule 960.5(b)3. permits the Respondent or staff to request in writing an adjournment of the hearing date for just cause. The Hearing Panel must promptly consider the request and inform the parties of its determination. If granted, the Hearing Attorney must also inform the parties of the new hearing date. New Rule 9222 concerns extensions of time, postponements, and adjournments. Under the New Rule, a Hearing Officer may, for good cause shown, change the place of the hearing, postpone the commencement of the hearing, or adjourn a convened hearing for a reasonable period of time. Such an extension may not exceed 28 days unless the Hearing Officer states on the record or provides by written order the reasons a longer period is necessary.

- Rule 960.5(b)4. requires parties to furnish to the Hearing Panelists and each other copies of all documentary evidence to be presented at the hearing, and a list of witnesses to be called at the hearing. New Rule 9261 provides that, no later than ten days before the hearing, or at such earlier date as may be specified by the Hearing Officer, each Party shall submit to all other Parties and to the Hearing Officer copies of documentary evidence and the names of the witnesses each Party intends to present at the hearing.
- Rule 960.5(b)5. permits the Hearing Panel to schedule pre-hearing conferences not less than eight business days prior to the hearing date. Pre-hearing conferences are held for the purpose of clarifying and simplifying issues and otherwise expediting the proceeding, and must be attended by all parties and the Hearing Panel. New Rule 9241 provides that, on his or her own motion or at the request of a Party, the Hearing Officer may, in his or her discretion, order counsel or any Party to meet for a pre-hearing conference. The conference may be held for the following non-exclusive list of reasons: expediting the disposition of the proceeding; establishing procedures to manage the proceeding efficiently; and improving the quality of the hearing through more thorough preparation. Under the New Rule, an initial pre-hearing conference, unless determined by the Hearing Officer to be unnecessary or premature, shall be held within 21 days after filing of an Answer. Under New Rule 9241(f), a Hearing Officer may issue

a default decision against a Party that fails to appear at a pre-hearing conference, if the Party was provided due notice.

- Rule 960.5(c) vests the Hearing Panelists with authority to determine all questions concerning the admissibility of evidence, and to otherwise regulate the conduct of the hearing. The Rule also states that the formal rules of evidence do not apply. The Rule requires staff to present the charges in the matter, and permits both parties to present evidence and produce witnesses that testify under oath and are subject to cross-examination. The Rule also allows the Hearing Panel to request production of documentary evidence and witnesses, and to question witnesses. Last, the Rule requires that a written transcript be made of the hearing, which becomes part of the record. New Rule 9263 provides the Hearing Officer with authority to receive relevant evidence, and to exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial. New Rule 9145(a) provides that the formal rules of evidence shall not apply in a proceeding brought under the Rule 9000 Series.
- Rule 960.5, Interpretation and Policy .01 permits a non-party to the matter to intervene upon showing that it has an interest in the subject of the hearing and that the disposition of the matter may impair or impede its ability to protect its interest. The Hearing Panel may also permit a non-party to intervene as a party when the person's claim or defense and main action have questions of law or fact in common. A

non-party wishing to intervene must file with the Hearing Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought. The Exchange is eliminating the ability for a non-party to intervene, but will allow the consolidation of proceedings under New Rule 9214, which concerns consolidation and severance of disciplinary proceedings. Under subparagraph (b) of the New Rule, a Party may file a motion to consolidate two or more disciplinary proceedings if such consolidation would further the efficiency of the disciplinary process, or if the subject complaints involve common questions of law or fact or one or more of the same Respondents. When determining whether to order the consolidation of such disciplinary proceedings, the New Rule requires the Chief Hearing Officers to consider whether the same or similar evidence reasonably would be expected to be offered at each of the hearings, whether the proposed consolidation would conserve the time and resources of the parties, and whether any unfair prejudice would be suffered by one or more parties as a result of the consolidation. Unlike Rule 960.5, Interpretation and Policy .01, New Rule 9214 does not permit a non-party to a disciplinary proceeding to file a motion or intervene in the proceeding in any manner whatsoever. The Exchange believes that eliminating the ability of a non-party to intervene in a matter is a better practice and will ensure that disciplinary proceedings are limited to issues of

concern to parties of a matter while still allowing the consolidation of matters under the conditions noted above.

- Rule 960.5, Interpretation and Policy .02 requires a Hearing Panel to consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. As noted above, the New Rules do not permit a non-party to a disciplinary proceeding to file a motion or intervene in the proceeding in any manner whatsoever. Also as noted above, New Rule 9214(a) permits the Chief Hearing Officer to consolidate disciplinary proceedings after considering, among other things, whether any unfair prejudice would be suffered by one or more parties as a result of the consolidation.
- Rule 960.5, Interpretation and Policy .03 prohibits any person not otherwise a party or licensed counsel representing a party from attending a hearing unless specifically allowed by the Hearing Panel. The new rules do not have a provision specifically concerning attendance at a hearing; however, hearings will be similarly limited to parties and licensed counsel. New Rule 9141(b) concerns who may represent a Party in a matter. The New Rule provides that a licensed attorney may represent a Party in a proceeding, a member of a partnership may represent the partnership, and a bona fide officer of a corporation, trust or association may represent the corporation, trust or association. New Rule 9261(a) requires Parties to submit to all other

Parties and to the Hearing Officer copies of documentary evidence and the names of the witnesses each Party intends to present at the hearing.

- Rule 960.6 concerns the summary disposition process. Under Rule 960.6(a), a Hearing Panel may issue a summary decision in a disciplinary proceeding that violations within the disciplinary jurisdiction of the Exchange have occurred and impose sanctions upon those culpable for such conduct if the Respondent has admitted to the violation(s), or there is no dispute concerning those material facts which give rise to such violation(s). Under Rule 960.6(b), the Exchange is required to serve the summary decision on the Respondent(s), to which the Respondent(s) may reply with a request to set aside any of the findings made or sanctions imposed by the summary decision. Rule 960.6(b) also provides that the Respondent(s) may request a hearing in their reply, which is governed by Rule 960.5 and, in cases where the Respondent has admitted to committing a violation, any further proceedings are limited to the issue of the propriety of the sanction imposed. Rule 960.6(c) requires the Hearing Panel to set aside a decision in a summary proceeding if the Respondent establishes that an issue of material fact or law exists as to any of the finding contained or sanctions imposed in the summary decision. New Rule 9264 provides for summary disposition. Unlike Rule 960.6, a motion for summary disposition must be initiated by a Party. Moreover, New Rule 9264 has different requirements based on when in the process the motion is made. Under the New Rule, the Respondent and/or staff may,

prior to the Hearing but after the Respondent has filed an answer and had opportunity to inspect documents in the record, make a motion for summary disposition of any or all the causes of action in the complaint with respect to that Respondent, as well as any defense raised in a Respondent's answer. If a hearing on the merits has begun, then parties may submit such a motion only with leave of the Hearing Officer. New Rule 9264(c) provides the process for proceeding when a summary motion does not dispose of the matter entirely. Under the New Rule, the Hearing Panel must, if practicable, ascertain what material facts exist without substantial controversy and what facts are controverted, and, based on this determination, issue an order specifying such. New Rule 9264(d) requires motions for summary disposition to be supported by a statement of undisputed facts, a supporting memorandum of points and authorities, and affidavits or declarations that set forth such facts. Because summary disposition proceedings are initiated by the Hearing Panel under Rule 960.6, there is no such analogue under the New Rules. New Rule 9264(e) concerns rulings on motions for summary disposition. The New Rule provides that a Hearing Officer may deny or defer a decision on any motion for summary disposition, yet only a Hearing Panel or, if applicable, the Extended Hearing Panel, may grant such a motion, except that the Hearing Officer may grant motions for summary disposition with respect to questions of jurisdiction. The New Rule also provides that a motion for summary disposition may be granted if there is no genuine

issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law.

- Rule 960.7 concerns offers of settlement. Under the Rule, a Respondent in a matter may submit an offer of settlement within 120 days of submitting its Answer. The offer of settlement must contain a proposed stipulation of facts and shall consent to specified sanctions. The BCC may accept the offer of settlement or reject it. Should the BCC reject the offer of settlement, the matter will proceed normally. As noted above, in certain cases FINRA will negotiate a settlement prior to the issuance of a complaint. In such cases, the proposed Statement of Charges and offer of settlement are provided to the BCC for review and approval, with the BCC treating the offer of settlement as the Respondent's Answer. The Exchange is replacing this Rule with New Rule 9270,¹⁵⁴ which provides expressly that a Respondent to propose in writing an offer of settlement at any time. The offer must conform to the requirements of the New Rule and in submitting the offer the Respondent waives certain rights. If the Phlx Regulation Department,¹⁵⁵ Department of Enforcement or

¹⁵⁴ As discussed above, the Exchange is also adopting an acceptance, waiver and consent process under New Rule 9216(a), which allows for the settlement of matters prior to the issuance of a complaint. The Exchange is proposing to include the Phlx Regulation Department as an entity that may administer the acceptance, waiver and consent process under New Rule 9216(a) in addition to the Department of Enforcement and Department of Market Regulation, which is unlike the analogous rules of BX and Nasdaq that reference only the Department of Enforcement and Department of Market Regulation.

¹⁵⁵ The Exchange is proposing to include the Phlx Regulation Department as an entity that may administer the settlement process under New Rule 9270(e) in addition to the Department of Enforcement and Department of Market

Department of Market Regulation do not oppose the offer of settlement, it is considered uncontested. Similar to Rule 960.7, an uncontested offer of settlement is provided to the Exchange Review Council (or to the ODA, in the case of a Respondent that is an affiliate of the Exchange within the meaning of Rule 985) by the Phlx Regulation Department, Department of Enforcement or Department of Market Regulation together with its recommendation. Under New Rule 9270(e), the ODA or Review Subcommittee may also accept any uncontested offer of settlement, and the Review Subcommittee may reject uncontested offers of settlement while the ODA may only reject uncontested offers of settlement involving Respondents that are affiliates of the Exchange. If a hearing on the merits has begun, the offer of settlement and a proposed order of acceptance is provided to the Hearing Panel or, if applicable, the Extended Hearing Panel for acceptance or rejection. If accepted by the Hearing Panel or, if applicable, the Extended Hearing Panel, the offer of settlement and the order of acceptance shall be forwarded to the Exchange Review Council (or to the ODA, in the case of a Respondent that is an affiliate of the Exchange within the meaning of Rule 985) to accept or reject. As described above, the Review Subcommittee may accept or reject an uncontested offer of settlement, and the ODA may only accept an uncontested offer of settlement not involving an Exchange affiliate.

Regulation, which is unlike the analogous rules of BX and Nasdaq that reference only the Department of Enforcement and Department of Market Regulation.

- Rule 960.7 Interpretation and Policies .01 allows the BCC to consider an offer of settlement submitted after 120 days as long as its consideration does not delay the hearing in the matter. The policy also provides that, if the Respondent submits an offer of settlement after the hearing has commenced, staff must promptly submit its position with respect to the offer and the Hearing Panel will then determine whether to consider the offer, and if so, determine whether to accept or reject the offer. The Exchange is replacing this policy with New Rule 9270(a), which provides that if a Respondent proposes an offer of settlement after the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Panel or, if applicable, the Extended Hearing Panel. Under New Rule 9270(e), if an offer of settlement is offered after a hearing has commenced and it is uncontested, then the Phlx Regulation Department, the Department of Enforcement or Department of Market Regulation must transmit the offer with a proposed order of acceptance to the Hearing Panel or, if applicable, the Extended Hearing Panel, for approval or rejection. Under New Rule 9270(f), which concerns contested offers of settlement provided prior to or after a hearing has commenced, if an offer of settlement is offered after a hearing has commenced and it is contested then the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation must provide a written opposition to the Hearing Panel or, if applicable, the Extended Hearing Panel, which may issue an approval or

rejection of the offer, or may order the Parties attend a settlement conference. If a contested offer of settlement is approved by the Hearing Panel, or, if applicable, the Extended Hearing Panel, the Hearing Officer shall draft an order of acceptance of the offer of settlement, which is sent to the Exchange Review Council (or ODA in the case of a Respondent that is an Exchange affiliate) for acceptance or rejection. The Review Subcommittee may accept or reject a contested offer of settlement and offer of acceptance, other than those concerning a Respondent that is an Exchange affiliate, or refer them to the Exchange Review Council.

- Rule 960.8 concerns the content, approval and issuance of Hearing Panel decisions. The Rule requires the Hearing Panel to review the entire record and make a determination by a majority vote on the disposition of the matter, including whether a Respondent committed violations and the appropriate sanctions, if any. The Rule requires the Hearing Panel to thereafter issue a written decision consistent with its determination. The written decision must contain a statement of findings and conclusions, with the reasons therefor, upon all material issues presented in the record, and whether each violation within the disciplinary jurisdiction of the Exchange alleged in the Statement of Charges occurred. The Rule requires the Hearing Panel, absent extraordinary circumstances, to issue its decision within 60 days after its receipt of the Transcript from staff, a copy of which must be promptly served on the Respondent. Last, the Rule requires disciplinary sanctions arising from the decision be made public in

a manner prescribed by the Board of Directors. The Exchange is replacing this Rule with New Rule 9268, which concerns decisions of Hearing Panels or, if applicable, the Extended Hearing Panel. Similar to the old Rule, the New Rule requires the Hearing Panel to make a determination in a matter based on a majority vote, which is reflected in a decision drafted by the Hearing Officer. Also similar to the old Rule, New Rule 9268 requires a decision to include, in part, the specific statutory or rule provisions allegedly violated, a statement that sets forth the findings of the Hearing Panel with respect to the act or practice the Respondent was alleged to have committed or omitted, and to provide the conclusions of the Hearing Panel whether the Respondent violated any provision alleged in the complaint. The New Rule requires that the decision be issued within 60 days of the final date allowed for filing proposed findings of fact, conclusions of law, and post hearing briefs, or by a date established by the Chief Hearing Officer. Although the date on which the 60 day period begins is different between the old and New Rules, the principle is the same, namely that once the matter is closed to further motion or argument a decision must be issued within the required timeframe. Last, under subparagraph (d) of the New Rule, the OHO must publish notice of the decision and any dissenting opinion in the Central Registration Depository and provide a copy of the decision and any dissent thereto to the each Member Organization of the Exchange with which the Respondent is associated.

- Rule 960.8, Supplementary Material, provides the Board of Directors' directive with regard to publicity of sanctions. The Exchange is replacing this Rule with New Rule IM-8310-3, which concerns the release of disciplinary complaints, decisions, and other information. The New Rule generally requires the Phlx Regulation Department to release information concerning a decision that imposes a suspension, bar, cancellation or expulsion of a Member Organization or Member; suspension or revocation of a Member's permit; or suspension, bar or revocation of the registration of a Member or Associated Person. Unlike BX and Nasdaq Rules 8310(a), New Rule 8310(a) will include suspension of a Member's permit and revocation or cancellation of a Member's permit as available sanctions under the rule, which is consistent with the authority currently provided under Rule 960.10(a)(1). As described above, BX and Nasdaq do not have Associated Persons that are permit holders, and therefore Members. Consequently, the Exchange is including Members in IM-8310-1, which discusses the effect of a suspension, revocation, cancellation or bar. The Exchange is also including disclosure of suspension of a Member's permit and revocation or cancellation of a Member's permit under New Rule IM-8310-3. The Regulation Department may also release such information concerning a decision where there is a significant policy or enforcement determination and the CRO has deemed the release to be in the public interest.

- Rule 960.9 concerns the review process of Hearing Panel decisions, which includes both appeals thereof and the initiation of reviews by the Board of Directors.
 - Rule 960.9(a) provides a Respondent ten days after service of the notice and decision to appeal the decision to the Board of Directors by service of the petition on the Secretary of the Exchange. The Rule requires the petition to be in writing and to specify the findings and conclusions of the decision, which is the subject of the petition, together with the reasons that the Respondent petitions for review of these findings. Any objections to a decision not specified in the petition are thereafter waived. The rule permits staff to provide a written response to the request filed with the Secretary within fifteen days of service of the petition. Under the rule, staff may request review of a decision by petitioning the Board of Directors within ten days after the decision. The New Rule 9300 series concerns the review of Disciplinary Proceedings by the Exchange Review Council, Board of Directors, and CRO. Under the new process, a Hearing Panel decision issued pursuant to New Rules 9268 (Decision of Hearing Panel) or 9269 (Default Decisions) may be appealed to the Exchange Review Council by a party within 25 days after service of a decision. See New Rule 9311(a). A Hearing Panel decision issued pursuant to New Rule 9268 may be called for review by the Exchange Review Council within 45 days after the date of service of the

decision. See New Rule 9312(a)(1). A Hearing Panel decision issued pursuant to New Rule 9269 may be called for review by the CRO within 25 days after the date of service of the decision. Should the matter move forward (i.e., the appeal is not withdrawn, abandoned, or the call for review is withdrawn), the Exchange Review Council will issue its own decision. Under the New Rule 9350 series, a Director of the Board of Directors may call for review of the decision of the Exchange Review Council not later than the next meeting of the Board of Directors that is at least fifteen days after the date on which the Board of Directors receives the Exchange Review Council decision. Unlike the old rule, New Rule 9351(a) does not provide a right to Parties to petition the Board of Directors for a review of an Exchange Review Council decision. The Exchange believes this is appropriate because parties are given the right to appeal a Hearing Panel decision to the Exchange Review Council, which serves in a similar appellate capacity as the Board of Directors under the old process.

- Rule 960.9(b)(i) concerns the Hearing Panel decision review process. Under the rule, the review is conducted by the Board of Directors or an Advisory Committee thereof. If an Advisory Committee is appointed, it must be composed of three Board Directors, one of which must be a Public Director appointed by the Chair of the Board. Any Board member that participated in the matter before the BCC or Hearing Panel may not participate in the Board review. Last, the rule provides

that a matter is considered on the record and written exceptions filed by the parties, unless the adjudicators determine to hear oral arguments. As noted above, the Exchange Review Council performs a similar appellate function as the Board of Directors under the old process. Under New Rule 9332, Exchange Review Council members are subject to the same disqualification and recusal standards as the Hearing Panelists and Hearing Officers, including a direct conflict of interest such as prior participation in the matter. Under the new Exchange Review Council process and pursuant to New Rule 9331(b), a Subcommittee or Extended Proceeding Committee is formed for the purpose of participating in a hearing, to the extent oral arguments are heard, and to recommend the disposition of a matter before the Exchange Review Council. New Rule 9343 provides that, if no oral argument is held, a matter shall be decided on the record, supplemented by any written materials submitted to or issued by the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council in connection with the appeal, cross-appeal, or call for review. Pursuant to New Rule 9346, the Exchange Review Council is charged with issuing a decision based on the record, as described above, and any oral argument permitted under the Code of Procedure, subject to limited exception.

- Rule 960.9(b)(ii) concerns reviews conducted by the Board of Directors. Under the rule, the Board must determine, by a majority

vote, whether to affirm, reverse or modify, in whole or in part the decision of the Hearing Panel. The Board may not reverse or modify, in whole or in part the decision of the Hearing Panel if the factual conclusions in the decision are supported by substantial evidence and the decision is not arbitrary, capricious or an abuse of discretion. The rule requires the Board decision to be in writing and promptly served on the Respondent. Last, the rule provides that the Board decision represents the final disciplinary sanction of the Exchange in terms of the Act. As noted above, the Exchange Review Council performs a similar appellate function as the Board of Directors under the old process. Under New Rule 9348, the Exchange Review Council may affirm, dismiss, modify, or reverse with respect to each finding, or remand the proceeding with instructions. The Exchange Review Council may also affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. The Exchange Review Council must issue a decision consistent with New Rule 9349(b), which provides elements required to be included in an Exchange Review Council decision.

- Rule 960.9(b)(iii) concerns reviews conducted by an Advisory Committee of the Board. The Advisory Committee must submit a report to the Board with a recommendation to affirm, reverse or modify, in whole or in part, the decision of the Hearing Panel. A modification may include an increase or decrease of the sanction. Like

the Board process, the Advisory Committee may not reverse or modify, in whole or in part the decision of the Hearing Panel if the factual conclusions in the decision are supported by substantial evidence and the decision is not arbitrary, capricious or an abuse of discretion. The Board must determine to affirm, reject or modify, in whole or in part the recommendation of the Advisory Committee under the same standard as if were reviewing the matter itself. The rule requires the Board decision to be in writing and promptly served on the Respondent. Last, the rule provides that the Board decision represents the final disciplinary sanction of the Exchange in terms of the Act. The Advisory Committee process is similar to the compulsory Subcommittee or Extended Proceeding Committee process under the New Rule 9330 series, as discussed above.

- Rule 960.9(c) permits the Board to initiate a review of a Hearing Panel decision within twenty days of Respondent's notice of the decision. A review initiated under this rule follows the process outlined above. As noted above, the Exchange Review Council performs a similar appellate function as the Board of Directors under the old process. Under New Rule 9312(a), the Exchange Review Council may call for review of the decision of a Hearing Panel within forty-five days after the date of service of the decision. If, however, the Hearing Panel decision relates to a default decision issued pursuant to New Rule 9269, the Chief Regulatory Officer may call such decision for review

within twenty-five days after the date of service of the decision. If called for review, such decision will be reviewed by the Exchange Review Council. As discussed, under the new process, an Exchange Review Council decision may be reviewed by the Board of Directors pursuant to New Rule 9351, and any final Exchange action may be appealed to the Commission pursuant to New Rule 9370.

- Rule 960.9(d) permits a Respondent to request review of a decision in a disciplinary proceeding to the Board in writing within ten days after the decision has been rendered. An appeal taken by staff or by a Respondent will be determined on the written record; however, parties may request an oral argument before the Board or Advisory Committee. As noted above, the Exchange Review Council performs a similar appellate function as the Board of Directors under the old process. Under New Rule 9311(a), a Respondent or the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may file written notice of appeal within twenty-five days after service of a decision.
- Rule 960.9(e) provides the process for staff to request Board review of a Hearing Panel decision, the timing of which mirrors that of a Respondent's appeal to the Board. As noted above, the Exchange Review Council performs a similar appellate function as the Board of Directors under the old process. Under New Rule 9311(a), a Respondent or the Phlx Regulation Department, the Department of

Enforcement or the Department of Market Regulation may file written notice of appeal within twenty-five days after service of a decision.

- Rule 960.10 concerns the process for determining appropriate sanctions against Members, Member Organizations, or persons associated with Member Organizations and the effectiveness of judgments.
 - Rule 960.10(a)(1) requires Members, Member Organizations, or persons associated with Member Organizations to be appropriately disciplined for violations under the disciplinary rules by expulsion, suspension, fine, censure, limitations or termination as to activities, functions, operations, or association with a Member Organization, or any other fitting sanction. The Exchange is replacing this rule with New Rule 8310(a), which stands for the same proposition that Members, Member Organizations, and persons associated with Member Organizations should be subject to appropriate sanction for each violation of the federal securities laws, rules or regulations thereunder, subject to the process under the New Rule 9000 Series. Unlike BX and Nasdaq Rules 8310(a), New Rule 8310(a) will include suspension of a Member's permit and revocation or cancellation of a Member's permit as available sanctions under the rule, which is consistent with the authority currently provided under Rule 960.10(a)(1). As described above, BX and Nasdaq do not have Associated Persons that are permit holders, and therefore Members.

- Rule 960.10(a)(2) requires the BCC and Hearing Panel to refer to the Exchange’s “Enforcement Sanctions User’s Guide” when imposing sanctions for violation of the Order Handling Rules. Under New Rule 9270(c)(5), the Enforcement Sanctions User’s Guide must be considered in settlement proceedings involving all proceedings under the New Rule 9000 Series. The Exchange notes that this is consistent with analogous rules of BX and Nasdaq.
- Rule 960.10(b) provides that sanctions imposed under the disciplinary rules are not effective until the Exchange review process is completed or the decision otherwise becomes final. Pending effectiveness of a decision imposing sanctions on a Respondent, a Hearing Panel may impose conditions and restrictions on the activities of a Respondent which it finds to be necessary or appropriate for the protection of the investing public, Members, Member Organizations, and persons associated with Member Organizations, and the Exchange and its subsidiaries. Under the new rules, the concept of final exchange action for purposes of Rule 19d-1(c)(1) of the Act is reflected in multiple sections of the rule. Generally, action in a matter is not final until all periods available for appeal of a decision or call for review have lapsed. Under New Rule 9268(e), a Hearing Panel decision becomes final action if it is not appealed timely pursuant New Rule 9311 or timely called for review by the Exchange Review Council pursuant to New Rule 9312. New Rule 9268(e) provides that a

majority decision of a Hearing Panel with respect to a Member or Member Organization that is an affiliate of the Exchange within the meaning of Rule 985(b) is final action of the Exchange and cannot be appealed or called for review. New Rule 9269 concerns default decisions in a matter before a Hearing Panel. Subparagraph (d)(1) provides that the default decision becomes final action if it is not appealed timely pursuant New Rule 9311 or timely called for review by the Exchange Review Council pursuant to New Rule 9312. New Rule 9269(d)(2), a default decision with respect to an Exchange member or member organization that is an affiliate of the Exchange within the meaning of Rule 985(b) constitutes final disciplinary action of the Exchange and cannot be appealed or called for review. New Rule 9349(c) concerns final exchange action with respect to an Exchange Review Council decision. Under the rule, the decision of the Exchange Review Council becomes final action of the Exchange after the decision has been provided to the Board of Directors and the decision was not called for review pursuant to New Rule 9351. If the Exchange Review Council decision remands the matter to the Hearing Panel, however, the decision is not final exchange action and will continue through the Code of Procedure process. If the Board of Directors calls an Exchange Review Council decision for review, any decision issued by the Board of Directors become final exchange action, unless the decision remands the matter, in which case the

matter continues through the Code of Procedure process. The New Rule 9800 Series concerns temporary cease-and-desist orders, and provides the process by which the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may impose such restrictions and how such restrictions are adjudicated.

- Rule 960.11 concerns the requirements for service of notice under the disciplinary rules and the authority of the BCC, Hearing Panel or other appropriate committee to provide extensions to certain time limits under the Disciplinary Rules.
 - Rule 960.11(a) permits any charges, notices or other documents to be served on the Respondent or its counsel, either personally or by deposit in the U.S. mail, either registered or certified, or by courier. Such service must be made to the Respondent or its counsel at the address as it appears on the books and records of the Exchange, or by e-mail by the written mutual consent of the parties. The rule also requires that all documents required by the disciplinary rules filed by any party to also be filed with the Hearing Panel and all parties, and received on the day prescribed by the disciplinary rules. The Exchange is replacing this rule with the New Rule 9130 Series, which concerns service and filing of papers. The new rule series provides the timing and form of required service based on the type of the notice. New Rule 9134 concerns the methods of and procedures for service.

Like the old rule, New Rule 9134 permits personal service, service by U.S. Postal Service, or service by courier.

- Rule 960.11(b) permits the BCC or its designee, Hearing Panel, or the appropriate committee before whom a matter is pending, to extend any time limit imposed under the disciplinary rules, unless otherwise noted. The Exchange is replacing this rule with New Rules 9222 and 9322. New Rule 9322(a) allows, any time prior to the issuance of a decision, the Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Exchange Review Council, for good cause shown, to extend or shorten a period prescribed by the Code for the filing of any papers, except that Counsel to the Exchange Review Council may shorten a period so prescribed only with the consent of the Parties. Similarly, New Rule 9322(b) allows the Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Exchange Review Council, for good cause shown, to postpone, adjourn, or change the location of the oral argument, except that Counsel to the Exchange Review Council may adjourn or adjourn the oral argument only with the consent of the Parties. New Rule 9222(a) allows, at any time prior to the issuance of the decision of the Hearing Panel or, if applicable, the Extended Hearing Panel, the Hearing Officer to, for good cause shown, extend or shorten any time limits prescribed by the Code for

the filing of any papers and, consistent with paragraph (b), postpone or adjourn any hearing. Paragraph (b) requires the Hearing Officer to take into consideration several factors in determining to grant an extension and limits the length of the extension to 28 days unless the Hearing Officer states on the record or provides by written order the reasons a longer period is necessary.

- Rule 960.12 concerns fairness and impartiality of Board or Committee members in the disciplinary process. The rule sets forth the impartiality standard for adjudicators and provides the process for the removal of an adjudicator that does not meet the standard, either by motion of the chair or the adjudicator.
 - Rule 960.12(a) prohibits a Board or Committee member, Hearing Officer, or Hearing Panelist from participating in any disciplinary proceeding if the individual cannot render a fair and impartial decision in the matter. In such a case, the rule requires the individual to remove himself from any consideration of the matter. As discussed above, New Rule 9233(a) requires a Hearing Officer to recuse himself if he determines that he has a conflict of interest or bias or circumstances otherwise exist where his fairness might reasonably be questioned. New Rule 9234(a) applies the same recusal standard as New Rule 9233(a) to Hearing Panelists. Similarly, New Rule 9332(a) requires an Exchange Review Council member and Counsel to recuse themselves should they determine that he has a conflict of interest or bias or

circumstances otherwise exist where the fairness of the Exchange Review Council member or Counsel might be reasonably questioned.

- Rule 960.12(b) provides the Chair of an adjudicatory body authority to remove an individual from consideration of a matter, upon receiving written notice that such individual cannot render a fair and impartial decision in the disciplinary proceeding. The written notice must specify the grounds for contesting the qualification of the individual. The determination of the Chair is final and conclusive with respect to the participation of the individual. The Exchange is replacing this rule with New Rules 9233(b), 9234(b) and 9332(b). New Rule 9233(b) provides that a party may move for the disqualification of a Hearing Officer. Likewise, New Rule 9234(b) provides parties with a process identical to New Rule 9233(b), yet also provides that the Chief Hearing Officer may order the disqualification a Hearing Panelist if he determines that he has a conflict of interest or bias or circumstances otherwise exist where his fairness might reasonably be questioned. New Rule 9332(b) provides that a party may move for the disqualification of an Exchange Review Council member, Review Subcommittee, a Panelist of a Subcommittee or an Extended Proceeding Committee, or Counsel to the Exchange Review Council.
- Rule 970 provides the process for assessing fines not relating to Order and Decorum up to \$10,000 in lieu of formal disciplinary proceedings. The Exchange is replacing Rule 970 with New Rule 9216(b).

- Rule 970(a) sets forth the Exchange's authority to assess a fine no greater than \$10,000 on a Member, Member Organization, or Associated Person in lieu of any disciplinary proceeding, other than regulations relating to order, decorum, health, safety and welfare on the Exchange pursuant to Section H of the Option Floor Procedure Advices. The rule also provides that any fines assessed pursuant to this Rule not exceeding \$2,500, and non-contested are not publicly reported to the Members except as may be required by Rule 19d-1 under the Exchange Act, or any other regulatory authority. The rule notes that any fine imposed pursuant to this Rule which exceeds \$2,500 shall be publicly reported to the Members as required by Rule 19d-1 under the Securities Exchange Act of 1934, and as may be required by any other regulatory authority. The Exchange is replacing Rule 970(a) with New Rules 9216(b)(1) and (2), which provides the Exchange's authority to assess such fines, and with New Rule 9216(b)(1)(D) and New Rule 9216(b)(2)(D).
- Rule 970(b) sets forth the notice requirements for service upon the Member, Member Organization, or Associated Person against which the fine is levied. The Exchange is replacing this rule with New Rule 9216(b)(1)(A), which describes the required contents of a minor rule violation plan letter, and New Rule 9216(b)(2)(A), which describes the required contents of a violation letter.
- Rule 970(c) states that payment of a fine assessed under the rule is deemed a waiver of a right to a disciplinary proceeding. The Exchange is

replacing this rule with New Rules 9216(b)(1)(A), 9216(b)(2)(A), 9216(b)(1)(B), and 9216(b)(2)(B). New Rules 9216(b)(1)(A) and 9216(b)(2)(A) note that the Member, Member Organization, or Associated Person waives any right to hearing or appeal. New Rules 9216(b)(1)(B)(i)(a) and 9216(b)(2)(B)(i)(a) provide additional waivers not noted in Rule 970(c), concerning claims of bias or prejudgment of the CRO or Exchange Review Council in such body's participation in discussions of the terms and conditions of the minor rule violation plan letter or violation letter. New Rules 9216(b)(1)(B)(i)(b) and 9216(b)(2)(B)(i)(b) provide additional waivers not noted under Rule 970(c) concerning ex parte communications. All of these new waivers arising from a Member's, Member Organization's or Associated Person's execution of a minor rule violation plan letter or a violation letter are a result of the different process for issuing fines for Advices. Under the current rule, a Member, Member Organization, or Associated Person may contest a citation by filing an Answer, which is provided to the BCC for disposition. Under the New Rules, a minor rule violation plan letter or a violation letter, as applicable, is agreed upon between the Exchange, or FINRA on its behalf, and the Member, Member Organization, or Associated Person. The waivers under New Rules 9216(b)(1)(A), 9216(b)(2)(A), 9216(b)(1)(B), and 9216(b)(2)(B) serve to protect the parties involved in the negotiated disposition of a matter through a minor rule violation plan letter or violation letter. Should a Member, Member

Organization, or Associated Person not consent to the issuance of a minor rule violation plan letter or violation letter, the matter may be subject to formal disciplinary action, as is the current practice for contested matters under Rule 970(d).

- Rule 970(d) sets forth the process a Member, Member Organization, or Associated Person must follow to contest the assessment of a fine assessed under the rule. As noted immediately above, the new process requires that a minor rule violation plan letter, or violation letter, is agreed upon prior to its issuance. As a consequence, there is no provision under the new rules for contesting a fine. If a Member, Member Organization, or Associated Person does not agree to the terms of a minor rule violation plan or violation letter proposed by the Exchange, then it is not compelled to accept the letter.
- Rule 970(e) sets forth the review process of a contested fine. Under the rule, the BCC may then: (a) decide that the matter be dismissed and the notice of alleged violation be rescinded; (b) decide that the notice, as issued, is valid, whereupon the alleged violator could either pay the fine or contest the matter before a Hearing Panel; (c) decide that the notice, as issued, should be modified to specify either a higher or lower fine than the one on the notice as issued, whereupon the alleged violator could either pay the new fine or contest the matter before a Hearing Panel; or (d) decide that the matter merits formal disciplinary action and authorize issuance of a complaint, pursuant to Rule 960.2. As noted above, should a

Member, Member Organization, or Associated Person not consent to the terms of a proposed minor rule violation plan letter or a violation letter, the matter may be subject to formal disciplinary proceedings. Unlike a hearing under Rule 970(d), the Exchange, or FINRA acting on its behalf, may pursue formal disciplinary action in any matter wherein a Member, Member Organization, or Associated Person refuses to consent to a minor rule violation plan letter or violation letter. As a consequence, there is no discretion to rescind, affirm or modify a determination prior to initiation of a formal disciplinary proceeding.

- Rule 970(f) sets forth the possible outcomes arising from a disciplinary proceeding arising from a contested fine. The rule provides that a hearing panel may impose any disciplinary sanction provided for in Disciplinary Rules, and may determine whether the violation is minor in nature. The rule further provides that if the violation is determined to be minor in nature, the violation(s) giving rise to the penalty shall not be publicly reported, except as may be required pursuant to Rule 19d-1 of the Exchange Act, or as may be required by any other regulatory authority. The rule notes that if the violation is determined to not be minor in nature, the decision of the Hearing Panel and any penalty imposed shall be publicly reported to the Members, Member Organizations, and persons associated with Member Organizations, in addition to any filing required by Rule 19d-1 of the Exchange Act, or any other regulatory authority, once such decision becomes “final” under the Disciplinary Rules. As

noted above, the new process requires that the terms of a minor rule violation plan letter or a violation letter are agreed upon prior to their issuance. As a consequence, there is no provision under the new rules for contesting a fine. If a Member, Member Organization, or Associated Person does not agree to the terms of a minor rule violation letter or a violation letter proposed by the Exchange, then it is not compelled to accept the letter. Should a Member, Member Organization, or Associated Person not consent to the terms of a proposed minor rule violation plan letter or violation letter, the matter is subject to formal disciplinary action, as is the current practice for contested matters under Rule 970(d). As discussed above, under the new rules, if a Member, Member Organization, or Associated Person does not agree to the terms of a proposed minor rule violation plan letter or violation letter, the Exchange or FINRA acting on its behalf will pursue a formal disciplinary proceeding against the Member, Member Organization, or Associated Person.

- Rule 970, Commentary .01 permits the Exchange to “batch” individual violations of order handling Options Floor Procedure Advices that are based on an exception-based surveillance program. The rule provides that such batch violations may be treated as a single occurrence, only in accordance with the guidelines set forth in the Exchange’s Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules. The rule further provides that the Exchange may batch individual violations of Rule 1014(c)(i)(A) pertaining to quote spread parameters

(and corresponding Options Floor Procedure Advice F-6). The Exchange may, in the alternative, refer the matter to the Business Conduct Committee for possible disciplinary action when (i) the Exchange determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be so egregious that referral to the Business Conduct Committee for possible disciplinary action is appropriate. The Exchange is proposing to move Commentary .01 to New Rules 9216(b)(1)(E) and 9216(b)(2)(E) with minor changes. Specifically, the Exchange is replacing text concerning referring matters to the BCC with requesting authorization from the ODA, which is the appropriate body responsible for authorizing the issuance of a complaint for conduct arising from violations under the Advices. The Exchange is also replacing references to the “Exchange” with references to the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation. The Exchange is also being more specific under the New Rules by noting that Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may seek authorization to take formal disciplinary action from the ODA.

- Rule 985 sets forth the limitations on ownership of the Exchange’s parent company Nasdaq and restrictions on the Exchange’s affiliation with Members, Member Organizations, and persons associated with Member Organizations. Rule 985(b) is cited in several sections of the New Rule 9000 Series, which

uses its definition of “affiliate” to draw distinctions in the appeals process. Rule 985 is based on BX Rule 2140. The term “member” under BX’s rules is synonymous with the Exchange’s definition of “member organization,” whereas the definition of a “member” of the Exchange relates to the permit holder.¹⁵⁶ BX does not have such a concept, nor does Nasdaq under its analogous rules. Given that the purpose of the rule is to guard against any possibility that the Exchange may exercise, or forebear to exercise, regulatory authority with respect to an affiliated member in a manner that is influenced by commercial considerations, to provide an opportunity for Commission review of certain proposed affiliations, and to ensure that certain affiliated members do not receive advantaged access to information in comparison with unaffiliated members, the Exchange is adding to the rule references to Member Organizations.¹⁵⁷ When the rule was adopted, the Exchange neglected to include Member Organizations in the rule.¹⁵⁸ The Exchange is also clarifying in Rule 985(a)(i) that the rule applies to persons “associated with a member organization,” not “associated with a member.” As discussed above, there is no category of “person associated with a member” permitted by the Exchange, and thus the term “organization” was erroneously omitted when adopted.¹⁵⁹

¹⁵⁶ See supra note 3.

¹⁵⁷ See Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 28, 2008) (SR-Phlx-2008-31).

¹⁵⁸ Id.

¹⁵⁹ Id.

- Rule 1092 concerns obvious errors and catastrophic errors. The rule currently references the MORC as the body responsible for review of determinations made by Options Exchange Officials pursuant to the rule. In light of the fact that the MORC's responsibilities are now incorporated into those of the Exchange Review Council, the Exchange is changing references to the MORC under the rule to references to the Exchange Review Council, which BX and Nasdaq have done in their analogous Options Rules Chapter V, Section 6(1).
- Rule 3202 concerns the application of other rules of the Exchange to the PSX equities market. The Exchange is amending references in this rule to replace references to the Rule 960 series with references to the New Rule 8000 and 9000 Series, delete references to Rule 50, which is replaced by New Rule 9553, and make conforming updates to the titles of Rules 98, 705, 754, 756, 792, 794, 795, 797, 798, 803, 902, 903, 904, 905, 906, and 907. The Exchange is also adding Rule 774 to the list of rules applicable to PSX, which, as discussed above, is being adopted as an express requirement that Member Organizations and Members not engage in disruptive quoting and trading activity. Last, the Exchange is deleting reference to Rules 70, 71, 72, 73, 74, 75, and 76, which are being deleted as part of this proposal.
- Rule 3219 concerns the withdrawal of quotations in PSX. The Exchange is replacing reference to the MORC with reference to the Exchange Review Council under Subparagraph (f) of the rule, which concerns jurisdiction over proceedings brought by PSX Market Makers seeking review of the denial of

an excused withdrawal pursuant to the rule, or the conditions imposed on their reentry.

- Rule 3220 concerns the voluntary termination of registration. The Exchange is replacing reference to the MORC with reference to the Exchange Review Council under Subparagraph (e) of the rule, which concerns jurisdiction over proceedings brought by market makers seeking review of their denial of a reinstatement pursuant to paragraphs (b) or (d) of the rule.
- Rule 3312 concerns clearly erroneous transactions. The Exchange is replacing several references to the MORC with references to the Exchange Review Council under Subparagraphs (c), (d)(1), (e)(2) and (f) of the rule. Subparagraph (c) of the rule concerns the review of clearly erroneous determinations. Subparagraph (d)(1) of the rule concerns the requirements for communicating materials to the Exchange. Subparagraph (e)(2) of the rule concerns fees for appeals. Lastly, Subparagraph (f) of the rule concerns refusal to abide by rulings of an Exchange official or the MORC.
- The Exchange's Equity Floor Procedure Advices provide fine-based sanctions for violations of the Exchange's regulations relating to equities trading. The Advices include MRVP violations, consistent with Rule 19d-1(c) under the Act.¹⁶⁰ Under the various fine schedules of these regulations, the fine amount increases with each additional violation of the particular advice violated. Upon reaching a certain number of violations of a particular advice over a certain period (as noted in the schedule), further sanction is discretionary with

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17 CFR 240.19d-1(c).

the BCC. In light of the retirement of the BCC, the Exchange is providing the Phlx Regulation Department, Department of Enforcement, and the Department of Market Regulation with discretionary authority to assess further sanction upon Members, Member Organizations or persons associated with a Member Organization for such violations of the Advices.¹⁶¹ The Exchange believes that these departments are best positioned to make determinations of whether further sanction is warranted under the Advices or whether formal disciplinary action should be pursued for such repeated violations because it is the same prosecutorial discretion that these departments exercise in determining whether matters under investigation warrant formal disciplinary action. As a consequence, Phlx is replacing references in the regulations to the BCC with the Phlx Regulation Department, Department of Enforcement, and the Department of Market Regulation. The Exchange is also deleting certain references in the Equity Floor Procedure Advices that reference Members as being broker-dealers and/or having the obligations of a broker-dealer, or as having associated persons. As described above, Members may not be broker-dealers on the Exchange, and thus would not have such obligations or associated persons.

- The Exchange is also amending its Option Floor Procedure Advices and Order & Decorum Regulations, which provide fine-based sanctions for violations of

¹⁶¹ Notwithstanding, determinations to issue a fine are made on a case by case basis, whereby the Exchange considers the individual facts and circumstances to determine whether a fine of more or less than the recommended amount is appropriate for the violation, or whether the violation requires formal disciplinary action.

the Exchange's regulations relating to options trading. These regulations include violations of the Exchange's MRVP relating to options trading. Under the various fine schedules of these regulations, the fine amount increases with each additional violation of the particular advice violated. Upon reaching a certain number of violation of a particular advice over a certain period (as noted in the schedule) further sanction is discretionary with the BCC. In light of the retirement of the BCC, the Exchange is providing the Phlx Regulation Department, Department of Enforcement, and the Department of Market Regulation with discretionary authority to assess further sanction upon Members, Member Organizations or persons associated with a Member Organization for such violations of the Advices, other than Order and Decorum Regulations, and to serve as the body to which certain violations are referred.¹⁶² As noted above, the Exchange believes that these departments are best positioned to make determinations of whether further sanction is warranted under the Advices or whether formal disciplinary action should be pursued for such repeated violations because it is the same prosecutorial discretion that these departments exercise in determining

¹⁶² For example, Option Floor Procedure Advice B-6 provides, in part, that "In any instance where an order is misrepresented in this fashion due to factors which give rise to the concern that it was the result of anything other than an inadvertent error, the Exchange may determine to bypass the fine schedule below and refer the incident to the Business Conduct Committee for possible disciplinary proceedings in accordance with those procedures set forth under the Exchange's Disciplinary Rule 960." The Exchange is replacing the Business Conduct Committee with the Phlx Regulation Department, Department of Enforcement, and the Department of Market Regulation, and is also replacing reference to the Disciplinary Rule 960 with reference to the New Rule 8000 and 9000 Series.

whether matters under investigation warrant formal disciplinary action.¹⁶³ As a consequence, Phlx is replacing references in the Advices to the BCC with the Phlx Regulation Department, Department of Enforcement, and the Department of Market Regulation.¹⁶⁴ For Order and Decorum Regulations, the Exchange is proposing to provide only the Phlx Regulation Department with discretionary authority to assess further sanction upon Members, Member Organizations or persons associated with a Member Organization for such violations. The Exchange notes that, by definition, such violations arise from the trading floor, which the Phlx Regulation Department is best positioned to determine what the appropriate sanction is for repeated violation of these regulations in light of its physical presence on the trading floor. In addition, the Exchange is replacing certain references to the MORC with references to the Exchange Review Council, since the MORC's responsibilities are subsumed into those of the Exchange Review Council, as discussed above. The Exchange is also deleting certain text in the Advices that reference persons associated with Members or otherwise make it unclear as to whether the rule applies to an associated person of a Member, which as described above does not exist.¹⁶⁵ The Exchange is also replacing references

¹⁶³ As noted above, determinations to issue a fine are made on a case by case basis. See supra note 161.

¹⁶⁴ In Options Floor Procedure Advice F-11, the Exchange is replacing the uppercase word "Discretionary" with a lowercase word and is deleting the word "the" to conform the Advice with other Advices.

¹⁶⁵ For example, in Options Floor Procedure Advice C-9 the Exchange is making it clear that the rule concerns persons on the floor associated with a member organization.

the “members” with references to “member organization” in Advices concerning obligations of registered broker-dealers.¹⁶⁶ The Exchange is updating rule citations in the Advices to reflect the appropriate rules in the New Rules. Last, the Exchange is deleting the upper case term “Member Organization” and is replacing it with the lower case term “member organization,” which is the convention used throughout the rules.

Conclusion

The changes proposed herein will allow the Exchange to harmonize its investigatory and disciplinary processes with the processes of BX and Nasdaq, thus providing a uniform process for the investigation and discipline of members and persons associated with members across all three self-regulatory organizations as administered by FINRA pursuant to RSAs. Harmonizing the investigatory and disciplinary processes of all three self-regulatory organizations 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 itself follows. Harmonized processes will bring consistency to investigations and adjudications of rule violations, and will reduce the number of disciplinary processes and requirements with which Members, Member Organizations, 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

¹⁶⁶ The Exchange is also making a clarifying change to Options Advice F-23 “Clerks in the Crowd” to make it clear that a clerk is an Associated Person, and that the rule is referring to Member Organizations and not Members in describing the entity unable to effect transactions on the trading floor.

its Members, Member Organizations 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 consequently is more transparent. Moreover, the Exchange notes that nearly two thirds of Phlx Member Organizations are also members of FINRA. Thus, those firms are already familiar with the FINRA disciplinary process.

The Exchange intends to announce the operative date of the new rules at least 30 days in advance via a regulatory alert. To facilitate an orderly transition from the current rules to the new rules, the Exchange is proposing to apply the current rules to all matters that the BCC has reviewed prior to the operative date. In terms of formal disciplinary matters, any matter that has been approved for the issuance of a Statement of Charges by the BCC will continue under the existing rules. In terms of applying the Advices, any fine that is subject to review by the BCC, but has not yet been reviewed by the BCC to determine whether to exercise its discretion to apply a fine or authorize disciplinary action as of the operative date, will instead be reviewed by the Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement. Any fine that was imposed prior to the operative date that is contested will continue under the existing rules. As a consequence of this transition process, the Exchange will retain the BCC and the existing processes during the transition period until such time that there are no longer any matters proceeding under the current rules. To facilitate this transition process, the Exchange will retain a transitional rule book that will contain the Exchange's rules as they are at the time of that this proposal is filed with the Commission, including the Rule 960 series. This transitional rule book 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 member organizations or persons subject to the Rule 960 series, the Exchange will remove the transitional rule book from its public rules website.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁶⁸ 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 proposed rule is consistent with Section 6(b)(6) of the Act,¹⁶⁹ which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or the rules of the Exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

The Exchange believes that the proposed changes are consistent with these requirements because the changes harmonize Phlx's investigative and adjudicatory

¹⁶⁷ 15 U.S.C. 78f(b).

¹⁶⁸ 15 U.S.C. 78f(b)(5).

¹⁶⁹ 15 U.S.C. 78f(b)(6).

processes with similar processes used by BX and Nasdaq. The new processes are well-established as fair and designed to protect investors and the public interest, providing greater detail and transparency in the processes than is currently provided under the Rule 960 Series. Because the Exchange is adopting these Rules materially unchanged from the related BX and Nasdaq rules, with only minor differences based on the need to account for the Exchange's trading floor and the Phlx Regulation Department's involvement in matters, the Exchange believes that the proposed changes should facilitate prompt, appropriate, and effective discipline of Members, Member Organizations, and Associated Persons consistent with the Act. The proposed rule change also makes miscellaneous changes to Exchange rules to account for the adoption of the New Rule 8000 and 9000 Series, and to make minor updates and corrections to the Exchange's rules.

Moreover, the Exchange believes that harmonizing the investigative and adjudicatory processes with those of BX and Nasdaq will reduce the burden on Members, Member Organizations, and Associated Persons that are also members or member organizations of BX, Nasdaq, and/or FINRA as they only will need to be familiar with a single process going forward. As discussed above, the new process will benefit all parties as it provides greater detail and specificity than the retired Rules and, consequently, is more transparent.

The Exchange also believes that adopting an Exchange Review Council is consistent with the Act because the committee's mandate is to, among other things, ensure consistent and fair application of the Exchange rules pertaining to discipline of Members, Member Organizations 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 Review Councils of BX and Nasdaq, as well as FINRA's National Adjudicatory Council. In addition to reviewing appeals of disciplinary actions, the Exchange Review Council will also have jurisdiction to review decisions to deny applications for membership in the Exchange, and appeals regarding limitations placed on members or their employees that are subject to a statutory disqualification. 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, Member Organizations 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. Last, the Exchange notes that Exchange Review Council will have significant overlap in membership with the current BCC, thereby ensuring familiarity with Exchange rules and membership issues. For these reasons, the Exchange believes that adoption of the Exchange Review Council is consistent with the Act.

The Exchange also believes that incorporating the functions of the MORC into the Exchange Review Council is consistent with the requirements of the Act because it will bring efficiency to the committee process, by vesting a single Board committee with responsibilities that would otherwise be spread across the MORC and proposed Exchange

Review Council, while ensuring that such responsibilities are performed to a high regulatory standard. In this regard, the Exchange Review Council is, by every measure, a more diverse body than the MORC that it replaces, yet it will maintain overlapping membership with current MORC members. The broad membership of the new Exchange Review Council will ensure that decisions made with respect to the MORC's former responsibilities are made fairly. Maintaining overlap in membership will ensure continuity and familiarity with the MORC responsibility and processes. In terms of similarity between the compositional requirements of the two committees, the Exchange notes that the proposed Exchange Review Council will have the same MORC requirement that not more than 50 percent of the committee's members be engaged in market making activity or employed by Exchange member organization whose revenues from market making exceed 10 percent of its total revenues.¹⁷⁰ The Exchange notes that the proposed By-Laws will limit Exchange Review Council members to a maximum of two consecutive three-year terms unlike the MORC, which has no stated limit in the By-Laws.¹⁷¹ This requirement ensures that there is a consistent influx of new members to the Exchange Review Council. The proposed By-Laws further require that membership of the Exchange Review Council to be divided into three classes of members, whose terms expire in different years, thus ensuring that the Review Council is not completely

¹⁷⁰ See Phlx By-Law, Article V, Section 5-3(d) and New Phlx By-Law, Article V, Section 5-3(b)(ii).

¹⁷¹ See Phlx By-Law, Article V, Section 5-3(d) and New Phlx By-Law, Article V, Section 5-3(b)(iv). Note that under New Phlx By-Law, Article V, Section 5-3(b)(iv), an Exchange Review Council member may serve greater than two terms if the member is appointed to fill a term of less than one year, in which case the member may serve up to two consecutive three-year terms following the expiration of such member's initial term.

reconstituted in any given year.¹⁷² Accordingly, the Exchange believes that the proposed changes will serve to protect the public interest and promote appropriate discipline of members for violations of securities laws and rules of the Exchange. The Exchange notes that both BX and Nasdaq incorporated their respective MORCs into their Review Councils, making the same changes proposed herein.¹⁷³ Moreover, members of the MORC will be included in the membership of the Exchange Review Council. Thus, the change will not impose any burden on Members, Member Organizations, and Associated Persons, while reducing the burdens and inefficiencies experienced by the Exchange in managing multiple committees.

The Exchange believes that eliminating the BCC is consistent with Sections 6(b)(5) and 6(b)(6) of the Act,¹⁷⁴ because the Exchange is replacing the BCC with other groups and processes that, while different, will continue to provide Members, Member Organizations and Associated Persons with a fair investigative and adjudicatory process. In particular, the functions of the BCC will be handled by the ODA, Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement, and the Exchange's CRO. The ODA will authorize the issuance of complaints, which is currently the responsibility of the BCC. The Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement will each individually have the authority to assess, and determine the amount of, fines under the Advices after repeated violations thereof, with the exception of the Advices relating to Order and Decorum for

¹⁷² See New Phlx By-Law, Article V, Section 5-3(b)(iv).

¹⁷³ See supra note 95.

¹⁷⁴ 15 U.S.C. 78f(b)(5) and (6).

which the Phlx Regulation Department will be solely responsible for assessing and determining the amount of fines thereunder. Although, the BCC currently is responsible for this, the Exchange notes that it believes that these departments are best positioned to make determinations of whether further sanction is warranted under the Advices or whether formal disciplinary action should be pursued for such repeated violations because it is the same prosecutorial discretion that these departments exercise in determining whether matters under investigation warrant formal disciplinary action. As described above, the ODA will review any such recommendation for formal disciplinary action. As described above, the CRO will have responsibility for the current BCC functions of approving of customer account guarantees and appointing of World Currency Options Margin committees, which do not fall within the ODA's purview. The Exchange believes that the CRO is best suited to manage these responsibilities. The Exchange notes that the CRO has general supervisory responsibility over the Exchange's regulatory operations, including the responsibility for overseeing its surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another self-regulatory organization to which the Exchange is a party. The CRO meets with the regulatory oversight committee of the Board of Directors. As such, the Board will remain apprised of the formation of, and any regulatory decisions made by, the CRO, and any World Currency Options Margin Committee. In sum, each BCC function will be handled in a fair manner and provide Members, Member Organizations and Associated Persons with a well-known process.

The Exchange believes that its proposal furthers the objectives of Section 6(b)(7)

of the Act,¹⁷⁵ in that it is designed to provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof. Specifically, the Exchange believes that the proposed investigatory and disciplinary process is consistent with Section 6(b)(7) of the Act¹⁷⁶ because it is based on the existing processes used by BX and Nasdaq. The process is well-established as consistent with the Act and where there are differences from the processes used by BX and Nasdaq, such as accounting for conduct on the Exchange's floor, the Exchange has proposed a fair process that includes elements of existing Exchange processes and processes of BX and Nasdaq. For example, the Exchange is proposing to vest the Phlx Regulation Department, Department of Enforcement, and the Department of Market Regulation with the authority to determine whether repeated violations of the Advises warrant additional fines or formal disciplinary proceedings, which is currently vested with the BCC. Notwithstanding, the Exchange will continue to make determinations to issue a fine on a case by case basis, whereby the Exchange considers the individual facts and circumstances to determine whether a fine of more or less than the recommended amount is appropriate for the violation, or whether the violation requires formal disciplinary action. Although the Exchange is replacing the BCC, which is independent of the investigatory and disciplinary processes, with the Phlx Regulation Department,

¹⁷⁵ 15 U.S.C. 78f(b)(7).

¹⁷⁶ Id.

Department of Enforcement, and the Department of Market Regulation, which are not, the Exchange believes that this will provide a fair procedure because these departments must gain approval to issue a complaint and settlements generally from the ODA, an entity independent of the enforcement function, if they determine formal disciplinary action is appropriate in lieu of a fine under the Advices. Moreover, if these departments determine that an additional fine is appropriate in lieu of pursuing formal disciplinary action, the departments are constrained by the maximum fine allowed under the Advices, which is the same constraint that the BCC has to the extent it determines an addition fine is appropriate.¹⁷⁷ If these departments instead determine that formal disciplinary action is warranted, they must gain approval to issue a complaint from the ODA, as discussed above.

Last, the Exchange believes that its proposal to phase-in the implementation of the new disciplinary process is consistent with Section 6(b)(7)¹⁷⁸ of the Act because both the current and proposed disciplinary processes are consistent with the Act, providing fair procedures for disciplining Members, Member Organizations and Associated Persons. The Exchange is proposing to provide advanced notice of the implementation date of the new process, and will apply the new process 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 process. As a consequence, the Exchange will delete the Rule 960 series from the rule book, but maintain a transitional rule book on the Exchange's public rules website (<http://nasdaqphlx.cchwallstreet.com/>), which will

¹⁷⁷ As described above, the Exchange may assess fines up to \$10,000 under the Advices in lieu of pursuing formal disciplinary proceedings.

¹⁷⁸ Supra note 175.

contain the Exchange rules as they are at the time of filing this rule change.¹⁷⁹ 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 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, Member Organizations, 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 and adjudicatory processes, thereby reducing the burden on Members, Member Organizations, and Associated Persons who are also members of BX and/or Nasdaq.

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,

¹⁷⁹ 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).

or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁸⁰ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁸¹

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-Phlx-2017-92 on the subject line.

¹⁸⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

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

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-Phlx-2017-92. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

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

All submissions should refer to File Number SR-Phlx-2017-92 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.¹⁸²

Eduardo A. Aleman
Assistant Secretary

¹⁸² 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 PHLX LLC

* * * * *

ARTICLE V STANDING COMMITTEES

* * * * *

Sec. 5-3. Committees Not Composed Solely of Directors

(a) No change.

[(b) The Board shall appoint a Business Conduct Committee.

The Business Conduct Committee shall, in accordance with the Rules of the Board of Directors of the Exchange, have exclusive jurisdiction to:

(i) monitor compliance with the Exchange Act, the Rules and Regulations thereunder, these By-Laws and Rules of the Exchange or any interpretation thereof, and the Rules, Regulations, resolutions and stated policies of the Board of Directors or any committee of the Exchange, by Members, Member Organizations and persons associated with any such persons or organizations;

(ii) examine into the business conduct and financial condition of Members, Member Organizations and persons associated with any such persons or organizations; and

(iii) authorize the initiation of any disciplinary actions or proceedings brought by the Exchange.

(b) The Business Conduct Committee or its designee (including a Hearing Panel) shall impose appropriate sanctions of expulsion, suspension, fine, censure or any other fitting sanction where the Business Conduct Committee or its designee (including a Hearing Panel) finds that a violation within the disciplinary jurisdiction of the Exchange has been committed. The jurisdiction of this Committee and its designee (including a Hearing Panel) shall not extend to the enforcement of Rules and regulations relating to order, decorum, health, safety and welfare on the options trading floors, or to hearings held by and sanctions imposed pursuant to Rule 1000 by Presiding Officials relating to such matters, except as permitted by the Rules of the Exchange or any interpretation thereof, and any regulations promulgated thereunder.

(c) The Business Conduct Committee or its designee (including a Hearing Panel) shall have authority, whenever it shall appear that a Member Organization is in

violation of Rule 703 of the Rules of the Board of Directors to direct a general partner(s) or an executive officer(s) of such Member Organization to appear before the Business Conduct Committee or its designee (including a Hearing Panel) for examination upon forty-eight (48) hours notice, either oral or in writing and, after such examination, such Committee or Committee's designee (including a Hearing Panel) shall have authority to suspend such Member Organization until the requirements of Rule 703 are fully met. Any such suspension directed by the Business Conduct Committee or its designee (including a Hearing Panel) shall be subject to review by the Board of Directors. In the event of a reversal by the Board of Directors of the suspension imposed by such Committee or the Committee's designee (including a Hearing Panel), a Member Organization or officer, partner, director (or person in a similar position) or Stockholder thereof shall be prohibited from instituting a lawsuit in any forum against the Exchange or the members of the Business Conduct Committee, or the Committee's designee (including a Hearing Panel), or hold the Exchange, any member of such Committee, or the Committee's designee (including a Hearing Panel) liable in damages based in whole or in part upon the suspension imposed by such Committee or by the Committee's designee (including a Hearing Panel).

(d) The Business Conduct Committee may prescribe regulations for the carrying of securities on margin by Members and Member Organizations for customers; and it may also make such regulations in regard to the segregation or hypothecation of securities carried in customers' accounts as it deems advisable.

(e) The Business Conduct Committee or its designee (including a Hearing Panel) may prohibit trading by a Member or Member Organization which is excessive in view of such person's or organization's capital.

(f) The Business Conduct Committee may require detailed financial reports of a Member or Member Organization and such other operational reports as it may deem advisable.

(g) The Business Conduct Committee shall have supervision over the advertising of Members and Member Organizations.

(h) The Business Conduct Committee shall consist of not less than eight (8) nor more than twelve (12) members, as established by the Board of Directors. The Business Conduct Committee shall include a number of Member Representative members that is equal to at least 20 percent of the total number of members of the Business Conduct Committee. 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.]

(b) The Board shall appoint an Exchange Review Council.

(i) 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 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 members, member organizations 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 member, member organization and associated person 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.

(ii) 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 fifty percent of the members of the Exchange Review Council shall be engaged in market making activity or employed by an Exchange member organization whose revenues from market making activity exceed ten percent of its total revenues.

(iii) 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.

(iv) 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. 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. 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.

(v) 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.

(vi) 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.

(vii) Notwithstanding By-Law Article V, Section 5-3(b)(iv), 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 V, Section 5-3(b)(ii). 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 V, Section 5-3(b)(ii) by virtue of such vacancy.

(viii) 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 V, Section 5-3(b)(ii) 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.

(ix) 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 124, 1092, 3219, 3220, and 3312 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.

(x) 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.

(xi) 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 Exchange 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.

(c) No change.

(d) Reserved.[The Board shall appoint a Market Operations Review Committee, which shall exercise the functions specified in the Exchange Rules, in accordance with procedures specified therein. The Market Operation Review Committee shall include a number of Member Representative members that is equal to at least 20 percent of the total number of members of the Market Operations Review Committee. No more than 50 percent of the members of the Market Operations Review Committee shall be engaged in market making activity or employed by a Member firm whose revenues from market making activity exceed 10 percent of its total revenues.]

* * * * *

RULES OF THE EXCHANGE

Definitions (Rule 1)

Rule 1. Definitions

The terms defined herein shall have the meanings specified herein for all purposes of Rules of the Board of Directors and of rules and regulations of Standing Committees of the Exchange, unless the context of a rule or regulation requires otherwise.

Act, Exchange Act or Securities Exchange Act

(a) The term “Act”, “Exchange Act” or “Securities Exchange Act” means the Securities Exchange Act of 1934, as amended.

Associated Person or Person Associated with a Member Organization

(b) The term “associated person” or “person associated with a member organization” means any partner, officer, director, or branch manager of an Exchange member organization or applicant (or person occupying a similar status or performing similar functions), or any person directly or indirectly controlling, controlled by, or under common control with such member organization or applicant, or any employee of such member organization or applicant, except that any person associated with a member organization or applicant whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of the Exchange Rules. For purposes of the 8000 and 9000 Rule Series, the term “person associated with a member organization” or “associated person” shall have the same meaning as the term “persons associated with a member” or “associated person of a member,” respectively, as provided in Section 3(a)(21) of the Exchange Act.

Board or Board of Directors

(c) The term “Board” or “Board of Directors” shall mean the Board of Directors of Nasdaq PHLX LLC.

By-Laws

(d) The term “By-Laws” means the By-Laws of Nasdaq PHLX LLC.

Clearing Firm

~~[(c)]~~(e) The term “clearing firm” shall mean a member organization that meets the requirements of Rule 165(c).

Code of Procedure

(f) The term “Code of Procedure” means the procedural rules contained in the Rule 9000 Series.

Commission or SEC

~~[(d)]~~(g) The terms “Commission” or “SEC” mean[s] the United States Securities and Exchange Commission.

Delivery

~~[(e)]~~(h) The term “delivery” means the delivery of securities on Exchange contracts, unless otherwise stated.

Director

[(f)](i) The term “Director” shall mean the Persons elected or appointed to the Board of Directors from time to time in accordance with the LLC Agreement and these By-Laws, in their capacity as managers of the Exchange.

Exchange

[(g)](j) The term “Exchange” shall mean Nasdaq PHLX LLC.

Exchange Review Council

(k) The term “Exchange Review Council” means the committee authorized and directed to act for the Board of Directors of the Exchange in a manner consistent with the Exchange Rules with respect to (1) an appeal or review of a disciplinary proceeding; (2) a statutory disqualification decision; (3) a review of a membership proceeding; (4) a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; (5) the exercise of exemptive authority; (6) an appeal of proceedings involving Exchange Rules 124, 1092, 3219, 3220, and 3312; and (7) such other proceedings or actions authorized by the Exchange Rules.

Executive Representative

[(h)](l) The term “Executive Representative” shall mean the executive representative who shall represent, vote, and act for the Exchange Member in all the affairs of the Exchange; provided, however, that other representatives of a Exchange Member may also serve on the Exchange Board or committees of the Exchange or otherwise take part in the affairs of the Exchange.

FINRA

[(i)](m) The term “FINRA” shall mean the Financial Industry Regulatory Authority, Inc. and its affiliates.

Floor

[(j)](n) The term “floor” means the floor of the Exchange.

Good Standing

[(k)](o) The term “Good Standing” shall refer to a member organization who is not in violation of any of its agreements with the Exchange or any of the provisions of the Rules or By-Laws of the Exchange, and who has maintained all of the conditions for approval as a member organization.

Inactive Nominee

[(l)](p) The term “inactive nominee” shall mean a natural person associated with and designated as such by a member organization and who has been approved for such status and is registered as such with the Membership Department. An inactive nominee shall have no rights or privileges under a permit unless and until said inactive nominee becomes admitted as a member of the Exchange pursuant to the By-Laws and Rules of the Exchange. An inactive nominee merely stands ready to exercise rights under a permit upon notice by the member organization to the Membership Department on an expedited basis.

Investment Banking or Securities Business

[(m)](q) The term “investment banking or securities business” means the business, carried on by a broker or dealer, of underwriting or distributing issues of securities, or of purchasing securities and offering the same for sale as a dealer, or of purchasing and selling securities upon the order and for the account of others.

Member

[(n)](r) The term “member” shall mean a permit holder which has not been terminated in accordance with the By-Laws and these Rules of the Exchange. A member is a natural person and must be a person associated with a member organization. Any references in the rules of the Exchange to the rights or obligations of an associated person or person associated with a member organization also includes a member.

Member Organization

[(o)](s) The term “member organization” shall mean a corporation, partnership (general or limited), limited liability partnership, limited liability company, business trust or similar organization, transacting business as a broker or a dealer in securities and which has the status of a member organization by virtue of (i) admission to membership given to it by the Membership Department pursuant to the provisions of Rules 900.1 or 900.2 or the By-Laws or (ii) the transitional rules adopted by the Exchange pursuant to Section 6-4 of the By-Laws. References herein to officer or partner, when used in the context of a member organization, shall include any person holding a similar position in any organization other than a corporation or partnership that has the status of a member organization.

Membership Department

[(p)](t) The “Membership Department” shall mean the Nasdaq PHLX Membership Department located within the Exchange.

[Nasdaq Global Market Security

(q) The term “Nasdaq Global Market Security” shall have the same meaning as defined in Nasdaq Rule 4200.

Nasdaq Capital Market Security

(r) The term “Nasdaq Capital Market Security” shall have the same meaning as defined in Nasdaq Rule 4200.]

Nasdaq Merger

[(s)](u) The term “Nasdaq Merger” shall mean the merger of a wholly owned subsidiary of Nasdaq, Inc., a Delaware corporation, with and into the Exchange, with the Exchange as the surviving corporation, in connection with the acquisition of the Exchange by Nasdaq, Inc.

NMS Stock

[(t)](v) The term “NMS Stock” shall have the same meaning as Rule 600(b)(47) of Regulation NMS.

NSCC

[(u)](w) The term “NSCC” shall mean the National Securities Clearing Corporation.

Non-member

[(v)](x) The term “non-member” includes, with respect to individuals, any person who is not a member and, with respect to entities, any organization that is not a member organization.

Options Exchange Official

[(w)](y) For purposes of these rules, the term “Option Exchange Official” shall mean an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer. A list of individual Options Exchange Officials shall be displayed on the Exchange website. The Chief Regulatory Officer shall maintain the list of Options Exchange Officials and update the website each time a name is added to, or deleted from, the list of Options Exchange Officials. In the event no Options Exchange Official is available to rule on a particular matter, the Chief Regulatory Officer or his/her designee shall rule on such matter.

Permit

[(x)](z) The term “permit” shall mean a permit of any class, series or kind established from time to time by the Board of Directors and denominated as such.

Person

[(y)](aa) The term “person” shall refer to a natural person, corporation, partnership (general or limited), limited liability company, association, joint stock company, trust, trustee of a trust fund, or any organized group of persons whether incorporated or not and a government or agency or political subdivision thereof.

Phlx

[(z)](bb) The term “Phlx” shall refer to Nasdaq PHLX LLC.

Protected Bid, Offer or Quotation

[(aa)](cc) The terms “Protected Bid, Offer or Quotation” [shall:

(1) have, after rule 611 of Regulation NMS is operative on the Exchange,]have the same meaning as rule 600(b)(57) and (58), as appropriate, of Regulation NMS.

[(2) mean, before rule 611 of Regulation NMS is operative on the Exchange, for Nasdaq Global Market and Nasdaq Capital Market Securities, the best bid, offer or quotation, respectively, of any national securities exchange or national securities association.

(3) mean, before rule 611 of Regulation NMS is operative on the Exchange, for securities other than Nasdaq Global Market and Nasdaq Capital Market Securities, the bids, offers or quotations as required by the ITS Plan (as long as such Plan is in effect) and related Exchange Rules (except that a Protected Bid, Offer or Quotation shall include a bid, offer or quotation of 100 shares) or as otherwise provided in any relief granted therefrom by the Commission.]

Protected NBBO

[(bb)](dd) The term “Protected NBBO” shall mean the best Protected Bid and the best Protected Offer in a stock.

Representative

[(cc)](ee) The term “representative” means a member or an associated person of a registered broker or dealer, including assistant officers other than principals, who is engaged in the investment banking or securities business for the member organization including the functions of supervision, solicitation or conduct of business in securities or who is engaged in the training of persons associated with a broker or dealer for any of these functions. To the extent required by the provisions of Rule 613, all representatives are required to be registered with the Exchange, and representatives that are so registered are referred to herein as “Registered Representatives.”

SCCP

[(dd)](ff) The term “SCCP” shall mean the Stock Clearing Corporation of Philadelphia.

SEC

[(ee)](gg) The term “SEC” shall mean the U.S. Securities and Exchange Commission. Any reference to “Commission” shall also mean the U.S. Securities and Exchange Commission.

Securities Act

[(ff)](hh) The term “Securities Act” shall mean the Securities Act of 1933, as amended.

Security

[(gg)](ii) The term “security” or “securities” includes stocks, bonds, notes, certificates of deposit or participation, trust receipts, rights, options contracts, warrants Cash Index Participations and other similar instruments.

Stock

[(hh)](jj) The term “stock” includes voting trust certificates, certificates of deposit for stocks, rights, warrants, and other securities classified for trading as stocks by the Exchange.

* * * * *

Rule 50. Reserved[Failure to Pay Dues, Fees and Other Charges**(a) Notice of Suspension, Cancellation or Bar**

If a member, member organization, person associated with a member or member organization or person subject to the Exchange's jurisdiction fails to pay any fees, dues, assessment or other charge required to be paid under the Exchange's By-Laws or Rules, or to submit a required report or information related to such payment, Phlx Regulation staff may issue a written notice to such member, member organization, or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member or member organization.

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

The Exchange shall serve the member or member organization or an employee thereof using the facilities or services of the Exchange, or enjoying any of the privileges therein, with such notice in accordance with Rule 960.6. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member.

(c) Contents of Notices

Notices issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notices shall state when the Exchange action will take effect and explain what the respondent must do to avoid such action. The notices shall state that the respondent may file a written request for a hearing with the Hearing Panel pursuant to Rule 960.6(b). The notices also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notices shall explain that, pursuant to Rules 960.5 and 960.8, a Hearing Panel may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) Effective Date of Suspension, Cancellation or Bar

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 960.6(c).

(e) Request for Hearing

A member or member organization or an employee thereof using the facilities or services of the Exchange, or enjoying any of the privileges therein, served with a notice under this Rule may file with the Hearing Panel a written request for a hearing pursuant to Rule 960.6(c). A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (b) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the Exchange action.

(f) Failure to Request Hearing

If a member or member organization or an employee thereof using the facilities or services of the Exchange, or enjoying any of the privileges therein, does not timely request a hearing, the suspension, cancellation or bar specified in the notice shall become effective 21 days after service of the notice and the notice shall constitute final Exchange action.

(g) Request for Termination of the Suspension

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

* * * * *

Rule 60. Reserved[Sanctions for Breach of Regulations

(a)(i) An Options Exchange Official may impose on members, member organizations and their associated persons, fines for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange or an Options Exchange Official may refer the matter to the Business Conduct Committee where it shall proceed in accordance with Rules 960.1—960.12.

(ii) Exchange Staff may impose on members, member organizations and their associated persons, fines for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange, or Exchange Staff may refer the matter to the Business Conduct Committee where it shall proceed in accordance with Rules 960.1-960.12.

(b)(i) An Options Exchange Official and an officer of the Exchange may exclude a member and any associated person of member organizations (“member”) from the trading floor for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange that occurred on the trading floor or on the premises immediately adjacent to the trading floor. Specifically, members shall be excluded if they pose an immediate threat to the safety of persons or property, are seriously disrupting Exchange operations, or are in possession of a firearm. Members so excluded may be excluded for a period of up to five business days.

(c) If a member shall be excluded for a period exceeding forty-eight hours, an expedited hearing (“Expedited Hearing”) will be held before the Chair of the Business Conduct Committee or a member of the Committee designated by the Chair (“Expedited Hearing Officer”) within forty-eight (48) business hours after the members’ exclusion from the trading floor. Written notice will be provided to the member of the date, time and place of the hearing. The member may be represented by counsel. The Expedited Hearing Officer or his or her designee shall conduct an Expedited Hearing. The Expedited Hearing

Officer shall allow both the member or his or her representative and Exchange staff to present arguments. The Expedited Hearing Officer shall make a determination of whether to continue the member's exclusion from the trading floor for a period of up to five (5) business days. The determination shall be based on the severity of the threat posed to persons on the trading floor, the disruptiveness caused by the actor and the safety and welfare of persons on the trading floor. The Expedited Hearing Officer shall make a ruling at the time of the hearing and a written decision will be provided to the member following the hearing. Members shall not be excluded from electronic trading, but will be not be permitted to be physically present on the trading floor for the duration of any exclusion

(ii) For purposes of this Rule, an "officer of the Exchange" shall refer to an officer who is a vice president or higher.

(iii) For purposes of this Rule and the Regulations promulgated thereunder, the "premises immediately adjacent to the trading floor" shall include the following: (1) all premises other than the trading floor that are under Exchange control, and (2) premises in the building where the Exchange maintains its principal office and place of business, namely FMC Tower, 2929 Walnut Street, Philadelphia, Pennsylvania.

(iv) Exclusion from the floor may not be the exclusive sanction for breaches of this Rule and the regulations thereunder. In addition to exclusion, a member may also be subject to a fine or the matter may be referred to the Business Conduct Committee where it shall proceed in accordance with Rules 960.1-960.12.

••• *Commentary (a)* -----

The procedure to be followed in cases where a pre-set fine of up to \$10,000.00 is summarily assessed is as follows:

.01 Notice of Fine. Notice of fine for breach of such regulations shall be given by the issuance of a written citation. Exchange Staff shall serve the written citations that are issued by the Options Exchange Official. The cited party may accept or contest the written citation.

.02 Time and Place of Hearing. If the written citation is contested, the Exchange shall fix a mutually convenient time and place of hearing, notice of which must be given in advance and may be given orally.

.03 Record. An appropriate record shall be kept. The costs of the making of such a transcript, including, but not limited to, the costs for the court reporter, reproduction of the transcript and producing copies thereof, shall be equally borne by the Exchange and by the cited party.

.04 Procedure. The hearing shall be conducted by a Hearing Director appointed by the Chair of the Business Conduct Committee, and will be conducted in whatever manner will permit full presentation of the evidence.

.05 Finding. The finding of the Hearing Director shall be rendered at the close of the hearing. The Hearing Director may decide that: (i) the citation should be overturned; (ii) the citation is valid as issued; or (iii) the citation as issued should be modified to specify either a higher or lower fine than the one on the notice as issued.

.06 Forum Fee. If a person contests a citation imposed under Rule 60 and the citation is upheld by the reviewing body, the reviewing body will impose a forum fee against the person in the amount of \$100.

.07 No Right of Appeal. The finding of the Hearing Director shall be final. There shall be no appeal from such finding.

.08 Report to Securities and Exchange Commission (SEC). A report in appropriate form shall be made to the SEC. However, no report shall be made in the case of citations for breaches of regulations relating to order, decorum, health, safety and welfare or administration of the Exchange if a citation is not contested and the fine is \$1,000 or less, or if the Hearing Director finds in favor of the appellant.

••• *Commentary (b)* -----

The procedure to be followed when a member is to be excluded from the trading floor is as follows:

.01 No Further Right of Appeal. The determination that a member shall be excluded is final. There shall be no appeal from such determination.

.02 Report to the SEC. A report in appropriate form shall be made to the SEC. However, no report shall be made in a case where a clerical employee is excluded for a breach of regulations relating to order, decorum, health, safety and welfare or administration of the Exchange.

RULE 60—REGULATION AND FINE SCHEDULE

(ORDER AND DECORUM CODE)

In most cases, the Exchange will enforce compliance with Order and Decorum Code pursuant to Rule 60. While ordinarily a finding of a violation will result in the appropriate pre-set fine and/or sanction, an Options Exchange Official or Exchange Staff may refer the matter to the Business Conduct Committee where it shall proceed in accordance with Rules 960.1-960.12.

In the case of repeat violations of a regulation by the same individual, the amount of the fine is determined by the number of such violations which have occurred within the year immediately preceding the current violation.]

* * * * *

[Rule 70. Suspension for Insolvency on Declaration

A member who fails to perform his contracts, or is insolvent, or a member who is a general partner or officer in a member organization which fails to perform its contracts, or is insolvent, shall immediately inform the Membership Department in writing that he/she or his/her organization is unable to meet his/her or its engagements, and prompt notice thereof shall be given to the Exchange. The permit of such member or member organization shall thereby be suspended until, after having settled with his creditors or the creditors of such organization, such permit has been reinstated by the Membership Department.

Rule 71. Suspension for Insolvency on Advice to Committee on Business Conduct

Whenever it shall appear to the Business Conduct Committee that a member or member organization has failed to meet his or its engagements or is insolvent, or the Business Conduct Committee has been advised by the Board of Directors of Stock Clearing Corporation that such member, or member organization is in such financial condition that he or it cannot be permitted to continue in business with safety to his or its creditors or this Exchange, the Business Conduct Committee shall announce to the members the

suspension of any permit of such member or member organization which suspension shall continue until the member's permit has been reinstated as provided in these Rules.

Rule 72. Investigation of Insolvency

Every member or member organization whose permit has been suspended under the provisions of this Rule shall immediately afford every facility required by the Business Conduct Committee for the investigation of his or its affairs, and shall after the announcement of such suspension file with the Membership Department a written statement covering all information required by said Committee, including a complete list of his or its creditors and the amount owing to each.

Rule 73. Time for Settlement of Insolvent Member

(a) If a member whose permit has been suspended under the provisions of this Rule fails to settle with his creditors and apply for reinstatement within six (6) months from the time of such suspension, or within such further time as the Board of Directors or their designee may grant, or fails to obtain reinstatement as hereinafter provided, his permit may be terminated by the Membership Department.

(b) Extension. The Board of Directors or their designee may, by the affirmative vote of a majority, extend the time of settlement for periods not exceeding one (1) year each.

Rule 74. Reinstatement of Insolvent Member

(a) When a member whose permit has been suspended under the provisions of this Rule applies for reinstatement thereof, the applicant shall furnish to the Membership Department a list of his creditors, a statement of the amounts originally owing and the nature of the settlement in each case. If he furnishes satisfactory proof of settlement with all his creditors, said Department may approve such reinstatement.

(b) Appeal to Board of Directors. If the application for reinstatement is denied by the Membership Department, the applicant may appeal within ten (10) days thereafter to the Board of Directors, which may act on such reinstatement.

Rule 75. Disciplinary Measures During Suspension for Insolvency

A member of the Exchange whose permit has been suspended under the provisions of this Rule, or his/her member organization, may be proceeded against by the Exchange for any offense committed by him either before or after the announcement of such suspension in all respects as if such suspension had not occurred.

Rule 76. Rights of Member Suspended for Insolvency

A member whose permit has been suspended under the provisions of this Rule, and his/her member organization shall be deprived during the term of such suspension of all rights and privileges of a member or a member organization, except the right to have his/her or its business transacted at members' commission rates.]

* * * * *

Rule 124. Disputes-Options

(a) No change.

(b) All rulings rendered by an Options Exchange Official are effective immediately and must be complied with promptly. Failure to promptly comply with an initial Options Exchange Official ruling may result in referral to the Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee]. Failure to promptly comply with other Options Exchange Official rulings issued pursuant to Order and Decorum Regulations (Rule 9216(c)[60]) or Floor Procedure Advices (Rule 9216(b)[970]) and not concerning a trading dispute may result in an additional violation.

(c) Review—Options Exchange Official rulings issued pursuant to Order and Decorum Regulations are reviewable pursuant to Rule 9216(c)[60]. Options Exchange Official rulings issued pursuant to Floor Procedure Advices are subject to the Rule 9000 Series[reviewable pursuant to Rule 970]. All other Options Exchange Official rulings are reviewable pursuant to paragraph (d) of this Rule.

(d) Review of Options Exchange Official Rulings (Trading Disputes)—All Options Exchange Official rulings are reviewable by the Exchange Review Council[Market Operations Review Committee].

(i) Regulatory staff must be advised within 15 minutes of an Options Exchange Official's ruling that a party to such ruling has determined to appeal from such ruling to the Exchange Review Council[Market Operations Review Committee]. The Exchange may establish the procedures for the submission of a request for a review of an Options Exchange Official ruling. Options Exchange Official rulings (including those concerning the nullification or adjustment of transactions) may be sustained, overturned or modified by the Exchange Review Council[Market Operations Review Committee]. The Exchange Review Council[Market Operations Review Committee] may act as a panel with a minimum of three Committee members, of which no more than 50% can be engaged in market making activity or employed by an Exchange member organization whose revenues from market making activity exceed ten percent of its total revenues.

In making a determination, the Exchange Review Council[Market Operations Review Committee] may consider facts and circumstances not available to the ruling Options Exchange Official as well as action taken by the parties in reliance on the Options Exchange Official's ruling (e.g., cover, hedge and related trading activity).

(ii) All decisions made by the Exchange Review Council[Market Operations Review Committee] in connection with initial rulings on requests for relief and with the review of an Options Exchange Official ruling pursuant to this paragraph (d) shall be documented in writing and maintained by the Exchange in accordance with the record keeping requirements set forth in the Securities Exchange Act of 1934, as amended, and the rules thereunder.

(iii) A member or member organization seeking review of an Options Exchange Official ruling shall be assessed a fee of \$250.00 for each Options Exchange Official ruling to be reviewed that is sustained and not overturned or modified by the Exchange Review Council[Market Operations Review Committee]. In addition, in instances where the Exchange, on behalf of a member or member organization, requests a review by another options exchange, the Exchange will pass any resulting charges through to the relevant member organization.

(iv) Decisions of the Exchange Review Council[Market Operations Review Committee] shall be final and may not be appealed to the Exchange's Board of Directors.

(v) All decisions of the Exchange Review Council[Market Operations Review Committee] are effective immediately and must be complied with promptly. Failure to promptly comply with a decision of the Exchange Review Council[Market Operations Review Committee] may result in referral to the Phlx Regulation Department, Department of Market Regulation or Department of Enforcement[Business Conduct Committee].

•• *Commentary:* -----

.01 Exchange staff may determine that an Options Exchange Official is ineligible to participate in a particular ruling where it appears that such Options Exchange Official has a conflict of interest. For purposes of this Rule, and without limitation, a conflict of interest exists where an Options Exchange Official: (a) is directly or indirectly affiliated with a party seeking an Options Exchange Official ruling; (b) is a participant or is directly or indirectly affiliated with a participant in a transaction that is the subject of a Option Exchange Official ruling; (c) is a debtor or creditor of a party seeking an Options Exchange Official ruling; or (d) is an immediate family member of a party seeking an Options Exchange Official ruling. Exchange staff may consider other circumstances, on a case-by-case basis, in determining the eligibility or ineligibility of a particular Options Exchange Official to participate in a particular ruling due to a conflict of interest.

* * * * *

Rule 600. Registration

(a) – (b) No change.

(c) Each [member and]member organization applicant that is a registered broker or dealer pursuant to Section 15 of the Securities Exchange Act of 1934 must use Web CRD to submit a Uniform Application for Broker-Dealer Registration, Form BD. Member organizations shall amend Form BD filings not later than thirty (30) days after the filer knew or should have known of the facts which gave rise to the amendment.

(d) In addition to the requirements of paragraph (a) above, each member organization must comply with the contact information requirements of this paragraph (d).

(i) Each member organization shall report to the Exchange all contact information required by the Exchange via the FINRA Contact System.

(ii) Each member organization 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 organization 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.

(iii) Each member organization 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.

* * * * *

Rule 615. Waiver of Requirements

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 as evidence 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 investment banking or securities business may constitute sufficient grounds to waive a Qualification Examination.

* * * * *

Rule 712. Independent Audit

No change.

••• *Supplementary Material:* -----

The Exchange[Business Conduct Committee] has adopted the following directive:

Annual audit

While the new rule eliminates the requirement for a surprise audit it is still required that an audit be conducted. The annual audit may be done on a surprise basis but the rule also allows for the audit to be conducted on a calendar year basis, fiscal year basis or any other regular basis approved by the Exchange.

The agreement between the member organization and the accountant, required to be filed with the Membership Department under directive of the Exchange[Business Conduct Committee], shall read substantially as follows, although additional provisions, not inconsistent with the following, may also be included in the agreement:

••• *Supplementary Material:* -----

SAMPLE COPY

(Not for filing)

To be typed on Accountants Letterhead

(Name of Member Organization)

Gentlemen:

You have selected us (me) to make an audit of your affairs and to prepare an answer to the financial questionnaire required to be filed with Nasdaq PHLX LLC based upon such audit.

We (I) Agree

(1) To make an audit of the affairs of your firm in accordance with the audit regulations of the Securities and Exchange Commission and Nasdaq PHLX LLC. Such audit shall be conducted as of , 20[19]. In the event the audit is to be conducted on a “surprise” basis, do not fill in date called for above and state that “the audit will be made without prior notice to your firm.”

(2) to notify promptly the Membership Department[Business Conduct Committee] that the audit has been commenced;

(3) to prepare an answer to the financial questionnaire required to be filed with the Membership Department[Business Conduct Committee], based upon such audit;

(4) to submit to the Membership Department[Business Conduct Committee] a copy of such answer accompanied by an attestation, in the prescribed form, signed by the general partners (officers) of the member firm (corporation) and ourselves (myself);

(5) to submit to the Membership Department[Business Conduct Committee] a copy of our (my) report in accordance with the special instructions which appear in the financial questionnaire.

Yours very truly,

Signature of Independent

Public Accountant

* * * * *

Rule 722. Miscellaneous Securities Margin Accounts

This Rule shall apply to all member organizations in respect of margin accounts for Miscellaneous Securities as defined in this Rule.

(a) - (c) No change.

(d) The [Business Conduct Committee]Chief Regulatory Officer may appoint a World Currency Options Margin [Subc]Committee, which [Subc]Committee shall be responsible for monitoring the utilization of letters of credit by world currency option writers, for monitoring the volatility of each world currency underlying a class of world currency options traded on the Exchange and for recommending to the Exchange that higher margin requirements be imposed with respect to any world currency option position(s) whenever such [Subc]Committee deems such higher margin requirements advisable. Such recommendations may include, but shall not be limited to, recommendations that the margin due on certain world currency option positions should not be reduced by all or any portion of any out-of-the-money reduction which would otherwise be permitted pursuant to this Rule.

Pursuant to this Rule 722, the Exchange may also conduct reviews of currency margins levels at any time that market conditions warrant.

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Rule 774. [Reserved]Disruptive Quoting and Trading Activity Prohibited

[Reserved](a) No member or member organization shall engage in or facilitate disruptive quoting and trading activity on the Exchange, as described in subsections (i) and (ii) of this Rule, including acting in concert with other persons to effect such activity.

(1) For purposes of this Rule, disruptive quoting and trading activity shall include a frequent pattern in which the following facts are present:

(A) Disruptive Quoting and Trading Activity Type 1:

- (i) a party enters multiple limit orders on one side of the market at various price levels (the “Displayed Orders”); and
- (ii) following the entry of the Displayed Orders, the level of supply and demand for the security changes; and
- (iii) the party enters one or more orders on the opposite side of the market of the Displayed Orders (the “Contra-Side Orders”) that are subsequently executed; and
- (iv) following the execution of the Contra-Side Orders, the party cancels the Displayed Orders.

(B) Disruptive Quoting and Trading Activity Type 2:

- (i) a party narrows the spread for a security by placing an order inside the NBBO; and
- (ii) the party then submits an order on the opposite side of the market that executes against another market participant that joined the new inside market established by the order described in paragraph (b)(i).

(2) Applicability. For purposes of this Rule, disruptive quoting and trading activity shall include a frequent pattern in which the facts listed above are present. Unless otherwise indicated, the order of the events indicating the pattern does not modify the applicability of the Rule. Further, disruptive quoting and trading activity includes a pattern or practice in which the quoting and trading activity is conducted on the Exchange as well as a pattern or practice in which some portion of the quoting or trading activity is conducted on the Exchange and the other portions of the quoting or trading activity are conducted on one or more other exchanges.

* * * * *

Rule 777. Guarantees Not Permitted

(a) No branch office manager of any member organization, no employee of any member organization engaged in trading in securities for the organization, and no securities salesman of any member organization, shall guarantee the payment of the debit balance, in a customer’s account, to his employer or to any other creditor carrying such account, without the prior written consent of the Chief Regulatory Officer[Business Conduct Committee].

(b) No branch office manager of any member organization, no employee of any member organization engaged in trading in securities for the organization, and no securities salesman of any member organization, shall guarantee any customer against losses in his account, or in any way represent to any customer that he or his employer will guarantee the customer against such losses.

* * * * *

Rule 923. Review of Membership Department Decisions

If the Membership Department takes an adverse action with respect to a membership application, permit application, or other matter for which the Membership Department has responsibility, the department will notify the applicant in writing of the specific grounds for denial and the applicant shall have a right to a hearing. [Any appeal from a decision of the Membership Department shall be heard by a special committee of the Board of Directors composed of three (3) Directors, of whom at least one (1) shall be a Public Director. The person requesting review may appeal by filing a written notice thereof with the Secretary of the Exchange within ten (10) days after a decision. The person requesting review shall be permitted to submit a written statement to this special committee. The Secretary of the Exchange shall certify the record of the proceeding, if any, and the written decision and shall submit these documents to the special committee. The special committee's review of the action shall be based solely on the record, the written decision and any statement submitted by the person requesting the review. The special committee shall prepare and deliver to such person a written decision and reasons therefor. If the special committee affirms the action, the action shall become effective ten (10) days from the date of the special committee's decision. There shall be no appeal to the Board of Directors from any decision of the special committee.]

(a) Review by the Exchange Review Council

(i) Initiation of Review by Applicant

Within 25 days after service of a decision of an adverse action described above, an applicant may file a written request for review with the Exchange Review Council. A request for review shall state with specificity why the applicant believes that the Department's decision is inconsistent with the bases for denial set forth in Rule 901, 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.

(ii) 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.

(iii) 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.

(iv) 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.

(v) 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.

(vi) 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.

(vii) 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.

(viii) Abandonment of Request for Review

If an applicant fails to specify the grounds for its request for review under subparagraph (a)(i), 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.

(ix) 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 (a)(vi), and not later than seven days before the meeting of the Exchange Review Council at which the membership proceeding shall be considered.

(x) 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 (B).

(B) Contents

The decision shall include:

- (1) a description of the Department's decision, including its rationale;
- (2) a description of the principal issues raised in the review;
- (3) a summary of the evidence on each issue; and
- (4) a statement whether the Department's decision is affirmed, modified, or reversed, and a rationale therefor that references the bases for denial in Rule 901.

(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 paragraph (b) of this rule below. 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 (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.

(b) Discretionary Review by the Exchange Board

(i) 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 (ii).

(ii) 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.

(iii) Review At Next Meeting

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

(iv) 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 923(a)(x)(B).

(v) 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.

* * * * *

[Disciplinary Rules (Rules 960—970)]**Rule 960.1. Jurisdiction**

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

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

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

• • • *Interpretations and Policies* -----

.01 The term “person associated with a member” or “associated person of a member” shall have the same meaning as in Section 3(a)(21) of the Exchange Act.

.02 A summary suspension or other action taken pursuant to Exchange By-Laws or Rules or Section 6(d)(3) of the Exchange Act shall not be deemed to be disciplinary action under these disciplinary Rules.

Rule 960.2. Complaint and Investigation

Investigation and Authorization of Complaint

(a) *Initiation of Investigation.* The Exchange shall investigate possible violations within the disciplinary jurisdiction of the Exchange upon instruction of either the Board, the Business Conduct Committee, or other Exchange officials or upon receipt by the Exchange of a written accusation from a member, member organization or from any person which specifies in reasonable detail the facts which are the subject of the accusation.

(b) *Cooperation with Investigation or Examination.* Each member, member organization, or person associated with a member shall promptly comply with any request of the Exchange’s Regulatory staff, including the Enforcement Department, or any officer of the Exchange for information, documents or testimony; each member, member organization or person associated with a member or member organization shall not otherwise impede or delay an Exchange investigation into matters within its disciplinary jurisdiction.

(c) *Right to Counsel.* A member, member organization or person associated with a member shall have the right to be represented by counsel in connection with requests for information, documents or testimony and throughout the course of any disciplinary proceeding and the review thereof or any hearing concerning a summary action.

(d) *Report.* Whenever the staff of the Exchange has a reasonable basis to believe that a violation within the disciplinary jurisdiction of the Exchange has occurred, a written report shall be submitted to the Business Conduct Committee specifying the violations which are believed to have occurred and those facts which gave rise to these violations.

(e) *Notice and Statement.* Prior to submitting its report, the staff shall notify the person(s) who is the subject of the report (“Subject”) of the general nature of the allegations and of the specific provisions of the Exchange Act, Rules and regulations promulgated thereunder, or the Limited Liability Company Agreement, By-Laws or Rules of the Exchange or any interpretation thereof or any resolution of the Board regulating the conduct of business on the Exchange, that appear to have been violated. The staff shall also inform the Subject that the report will be reviewed by the Committee. The Subject

may then submit a written statement to the Committee concerning why no disciplinary action should be taken. To assist a Subject in preparing such a written statement, he shall have access to any documents and other materials in the investigative file of the Exchange that were furnished by him or his agents.

(f)(i) *Determination to Initiate Charges.* Whenever it shall appear to the Business Conduct Committee that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange and that disciplinary action is warranted, the Business Conduct Committee shall direct the staff of the Exchange to prepare a statement of charges. Whenever the Business Conduct Committee determines that violations within the disciplinary jurisdiction of the Exchange have not occurred or that disciplinary action is not warranted it shall so instruct the staff and its instruction not to initiate disciplinary action along with the reasons for not initiating such action shall be recorded in the minutes of the Business Conduct Committee.

(ii) When the number of violations under Exchange Rules is determined based upon an exception-based surveillance program, the Exchange may aggregate, or “batch,” individual violations of Exchange order handling Rules and consider such “batched” violations as a single offense only in accordance with the guidelines set forth in the Exchange’s Numerical Criteria for Bringing Cases for Violations of Exchange Order Handling Rules. In addition, the Exchange may batch individual violations of Rule 1014(c)(i)(A) pertaining to quote spread parameters (and corresponding Options Floor Procedure Advice F-6). In the alternative, the Exchange may refer the matter to the Business Conduct Committee for possible disciplinary action when (i) the Exchange determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be so egregious that referral to the Business Conduct Committee for possible disciplinary action is appropriate.

Rule 960.3. Charges

Statement of Charges

The Statement of Charges shall set forth the specific provisions within the disciplinary jurisdiction of the Exchange alleged to have been violated, the persons or organization alleged to have committed each of the violations (“Respondents”) and the specific acts which give rise to the alleged violations. A copy of the Statement of Charges shall be served upon each of the Respondents in accordance with Rule 960.11.

Rule 960.4. Answer

A Respondent shall have 15 business days after service of the Statement of Charges to file a written answer thereto. The Answer shall specifically admit or deny each allegation

contained in the Statement of Charges, and a Respondent shall be deemed to have admitted any allegation contained not specifically denied. The Answer may also contain any defense which a Respondent wishes to submit and may be accompanied by documents in support of his Answer or defense. A Respondent must state in his Answer whether he requests a hearing concerning the statement of charges. In lieu of requesting a hearing, a Respondent may request that the matter be decided upon written submissions, whereupon the Hearing Panel shall decide whether to grant such request and determine a schedule for each party to make their respective submissions. A Respondent who does not request a hearing or that the matter be decided upon written submissions, shall be deemed to have waived his right to request a hearing or have his written submissions, other than the Answer and any documents in support of his Answer or defense, be considered by a Hearing Panel (as defined in Rule 960.5). The Hearing Panel may thereafter prepare its decision in accordance with Rule 960.8. In the event a Respondent fails to file an Answer within the specified time, or has not within the specified time, requested and obtained from Enforcement Staff an extension of time to answer, the charges shall be considered to be admitted and the Hearing Panel may prepare its decision in accordance with Rule 960.8.

Rule 960.5. Hearing

(a) Hearing Panels.

1. Request for a Hearing—A hearing on the Statement of Charges shall, at the request of Respondent in his Answer, or upon motion of the Business Conduct Committee or Enforcement Staff, be held before a Hearing Panel composed of three persons. Should the hearing be at the request of the Respondent, Exchange staff must provide written notice to the Chair of the Business Conduct Committee or the Chair's designee which requests the naming of a Hearing Panel within 5 business days of receiving Respondent's request for a hearing.
2. Selection of Hearing Panel—The Chair of the Business Conduct Committee or the Chair's designee shall name a Hearing Panel within 10 business days of (i) receipt of notice from Exchange staff that Respondent has requested a hearing; or (ii) upon motion of the Business Conduct Committee for naming of a Hearing Panel, or (iii) upon Respondent's request that the matter be decided upon written submissions (as set forth in Rule 960.4). The Chair of the Business Conduct Committee or the Chair's designee shall then promptly notify Exchange staff and Respondent of the names of the members of the Hearing Panel.
3. Hearing Panel— The responsibilities of the Hearing Panel include, but are not limited to: presiding over hearings in contested disciplinary cases authorized by the Business Conduct Committee; conducting pre-hearing conferences; ruling on

procedural or discovery matters; making all necessary evidentiary or other rulings; regulating the conduct of the hearing; imposing appropriate sanctions for improper conduct by a party or a party's representative; issuing decisions; and rendering decisions in connection with Summary Disposition Proceedings.

The Hearing Panelists will not be permitted to be involved in any manner in the investigation of possible misconduct, to participate in the consideration by the Business Conduct Committee of whether to institute a disciplinary action, to render a decision following a hearing without the concurrence of a majority of the Hearing Panel, rule upon requests to disqualify any member of the Hearing Panel or issue citations for violations of Exchange Rules or Floor Procedure Advices.

The Hearing Panel shall be members of the Exchange, or general partners or officers of member organizations, or such other persons whom the Chair of the Business Conduct Committee or the Chair's designee considers to be qualified. The Chair of the Committee or the Chair's designee shall select these three persons from individuals who have been deemed qualified to serve as a Hearing Panelist. In making such selections the Chair or the Chair's designee shall, to the extent practicable, choose individuals whose background, experience and training qualify them to consider and make determinations regarding the subject matter to be presented to the Hearing Panel. The Chair shall also consider such factors as the availability of the individual Hearing Panelists, the extent of their prior service on Hearing Panels and any relationship between such persons and a Respondent which might make it inappropriate for such persons to serve on the Hearing Panel.

After being designated as a qualified Hearing Panelist, each prospective Hearing Panelist shall complete a mandatory training session to be conducted by the Hearing Attorney. Qualified Hearing Panelists serve for three-year terms. If a Hearing Panelist wishes to continue serving after expiration of the term, the Hearing Panelist must submit an updated application for review and approval by the Business Conduct Committee.

4. Hearing Attorney - A Hearing Attorney shall assist the Hearing Panel in the discharge of its duties. The Hearing Attorney shall not have a vote in the Panel's disposition of the matter, but will advise the Panel on the application of the Disciplinary Rules, Guidelines for Sanctions, and relevant precedent. The Hearing Attorney will not be permitted to be involved in any manner in the investigation of possible misconduct, to participate in the consideration by the Business Conduct Committee of whether to institute a disciplinary action, to render a decision following a hearing without the concurrence of a majority of the Hearing Panel, rule upon requests to disqualify the Hearing Attorney or any member of the Hearing Panel, or issue citations for violations of Exchange Rules or Floor Procedure Advices.

5. Notice—Promptly after the selection of the Hearing Panelists, the Chair of the Business Conduct Committee or the Chair’s designee shall cause written notice thereof to be given to the Respondent. If any person involved in the disciplinary proceeding shall have knowledge of a relationship between himself and any person selected for service on the Hearing Panel which might result in such Panelist being unable to render a fair and impartial decision, he shall give prompt written notice thereof to the Chair of the Business Conduct Committee or the Chair’s designee, specifying the nature of such relationship and the grounds for contesting the qualification of such person to serve on the Hearing Panel. The decision of the Chair of the Business Conduct Committee or the Chair’s designee shall be final and conclusive with respect to the qualification of any person to serve on the Hearing Panel.

6. Compensation of Hearing Panelists—Hearing Panelists appointed by the Chair of the Business Conduct Committee will be compensated for any hearing sessions, including pre-hearing conferences, and for one deliberation session per disciplinary proceeding for which a Hearing Panel renders a decision. The fixed and non-negotiable rate to be paid to the Hearing Panelists shall be the same for each hearing session that lasts four hours or less and for one deliberation session. A hearing session is defined as any meeting between the parties and the Hearing Panel. If a Hearing Panelist is also a member of the Board of Directors, any Board of Directors or Standing Committee meetings that are held on the same day as the hearing would be considered a single meeting for the purposes of compensation. Hearing Panelists may be paid additional compensation in extraordinary cases, as determined by the Chair of the Business Conduct Committee in consultation with the Business Conduct Committee. Factors to be considered in determining whether a case is extraordinary include, but are not limited to, the anticipated and actual length of time of the hearing; the complexity and nature of the matter; and the magnitude of the potential penalty.

7. Hearing Panelist Availability—If a Hearing Panelist is unable to participate in the hearing for any reason, the Chair of the Business Conduct Committee shall appoint a qualified replacement Hearing Panelist for that hearing. The replacement Hearing Panelist will be selected from a pre-screened pool of qualified candidates.

(b) Notice of Hearing and Pre-Hearing Procedures.

1. Hearing Date—A hearing on the Statement of Charges shall commence no later than 120 days after the earlier of the date of filing of a written Answer by the Respondent wherein a hearing is requested or the date the Business Conduct Committee requests a hearing date. The 120 day deadline for the commencement of a hearing may be extended by the Hearing Panel for good cause.

2. Notice—The Respondent shall be given at least 15 business days notice of the time and place of the hearing.

3. Requests for Adjournments—A request by the Respondent or Exchange staff for an adjournment of the hearing date shall be in writing and will be considered by the Hearing Panel for just cause. The Hearing Panel shall promptly consider the request for an adjournment for just cause, rule on the request and inform the parties, in writing if time permits, as to whether the request was, or was not, granted. In the event that the request for an adjournment for just cause is granted, the Hearing Attorney shall, at that time, schedule a new hearing date and so inform the parties of the new date.

4. Exchange of Evidence—Exchange staff and the Respondent shall furnish to the Hearing Panelists and to each other (i) copies of all documentary evidence each intends to present at the hearing, and (ii) a list of witnesses, including names, addresses and telephone numbers, that each intends to call at the hearing on such date as prescribed by the Hearing Panel, but in any event, not less than 8 business days in advance of the scheduled hearing date.

5. Pre-Hearing Conferences—Where appropriate, the Hearing Panel shall schedule one or more pre-hearing conference(s) to be held not less than 8 business days in advance of the scheduled hearing date, to be attended by Exchange staff, each of the Respondents and the Hearing Panel. The pre-hearing conference shall be held for the purpose of clarifying and simplifying issues and otherwise expediting the proceeding. At such conference, and if they have not done so previously, Exchange staff and the Respondents shall furnish to the Hearing Panel and to each other (i) copies of all documentary evidence each intends to present at the hearing, and (ii) a list of witnesses, including names, addresses and telephone numbers, that each intends to call at the hearing. Exchange staff and Respondents shall also attempt to stipulate to the authenticity of documents and to facts and issues not in dispute, and any other items which will serve to expedite the hearing of the matter.

(c) *Conduct of Hearing.* The Hearing Panelists shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by the Exchange staff who, along with Respondent, may present evidence and produce witnesses who shall testify under oath and shall be subject to cross examination and questioning by the Hearing Panel. The Hearing Panel may, on its own motion, request the production of documentary evidence and witnesses and may also question witnesses. A transcript of the hearing shall be made and shall become a part of the record. The costs of the making of such a transcript, including, but not limited to, the costs for the court reporter, reproduction of the transcript and producing copies thereof, shall be equally borne by the

Exchange and by Respondent. Exchange staff shall provide a copy of the transcript of the hearing to the Hearing Panel within 5 business days of receiving the transcript.

••• **Interpretations and Policies:** -----

.01 Intervention. Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Hearing Panel that he has an interest in the subject of the hearing and that the disposition of the matter, may, as a practical matter, impair or impede his ability to protect that interest. Also, the Hearing Panel may in its discretion permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in common. Any person wishing to intervene as a party to a hearing shall file with the Hearing Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought.

.02 The Hearing Panel, in exercising its discretion concerning intervention, shall take into consideration whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

.03 Attendance. Any person not otherwise a party or licensed counsel representing a party may not attend a hearing unless specifically allowed by the Hearing Panel.

Rule 960.6. Summary Disposition Proceedings

(a) *Initiation of Summary Disposition Proceeding.* A Hearing Panel may make a summary decision in a disciplinary proceeding that violations within the disciplinary jurisdiction of the Exchange have occurred and impose sanctions upon those culpable for such conduct whenever:

- (i) any member, or member organization or person associated with or employed by a member or member organization has admitted to such a violation; or
- (ii) there is no dispute concerning those material facts which give rise to such violations.

(b) *Notice to Respondent.* The Exchange shall serve notice and a copy of such a summary decision upon Respondents in accordance with Rule 960.11. Respondents may, no later than (21) twenty-one business days after service, file with the Exchange a written reply to the summary decision, including documentary support, asking the Hearing Panel to set aside any of the findings made or sanctions imposed in the summary decision. Respondents may include a request for a hearing in their reply. If a reply is not filed within the specified time period, the summary decision shall become final and the Respondents shall have waived any and all rights of review. Hearings held pursuant to this section shall be governed by those procedures contained in Rule 960.5. When a

Respondent has admitted to committing a violation, any further proceeding pursuant to these disciplinary Rules shall be limited to the issue of the propriety of the sanction imposed.

(c) *Further Proceeding.* The Hearing Panel shall set aside a decision in a summary proceeding if a Respondent establishes that an issue of material fact or law exists as to any of the findings contained or sanctions imposed in the summary decision. Should a summary decision be set aside on these grounds, a hearing will then be scheduled on the merits of the issues in dispute and the case shall proceed in accordance with Rules 960.5, 960.8 and 960.9. If the Hearing Panel decides that no issues of material fact or law exist with respect to the summary decision, the summary decision becomes final and may be appealed in accordance with Rule 960.9.

Rule 960.7. Offers of Settlement

At any time during a period not to exceed 120 days immediately following the date of filing of Respondent's written Answer, a Respondent may submit to the Business Conduct Committee a written offer of settlement which shall contain a proposed stipulation of facts and shall consent to specified sanctions. Where the Business Conduct Committee accepts an offer of settlement, it shall issue a decision and impose sanctions consistent with the terms of such offer. Where the Business Conduct Committee rejects an offer of settlement, it shall notify the Respondent in accordance with Rule 960.11 and the matter shall proceed as if such offer had not been made, and the offer and all documents relating thereto shall not become part of the record. A decision of the Business Conduct Committee issued upon acceptance of an offer of settlement as well as its determination whether to accept or reject such an offer shall be final, and the Respondent may not seek review thereof. A copy of the decision shall be promptly served on the Respondents in accordance with Rule 960.11.

••• Interpretation and Policies: -----

.01 If a Respondent submits an offer of settlement after the 120 day period, the Business Conduct Committee may consider such offer and determine appropriate sanctions as long as its consideration does not delay the hearing in the matter. If a Respondent submits an offer of settlement after the hearing has commenced, the Exchange staff shall promptly submit its position with respect to such offer of settlement. The Hearing Panel shall then determine whether to consider the offer of settlement and, if considered, whether to accept or reject such offer.

Rule 960.8. Decision

Except as provided in Rule 960.7, the Hearing Panel shall review the entire record of the disciplinary proceeding or, if appropriate, the written submissions if the Hearing Panel

granted the Respondent's request to decide the matter upon such written submissions. After this Review, the Hearing Panel, by a majority vote, shall determine whether Respondents have committed violations and the appropriate sanctions, if any, therefor. The Hearing Panel shall thereafter issue a written decision in conformity with its determination, including in its decision a statement of findings and conclusions, with the reasons therefor, upon all material issues presented in the record, and whether each violation within the disciplinary jurisdiction of the Exchange alleged in the statement of charges has occurred. The decision shall be prepared, absent extraordinary circumstances, within 60 days after Exchange staff has served the Hearing Panel with a copy of the transcript of the hearing. A copy of the decision shall be promptly served on the Respondents in accordance with Rule 960.11.

Any disciplinary sanctions imposed by the Exchange upon any member, or member organization or any partner, officer, director (or person in a similar position) of, or persons employed by or associated with, any such person or organization shall be publicized in such manner as the Board of Directors may from time to time direct.

••• **Supplementary Material:** -----

Publicity on Fines, Censures and Disciplinary Actions

The Board of Directors has adopted the following directive:

The Board of Directors of the Exchange has approved a policy of publicizing fines, censures, and disciplinary actions imposed on members and member organizations by the Exchange. In approving the policy the Board of Directors has determined that such publicity shall be directed to the entire membership of the Exchange.

Rule 960.9. Review

(a) *Petitions.* A Respondent shall have 10 days after service of notice and a copy of a decision made by the Hearing Panel to appeal such decision to the Board of Directors. Such petition shall be in writing and shall specify the findings and conclusions in such decision, which is the subject of the petition, together with the reasons that Respondent petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. Within 15 days after a Respondent's petition for review has been filed with the Secretary of the Exchange, Enforcement staff may submit to the Secretary a written response to the petition. A copy of the response must be served upon the Respondent. A Respondent has 15 days from the service of the response to file a reply with the Secretary and Enforcement staff. An appeal may also be taken by the Exchange staff by petitioning the Board of Directors within ten (10) days after the decision, for permission to proceed with such appeal.

(b) *Conduct of Review.*

(i) The review shall be conducted by the Board of Directors or an Advisory Committee thereof. If an Advisory Committee is appointed to conduct the review, it shall be composed of three (3) Directors, of whom at least one (1) shall be a Public Director, appointed by the Chair of the Board of Directors. Any Board member who participated in a matter before the Business Conduct Committee or Hearing Panel may not participate in any review of that matter by the Board of Directors or an Advisory Committee. Unless the Board of Directors or the Advisory Committee shall decide to hear oral arguments, such review shall be based solely upon the record and written exceptions filed by the parties. The review shall be conducted as soon as is practicable.

(ii) Should the Board of Directors conduct the review, then based upon such review, the Board of Directors by a majority vote of its members, shall decide to affirm, reverse or modify, in whole or in part the decision of the Hearing Panel. Such modification may include an increase or decrease of the sanction. The Board of Directors may not reverse, or modify, in whole or in part, the findings, conclusions and decision if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Rule 960.11, and shall be final and conclusive subject to Rule 960.9(c) and (d), as well as the provisions of the Exchange Act.

(iii) Should the review be conducted by an Advisory Committee, the Advisory Committee shall submit a written report to the Board of Directors. In such report, the Advisory Committee shall recommend to affirm, reverse or modify, in whole or in part, the decision of the Hearing Panel. Such modification may include an increase or decrease of the sanction. The Advisory Committee may not reverse, or modify, in whole or in part, the findings, conclusions or decision if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The Board of Directors by a majority vote of its members, shall decide to affirm, reject or modify, in whole or in part the recommendations of the Advisory Committee. Such modification may include an increase or decrease of the sanction. The Board of Directors may not reverse, or modify, in whole or in part, the findings, conclusions and decision of the Advisory Committee if the factual conclusions in the decision are supported by substantial evidence and such decision is not arbitrary, capricious or an abuse of discretion. The decision of the Board shall be in writing, shall be promptly served on the Respondent in accordance with Rule 960.11, and shall be final and conclusive subject to Rule 960.9(c) and (d), as well as to the provisions of the Exchange Act.

(c) *Review on Motion of Board of Directors.* The Board of Directors may on its own initiative order review of a Hearing Panel decision within 20 days after notice of the decision has been served on the Respondent. Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule. Should the Board of Directors vote to modify or reverse such decision, the Board shall make its own findings and issue a final decision of the Exchange. An Advisory Committee appointed by the Board of Directors may conduct such a review in accordance with the provisions of Rule 960.9.

(d) An appeal in a disciplinary proceeding to the Board of Directors may be taken by a respondent in a disciplinary proceeding by filing written notice of appeal within ten (10) days after the decision has been rendered. An appeal taken by a respondent or by the staff (after approval by the Board of Directors) will be based on the written record, however, the parties will have the right to request an oral argument before the Board of Directors or an Advisory Committee thereof.

(e) *Petition by Enforcement Staff.* An appeal of a decision made by the Hearing Panel may also be taken by the Enforcement staff by petitioning the Board of Directors, within 10 days after service of notice and a copy of the decision, for permission to proceed with such appeal. Such petition shall be in writing and shall specify the findings and conclusions of such decision, which are the subject of the petition, together with the reasons that Enforcement staff petitions for review of these findings and conclusions. Any objections to a decision not specified in the petition for review shall be thereafter waived. If permission to appeal is granted, staff shall serve a copy of the petition on the Respondent within five days of permission to appeal being granted. Within 15 days Respondent may submit to the Board of Directors a written response to the petition. A copy of the response must be served upon the Exchange's Enforcement staff, who then has 15 days from the service of the response to file a reply with the Board of Directors and the Respondent.

Rule 960.10. Judgment and Sanctions

(a) *Sanctions.*

(1) Members, member organizations and persons associated with or employed by members or member organizations shall (subject to any rules or order of the Securities and Exchange Commission) be appropriately disciplined for violations under these disciplinary Rules by expulsion, suspension, fine, censure, limitations or termination as to activities, functions, operations, or association with a member or member organization, or any other fitting sanction.

(2) The Business Conduct Committee and Hearing Panel shall refer to the Exchange's "Enforcement Sanctions User's Guide" ("Sanction Guidelines") when imposing

sanctions for violations of options Order Handling Rules. The Sanction Guidelines outline factors for the Business Conduct Committee and the Hearing Panel, to consider when reviewing violations of options order handling rules and imposing appropriate remedial sanctions.

(b) *Effective Date of Judgment.* Sanctions imposed under these disciplinary Rules shall not become effective until the Exchange review process is completed or the decision otherwise becomes final. Pending effectiveness of a decision imposing sanctions on a Respondent, the Hearing Panel may impose such conditions and restrictions on the activities on such Respondent which it finds to be necessary or appropriate for the protection of the investing public, members, member organizations and the Exchange and its subsidiaries.

Rule 960.11. Service of Notice and Extension of Time Limits

(a) *Service of Notice.* Any charges, notices, or other documents may be served upon a Respondent or Respondent's Counsel either personally or by deposit in the United States mail, postage pre-paid via registered or certified mail or by courier service addressed to Respondent's Counsel or the Respondent at his address as it appears on the books and records of the Exchange or, upon mutual written consent of the parties, by electronic delivery. Unless otherwise stated in these disciplinary Rules, all documents required by these Rules to be filed by any party must be filed with the Hearing Panel with copies to all parties and must be received by the Hearing Panel on the day prescribed by these Rules.

(b) *Extension of Time Limits.* Any time limits imposed under these disciplinary Rules, unless otherwise noted, for the submission of documentary evidence, petitions, requests for a hearing, or other materials may be extended by permission of the Business Conduct Committee or its designee, Hearing Panel, or appropriate committee before whom the matter is currently pending.

Rule 960.12. Fairness and Impartiality of Board or Committee Members

(a) *Disqualification on Own Motion.* No Board member, Committee member, Hearing Officer or Hearing Panelist shall in any manner participate in any disciplinary proceeding if such individual cannot render a fair and impartial decision in the matter. In such case, that individual shall remove himself from any consideration of the matter.

(b) *Disqualification On Order of Chair.* Whenever any person has any reason to believe that a particular individual cannot render a fair and impartial decision in a disciplinary proceeding, such person shall give prompt written notice thereof to the appropriate Chair, specifying the grounds for contesting the qualification of such individual. In such case,

the decision of the Chair shall be final and conclusive with respect to whether such individual participates in the determination of such matters.

Rule 970. Floor Procedure Advices: Violations, Penalties, and Procedures

(a) In lieu of commencing a "disciplinary proceeding" as that term is used in Exchange Rules 960.1-960.12, the Exchange may, subject to requirements set forth in this Rule, impose a fine, not to exceed \$10,000, on any member, member organization, or any partner, officer, director or person employed by or associated with any member or member organization, for any violation of a Floor Procedure Advice of the Exchange, which violation the Exchange shall have determined is minor in nature. Any fine imposed pursuant to this Rule, and not exceeding \$2,500, and not contested shall not be publicly reported to the members except as may be required by Rule 19d-1 under the Securities Exchange Act of 1934, and as may be required by any other regulatory authority. Any fine imposed pursuant to this Rule which exceeds \$2,500 shall be publicly reported to the members and as required by Rule 19d-1 under the Securities Exchange Act of 1934, and as may be required by any other regulatory authority.

(b) In any action taken by the Exchange pursuant to this Rule, the person against whom a fine is imposed shall be served with a written statement, signed by an authorized official of the Exchange on behalf of the Business Conduct Committee, setting forth (i) the Floor Procedure Advice(s) alleged to have been violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each violation; and (iv) the date by which such determination becomes final and such fine becomes due and payable to the Exchange or when such determination must be contested, as provided in paragraph (d) hereunder, such date to be not less than seven business days after the date of service of the written statement.

(c) If the person against whom a fine is imposed pursuant to this Rule pays the fine, such payment shall be deemed to be a waiver by such person of his right to a disciplinary proceeding under Exchange Rules 960.1-960.12 and any review of the matter by the Business Conduct Committee, an Exchange Hearing Panel, the Disciplinary Review Committee, or the Exchange Board of Directors.

(d) Any person against whom a fine is imposed pursuant to this Rule may contest the Exchange's determination by filing with the Department of the Exchange taking the action not later than the date by which such determination must be contested a written response meeting the requirements of an "Answer" as provided in Rule 960.4, at which point the matter shall be referred to the Business Conduct Committee for its consideration and determination.

(e) The Committee may then (a) decide that the matter be dismissed and the notice of alleged violation be rescinded; (b) decide that the notice, as issued, is valid, whereupon the alleged violator could either pay the fine or contest the matter before a Hearing Panel; (c) decide that the notice, as issued, should be modified to specify either a higher or lower fine than the one on the notice as issued, whereupon the alleged violator could either pay the new fine or contest the matter before a Hearing Panel; or (d) decide that the matter merits formal disciplinary action and authorize issuance of a Complaint, pursuant to Exchange Rule 960.2.

(f) If a disciplinary proceeding thereafter results, and the Hearing Panel determines that the person has violated the Advice(s) as alleged, the Hearing Panel shall (a) be free to impose any disciplinary sanction provided for in Exchange Rules 960.1-960.12 and (b) determine whether the violation is minor in nature. If determined to be minor in nature, the violation(s) giving rise to the penalty shall not be publicly reported by the Exchange to the members, except as may be required pursuant to Rule 19d-1 of the Securities Exchange Act of 1934 (Exchange Act), or as may be required by any other regulatory authority; if determined not to be minor in nature, the decision of the Hearing Panel and any penalty imposed shall be publicly reported to the members, in addition to any filing required by Rule 19d-1 of the Exchange Act, or any other regulatory authority, once such decision becomes "final" under Exchange Rules 960.1-960.12.

••• Commentary: -----

.01 For purposes of imposing fines under the Options Floor Procedure Advices (“OFPAs”), when the number of violations under Exchange Rules is determined based upon an exception-based surveillance program the Exchange may aggregate, or “batch,” individual violations of order handling OFPAs, and consider such “batched” violations as a single Occurrence only in accordance with the guidelines set forth in the Exchange’s Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules. In addition, the Exchange may batch individual violations of Rule 1014(c)(i)(A) pertaining to quote spread parameters (and corresponding Options Floor Procedure Advice F-6). In the alternative, the Exchange may refer the matter to the Business Conduct Committee for possible disciplinary action when (i) the Exchange determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be so egregious that referral to the Business Conduct Committee for possible disciplinary action is appropriate.]

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Affiliation and Ownership Restrictions (Rule 985)

Rule 985. Affiliation and Ownership Restrictions**(a) Nasdaq Ownership Restriction**

(i) No member, member organization, or person associated with a member organization shall be the beneficial owner of greater than twenty percent (20%) of the then-outstanding voting securities of Nasdaq, Inc.

(ii) No change.

(b) Restrictions on Affiliation

(i) Except as provided in paragraph (ii) below:

(A) the Exchange or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in, or engage in a business venture with, an Exchange member, member organization, or an affiliate of an Exchange member or member organization in the absence of an effective filing under Section 19(b) of the Exchange Act; and

(B) an Exchange member or member organization shall not be or become an affiliate of the Exchange, or an affiliate of an entity affiliated with the Exchange, in the absence of an effective filing under Section 19(b) of the Exchange Act.

The term “affiliate” shall have the meaning specified in Rule 12b-2 under the Exchange Act; provided, however, that for purposes of this Rule, one entity shall not be deemed to be an affiliate of another entity solely by reason of having a common director. The term “business venture” means an arrangement under which (A) the Exchange or an entity with which it is affiliated, and (B) an Exchange member or member organization, or an affiliate of an Exchange member or member organization, engage in joint activities with an expectation of shared profit and a risk of shared loss from common entrepreneurial efforts.

(ii) Nothing in this Rule shall prohibit, or require a filing under Section 19(b) of the Exchange Act, for:

(A) an Exchange member or member organization, or an affiliate of an Exchange member or member organization, acquiring or holding an equity interest in Nasdaq, Inc. that is permitted by the ownership limitations contained in Rule 985(a), or

(B) the Exchange or an entity affiliated with the Exchange acquiring or maintaining an ownership interest in, or engaging in a business venture with, an affiliate of an Exchange member or member organization if:

(I) there are information barriers between the member or member organization and the Exchange and its facilities, such that the member or member organization

(aa) will not be provided an informational advantage concerning the operation of the Exchange and its facilities, and will not be provided changes or improvements to the trading system that are not available to the industry generally or other Exchange members or member organizations;

(bb) will not have any knowledge in advance of other Exchange members or member organizations of proposed changes, modifications, or improvements to the operations or trading systems of the Exchange and its facilities, including advance knowledge of Exchange filings pursuant to Section 19(b) of the Exchange Act;

(cc) will be notified of any proposed changes, modifications, or improvements to the operations or trading systems of the Exchange and its facilities in the same manner as other Exchange members or member organizations are notified; and

(dd) No change.

(II) No change.

(c) No change.

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OPTIONS RULES

Rules Applicable to Trading of Options on Stocks, Exchange-Traded Fund Shares and Foreign Currencies (Rules 1000—1098)

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Rule 1092. 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 or member organization to use the mutual adjustment process to

circumvent any applicable Exchange rule, the Act or any of the rules and regulations thereunder.

(a) – (k) No change.

(l) *Appeals.* If a party affected by a determination made under this Rule so requests within the time permitted, the Exchange Review Council[Market Operations Review Committee] will review decisions made under this Rule in accordance with Exchange Rule 124(d). A request for review under this paragraph must be made within 30 minutes after a party receives verbal notification of a final determination by an Official under this Rule, except that if such notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time on the next trading day to request a review. Such a request for review must be in writing or otherwise documented. The Exchange Review Council[Market Operations Review Committee] shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day. Any determination by an Official or the Exchange Review Council[Market Operations Review Committee] shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration. The party initiating the appeal shall be assessed a \$500.00 fee if the Exchange Review Council[Market Operations Review Committee] upholds the decision of the Official. In addition, in instances where the Exchange, on behalf of a member or member organization, 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 or member organization.

Commentary: -----

.01 - .04 No change.

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NASDAQ PSX

NASDAQ PSX (Rules 3000—3407)

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Rule 3202. Application of Other Rules of the Exchange

The following Rules of the Exchange shall be applicable to market participants trading on PSX.

The Limited Liability Company Agreement of the Exchange

The By-Laws of the Exchange

Rule 1. Definitions

[Rule 50. Failure to Pay Dues, Fees and Other Charges]

Rule 52. Fees, Dues and Other Charges

Rule 53. Liability for Dues Until Transfer or Military Service

Rule 56. Effect of Suspension or Termination on Payment of Fees

Rule 57. Members' Contracts

Rule 58. Exchange Contracts

Rule 59. Deliveries through Registered Clearing Agencies

Rule 62. Disapproval of Business

Rule 63. Effect of Suspension or Termination

Rule 64. Office Vacated by Suspension or Termination

[Rule 70. Suspension for Insolvency on Declaration]

[Rule 71. Suspension for Insolvency on Advice to Committee on Business Conduct]

[Rule 72. Investigation of Insolvency]

[Rule 73. Time for Settlement of Insolvent Member]

[Rule 74. Reinstatement of Insolvent Member]

[Rule 75. Disciplinary Measures During Suspension for Insolvency]

[Rule 76. Rights of Member Suspended for Insolvency]

Rule 98. Reserved[Emergency Committee]

Rule 103. Dealings on the Exchange - Securities

Rule 112. Bids and Offers - "When Issued"

Rule 128. Price and Execution Binding

Rule 133. Trading Halts Due to Extraordinary Market Volatility

Rule 274. Payment on Delivery - Collect on Delivery

Rule 279. Book-Entry Settlement

Rule 431. Ex-dividend, Ex-rights

Rule 432. Ex-warrants

Rule 433. Buyer Entitled to Dividend, etc.

Rule 434. Claims for Dividend, etc.

Rule 451. Taking or Supplying Securities Named in Order

Rule 452. Limitations on Members' Trading Because of Customers' Orders

Rule 453. Successive Transactions by Members

Rule 455. Short Sales

Rule 600. Registration

Rule 601. Office, Other Than Main Offices

Rule 602. Status Verification

Rule 603. Control of Offices

Rule 605. Advertisements, Market Letters, Research Reports and Sales Literature

Rule 607. Covered Sales Fee

Rule 610. Notification of Changes in Business Operations

Rule 611. Principal Registration Requirements

Rule 612. Categories of Principal Registration

Rule 613. Representative Registration

Rule 614. Persons Exempt from Registration

Rule 615. Waiver of Requirements

Rule 616. Electronic Filing Requirements for Uniform Forms

Rule 623. Fingerprinting

Rule 625. Training

Rule 640. Continuing Education for Registered Persons

Rule 651. Exchange's Costs of Defending Legal Proceedings

Rule 652. Limitation of Exchange Liability and Reimbursement of Certain Expenses (paragraphs (b), (c), (d), and (e) only)

Rule 703. Financial Responsibility and Reporting

Rule 704. Assignment of Interest of Partner

Rule 705. Fidelity Bonds[Members Must Carry]

Rule 707. Conduct Inconsistent with Just and Equitable Principles of Trade

Rule 708. Acts Detrimental to the Interest or Welfare of the Exchange

Rule 712. Independent Audit

Rule 721. Proper and Adequate Margin

Rule 722. Miscellaneous Securities Margin Accounts

Rule 723. Prohibition on Free-Riding in Cash Accounts

Rule 741. Customers' Securities

Rule 742. Restrictions on Pledge of Customers' Securities

Rule 745. Partial Payments

Rule 746. Diligence as to Accounts

Rule 747. Approval of Accounts

Rule 748. Supervision

Rule 749. Transactions for Employees of Exchange, etc.

Rule 750. Speculative Transactions for Employees of Certain Employers

Rule 751. Accounts of Employees of Member Organizations

Rule 752. Statements to Be Sent to Customers

Rule 753. Notwithstanding Power of Attorney

Rule 754. Discretionary Power as to Customers' Accounts[Employees' Discretion as to Customers' Accounts]

Rule 756. Reserved[Accounts of General Partners]

Rule 757. Anti-Money Laundering Compliance Program

Rule 760. Maintenance, Retention and Furnishing of Books, Records and Other Information

Rule 761. Supervisory Procedures Relating to ITSFEA and to Prevention of Misuse of Material Nonpublic Information

Rule 762. Telemarketing

Rule 763. Recommendations to Customers (Suitability)

Rule 764. Best Execution and Interpositioning

Rule 771. Excessive Trading of Members

Rule 772 Trading for Joint Account

Rule 773. Participation in Joint Accounts

Rule 774. Disruptive Quoting and Trading Activity Prohibited

Rule 777. Guarantees Not Permitted

Rule 782. Manipulative Operations

Rule 783. Report of Financial Arrangements

Rule 784. Report of Options

Rule 785. Automated Submission of Trading Data

Rule 786. Periodic Reports

Rule 792. Reserved[Control of Voting Stock]

Rule 794. [Assignment of Holdings]Reserved

Rule 795. [Member Officer or Director]Reserved

Rule 796. Underwriting of Securities by Member Organizations

Rule 797. [Loans to Officers and Directors]Reserved

Rule 798. [Admission of Corporation]Reserved

Rule 803. [Criteria for Listing—Tier I]Listing Standards for Unlisted Trading Privileges

Rule 900.1. General Powers and Duties of Membership Department

Rule 900.2. Membership Applications

Rule 901. Denial of and Conditions to Membership

Rule 902. [Admission to Partnership - Partnership Arrangements]Reserved

Rule 903. [Fixed Interest of Partner]Reserved

Rule 904. [Use of a Partnership Name]Reserved

Rule 905. [Special or Limited Partners]Reserved

Rule 906. [Notice of Change in Partnership]Reserved

Rule 907. [Partners and Officers]Reserved

Rule 908. Rights and Privileges of A-1 Permits

Rule 909. Collection of Exchange Fees and Other Claims

Rule 910. Qualification as Member Organization

Rule 911 Member and Member Organization Participation

Rule 921. Qualification; Designation of Executive Representative

Rule 922. Certificate of Incorporation

Rule 924. Obligation of Members and Member Organizations to the Exchange

Rule 925. Inactive Nominees

Rule 950. Arbitration

Sec. 44 FINRA Jurisdiction Over Arbitrations Against Exchange Members

[Rule 960.1. Jurisdiction]

[Rule 960.2. Complaint and Investigation]

[Rule 960.3. Charges]

[Rule 960.4. Answer]

[Rule 960.5. Hearing]

[Rule 960.6. Summary Disposition Proceedings]

[Rule 960.7. Offers of Settlement]

[Rule 960.8. Decision]

[Rule 960.9. Review]

[Rule 960.10. Judgment and Sanctions]

[Rule 960.11. Service of Notice and Extension of Time Limits]

[Rule 960.12. Fairness and Impartiality of Board or Committee Members]

Rule 980. Regulatory Services Agreements

Rule 985. Affiliation and Ownership Restrictions

Rule 1094. Sponsored Participants

Rule 8000. Investigations and Sanctions

Rule 8001. Regulation of the Exchange and its Member Organizations

Rule 8100. General Provisions

Rule 8110. Availability of Manual to Customers

Rule 8120. Definitions

Rule 8200. Investigations

Rule 8210. Provision of Information and Testimony and Inspection and Copying of Books

Rule 8211. Automated Submission of Trading Data

Rule 8212. Reserved

Rule 8213. Reserved

Rule 8220. Reserved

Rule 8300. Sanctions

Rule 8310. Sanctions for Violation of the Rules

Rule IM-8310-1. Effect of a Suspension, Revocation, Cancellation, or Bar

Rule IM-8310-2. Reserved

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

Rule 8320. Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay

Rule 8330. Costs of Proceedings

Rule 9000. Code of Procedure

Rule 9001. Regulatory Contract with FINRA

Rule 9100. Application and Purpose

Rule 9110. Application

Rule 9120. Definitions

Rule 9130. Service; Filing of Papers

Rule 9131. Service of Complaint and Document Initiating a Proceeding

Rule 9132. Service of Orders, Notices, and Decisions by Adjudicator

Rule 9133. Service of Papers Other Than Complaints, Orders, Notices, or Decisions

Rule 9134. Methods of, Procedures for Service

Rule 9135. Filing of Papers with Adjudicator: Procedure

Rule 9136. Filing of Papers: Form

Rule 9137. Filing of Papers: Signature Requirement and Effect

Rule 9138. Computation of Time

Rule 9140. Proceedings

Rule 9141. Appearance and Practice; Notice of Appearance

Rule 9142. Withdrawal by Attorney or Representative

Rule 9143. Ex Parte Communications

Rule 9144. Separation of Functions

Rule 9145. Rules of Evidence; Official Notice

Rule 9146. Motions

Rule 9147. Rulings On Procedural Matters

Rule 9148. Interlocutory Review

Rule 9150. Exclusion from Rule 9000 Series Proceeding

Rule 9160. Recusal or Disqualification

Rule 9200. Disciplinary Proceedings

Rule 9210. Complaint and Answer

Rule 9211. Authorization of Complaint

Rule 9212. Complaint Issuance - Requirements, Service, Amendment, Withdrawal, and Docketing

Rule 9213. Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel

Rule 9214. Consolidation or Severance of Disciplinary Proceedings

Rule 9215. Answer to Complaint

Rule 9216. Acceptance, Waiver, and Consent; Violation of Floor Procedure Advices; Violation of Order and Decorum Regulations

Rule IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)

Rule 9220. Request for Hearing; Extensions of Time, Postponements, Adjournments

Rule 9221. Request for Hearing

Rule 9222. Extensions of Time, Postponements, and Adjournments

Rule 9230. Appointment of Hearing Panel, Extended Hearing Panel

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

Rule 9232. Criteria for Selection of Panelists and Replacement Panelists

Rule 9233. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers

Rule 9234. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Panelists

Rule 9235. Hearing Officer Authority

Rule 9240. Pre-Hearing Conference and Submission

Rule 9241. Pre-Hearing Conference

Rule 9242. Pre-Hearing Submission

Rule 9250. Discovery

Rule 9251. Inspection and Copying of Documents in Possession of Staff

Rule 9252. Requests for Information

Rule 9253. Production of Witness Statements

Rule 9260. Hearing and Decision

Rule 9261. Evidence and Procedure in Hearing

Rule 9262. Testimony

Rule 9263. Evidence: Admissibility

Rule 9264. Motion for Summary Disposition

Rule 9265. Record of Hearing

Rule 9266. Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs

Rule 9267. Record; Supplemental Documents Attached to Record; Retention

Rule 9268. Decision of Hearing Panel or Extended Hearing Panel

Rule 9269. Default Decisions

Rule 9270. Settlement Procedure

Rule 9280. Contemptuous Conduct

Rule 9290. Expedited Disciplinary Proceedings

Rule 9291. Permanent Cease and Desist Orders

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

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

Rule 9311. Appeal by Any Party; Cross-Appeal

Rule 9312. Review Proceeding Initiated By the Exchange Review Council

Rule 9313. Counsel to the Exchange Review Council

Rule 9320. Transmission of Record; Extensions of Time, Postponements, Adjournments

Rule 9321. Transmission of Record

Rule 9322. Extensions of Time, Postponements, Adjournments

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

Rule 9331. Appointment of Subcommittee or Extended Proceeding Committee

Rule 9332. Disqualification and Recusal

Rule 9340. Proceedings

Rule 9341. Oral Argument

Rule 9342. Failure to Appear at Oral Argument

Rule 9343. Disposition Without Oral Argument

Rule 9344. Failure to Participate Below; Abandonment of Appeal

Rule 9345. Subcommittee or Extended Proceeding Committee Recommended Decision to the Exchange Review Council

Rule 9346. Evidence in the Exchange Review Council Proceedings

Rule 9347. Filing of Papers in the Exchange Review Council Proceedings

Rule 9348. Powers of the Exchange Review Council on Review

Rule 9349. Exchange Review Council Formal Consideration; Decision

Rule 9350. Discretionary Review by Board

Rule 9351. Discretionary Review by the Exchange Board

Rule 9360. Effectiveness of Sanctions

Rule 9370. Application to Commission for Review

Rule 9400. Expedited Client Suspension Proceeding

Rule 9500. Other Proceedings

Rule 9510. Reserved

Rule 9520. Eligibility Proceedings

Rule 9521. Purpose and Definitions

Rule 9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

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

Rule 9524. Exchange Review Council Consideration

Rule 9525. Discretionary Review by the Exchange Board

Rule 9526. Expedited Review

Rule 9527. Application to Commission for Review

Rule 9530. Reserved

Rule 9531. Reserved

Rule 9532. Reserved

Rule 9533. Reserved

Rule 9534. Reserved

Rule 9535. Reserved

Rule 9536. Reserved

Rule 9537. Reserved

Rule 9550. Expedited Proceedings

Rule 9551. Reserved

Rule 9552. Failure to Provide Information or Keep Information Current

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

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

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

Rule 9556. Failure to Comply with Temporary and Permanent Cease and Desist Orders

Rule 9557. Procedures for Regulating Activities Under Rule 703 Regarding a Member Organization Experiencing Financial or Operational Difficulties

Rule 9558. Summary Proceedings for Actions Authorized by Section 6(d)(3) of the Act

Rule 9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series

Rule 9600. Procedures for Exemptions

Rule 9610. Application

Rule 9620. Decision

Rule 9630. Appeal

Rule 9700. Reserved

Rule 9800. Temporary Cease and Desist Orders

Rule 9810. Initiation of Proceeding

Rule 9820. Appointment of Hearing Officer and Hearing Panel

Rule 9830. Hearing

Rule 9840. Issuance of Temporary Cease and Desist Order by Hearing Panel

Rule 9850. Review by Hearing Panel

Rule 9860. Violation of Temporary Cease and Desist Orders

Rule 9870. Application to Commission for Review

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Rule 3219. Withdrawal of Quotations

(a) – (e) No change.

(f) The Exchange Review Council[Market Operations Review Committee] shall have jurisdiction over proceedings brought by PSX Market Makers seeking review of the denial of an excused withdrawal pursuant to this Rule 3219, or the conditions imposed on their reentry.

Rule 3220. Voluntary Termination of Registration

(a) – (d) No change.

(e) The Exchange Review Council[Market Operations Review Committee] shall have jurisdiction over proceedings brought by market makers seeking review of their denial of a reinstatement pursuant to paragraphs (b) or (d) of this Rule.

* * * * *

Rule 3312. Clearly Erroneous Transactions

The provisions of paragraphs (a)(2)(C), (b), and (c)(1) of this Rule, as amended on September 30, 2010, and the provisions of paragraphs (g) through (i), shall be in effect during a pilot period to coincide with the pilot period for the Limit Up-Limit Down Plan, including any extensions to the pilot period for the Plan. If the Plan is not either extended or approved as permanent, the prior versions of paragraphs (a)(2)(C), (b), and (c)(1) shall be in effect, and the provisions of paragraphs (g) through (i) shall be null and void.

(a) – (b) No change.

(c) Review by the Exchange Review Council[Market Operations Review Committee (“MORC”)]

(1) A member organization or person associated with a member organization may appeal a determination made under paragraph (a) to the Exchange Review Council[MORC]. A member organization or person associated with a member organization may appeal a determination made under paragraph (b) to the Exchange Review Council[MORC] unless the Senior Official making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest, and further provided that with respect to rulings made by the Exchange in conjunction with one or more additional market centers, the number of affected transactions is similarly such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest and, hence, are also non-appealable. An appeal must be made in writing, and must be received by the Exchange within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed. Once a written appeal has been received, the counterparty to the trade that is the subject of the appeal will be notified of the appeal and both parties shall be able to submit any additional supporting written information up until the time the appeal is considered by the Exchange Review Council[MORC]. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal to the Exchange Review Council[MORC] shall not operate as a stay of the determination being appealed, and the scope of the appeal shall be limited to trades which the person making the appeal is a party.

Once a party has appealed a determination to the Exchange Review Council[MORC], the determination shall be reviewed and a decision rendered, unless (i) both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered by the Exchange Review Council[MORC], or (ii) the party filing the appeal withdraws its appeal prior to the notification of counterparties. The Exchange Review Council[MORC] 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 between 3:00 ET and the close of trading in the After Hours Trading Session, 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. Upon consideration of the record, and after such hearings as it may in its discretion order, the Exchange Review Council[MORC], pursuant to the standards set forth in this Rule, shall affirm, modify, reverse, or remand the determination.

(2) The panel shall consist of three or more members of the Exchange Review Council[MORC], provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member organization whose revenues from market making activity exceed ten percent of its total revenues. In no case shall an Exchange Review Council[MORC] Panel include a person affiliated with a party to the trade in question.

(3) The decision of the Exchange Review Council[MORC] pursuant to an appeal, or a determination by an Exchange official that is not appealed, shall be final and binding upon all parties and shall constitute final action by the Exchange on the matter in issue. Any determination by an Exchange official pursuant to paragraph (a) or (b) or any decision by the Exchange Review Council[MORC] pursuant to paragraph (c) shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

(d) Communications

(1) All materials submitted to the Exchange or the Exchange Review Council[MORC] pursuant to this Rule shall be submitted in writing within the time parameters specified herein via the online complaint form available on the Exchange's website, facsimile, or such other telecommunications procedures as the Exchange may announce from time to time in an Equity Trader Alert. Materials shall be deemed received at the time indicated by the telecommunications equipment (e.g., facsimile machine or computer) receiving the materials. The Exchange, in its sole and absolute discretion, reserves the right to reject or accept any material that is not received within the time parameters specified herein. All times stated in this Rule are Eastern Time.

(2) No change.

(e) Fees

(1) No change.

(2) Appeal Fees

The party initiating an appeal shall be assessed a \$500.00 fee if the Exchange Review Council[MORC] upholds the decision of the Exchange official.

(3) No change.

(f) Refusal to Abide by Rulings of an Exchange Official or the Exchange Review Council[MORC]

It shall be considered conduct inconsistent with just and equitable principles of trade for any member organization to refuse to take any action that is necessary to effectuate a final decision of an Exchange official or the Exchange Review Council[MORC] under this Rule.

(g) – (i) No change.

* * * * *

EQUITY FLOOR PROCEDURE ADVICES

A. MISCELLANEOUS

A-1 Record of Orders on PSX

Member[s and member] organizations which act as brokers on PSX shall make and maintain the memorandum described in rule 17a-3(a)(6) and Rule 17a-4(b)(1) for all orders and partial orders that they enter on PSX in which they act as brokers.

FINE SCHEDULE (Implemented on a one year running calendar basis)	
1st Occurrence	\$100.00
2nd Occurrence	\$250.00
3rd	\$500.00

Occurrence	
4th and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

A-2 Failure to Comply with an Exchange Inquiry

Each member, member organization, or associated person is required to promptly comply with any request of information made by the Exchange in connection with any regulatory inquiry, investigation or examination relating to the Exchange's disciplinary jurisdiction or regulatory obligations.

For the purposes of this Advice, information received within ten business days from the date of the original request shall be deemed to meet the requirement of prompt compliance, except, for purposes of Exchange requests, information received within two business days from the date of the original request shall be deemed to meet the requirement of prompt compliance.

The Exchange may under extenuating circumstances grant extensions to allow for responses beyond the allotted requirement. Requests for extensions must be submitted in writing to the appropriate department prior to the due date of the outstanding request. Each additional request for information not furnished within the allotted time periods may be considered a separate occurrence for purposes of the fine schedule below.

FINE SCHEDULE (Implemented on a three year running calendar basis)	
1st Occurrence	\$200.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,500.00
4th and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

A-3 Supervisory Procedures Relating to ITSFEA

(a) – (b) No change.

FINE SCHEDULE (Implemented on a three year running calendar basis)	
1st Occurrence	\$250.00
2nd Occurrence	\$500.00
3rd and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

A-4 Fingerprinting Personnel

Member[s, and member] organizations are required to comply with Section 17(f) of the Securities Exchange Act of 1934 respecting the fingerprinting of required employees. Applicants for a permit must also be fingerprinted. Such fingerprints must be submitted to FINRA for identification and appropriate processing prior to any employee performing the functions listed in SEC rule 17f-2.

FINE SCHEDULE	
1st Occurrence	\$50.00
2nd Occurrence	\$100.00
3rd Occurrence	\$250.00
4th and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

A-5 Training

All members and persons employed by or associated with [such member or]a member organization shall successfully complete mandatory training, as required by the Exchange. Training topics include, but are not limited to, training related to that person’s function at the Exchange, changes in existing automated systems or any new technology that is utilized by the Exchange, compliance with Exchange Rules and federal securities laws.

Failure to attend the scheduled mandatory training described above may result in the issuance of a fine in accordance with the fine schedule below.

FINE SCHEDULE (Implemented on a three year running calendar basis)	
1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department</u> , <u>Department of Market Regulation</u> , or <u>Department of Enforcement</u> [Business Conduct Committee]

A-6 Failure to Provide Notification of Changes in Business Operations

Any [member or]member organization for which the Exchange is the Designated Examining Authority (“DEA”) shall provide prior written notification to the Exchange or its designee of any change in the business operations of such [member or]member organization which would cause the [member or]member organization to be subject to additional or modified net capital requirements, examination schedules or other registration, examination or regulatory requirements.

For the purposes of this Advice, the appropriate time frame for notification is at least 10 business days prior to the change in business operations.

FINE SCHEDULE (Implemented on a three year running calendar basis)	
1st Occurrence	\$250.00
2nd	\$500.00

Occurrence	
3rd Occurrence	\$1,000.00
4th and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

A-7 Failure to Timely Submit Amendments to Form U4, Form U5 and Form BD

Any [member, and]member organization that is required to file Form U4, Form U5 or Form BD pursuant to Exchange Rules 600, 611-613, 616 or 620, or the Securities Exchange Act of 1934 and the rules promulgated thereunder, is required to amend the applicable Form U4, Form U5 or Form BD to keep such forms current at all times. Member[s, and member] organizations shall amend Form U4, Form U5 or Form BD not later than thirty (30) days after the filer knew or should have known of the facts which gave rise to the need for the amendment.

FINE SCHEDULE (Implemented on a running 12 month period)	
1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

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OPTION FLOOR PROCEDURE ADVICES AND ORDER & DECORUM REGULATIONS

A. SPECIALISTS

A-1 – A-14 No change.

B. REGISTERED OPTIONS TRADERS

B-1 Responsibility to Make Markets

An ROT shall not refuse a request by a Floor Broker, Specialist, or Options Exchange Official to make a two sided market for any option series trading in the same crowd at which such ROT is trading.

FINE SCHEDULE (Implemented on a three-year running calendar basis)	
1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

B-2 Crowd Courtesy

An ROT shall position himself in the trading crowd so as to permit easy access to the time clock located at the Specialist post.

FINE SCHEDULE (Implemented on a two-year running calendar basis)	
1st Occurrence	\$250.00
2nd Occurrence	\$500.00
3rd Occurrence	\$1,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

B-3 Trading Requirements

(a) No change.

FINE SCHEDULE (Implemented on a two-year running calendar basis)

(a)

1. Quarterly requirement to trade the greater of 1,000 contracts or 50% of contract volume in person	
1st Occurrence	\$250.00
2nd Occurrence	\$500.00
3rd Occurrence	\$1,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]
2. Quarterly requirement to trade 50% in assigned options	
1st Occurrence	\$250.00
2nd Occurrence	\$500.00
3rd Occurrence	\$1,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

(b) For any calendar quarter, in addition to the requirements of paragraph (a) above, in order for an ROT (other than an RSQT or a Remote Specialist) to receive Specialist margin treatment for off-floor orders in accordance with Rule 1014, Commentary .01, the ROT must execute the greater of 1,000 contracts or 80% of his total contracts that quarter in person (not through the use of orders except that non-streaming ROTs can use orders entered in person) and 75% of his total contracts that quarter in assigned options. Violations of this trading requirement are subject to Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee] review.

B-4 ROTs Entering Orders from On-Floor and Off-Floor for Execution on the Exchange

An ROT may not enter from off the floor opening orders for his market maker accounts, but may enter from off the floor or on the floor opening orders for his customer account. An ROT may enter from off the floor closing orders for either his market maker or customer account.

However, an ROT who has executed the greater of 1,000 contracts or 80% of his total contracts in a calendar quarter in person and 75% of his total contracts that quarter in assigned options may enter an opening transaction from off the floor for his market maker account if such transaction is for the purpose of hedging, reducing risk of, or rebalancing positions of the ROT. The off-floor orders for which an ROT receives Specialist margin treatment shall be subject to the obligations of Rule 1014(a) and an ROT is responsible for evidencing reliance of these provisions. Violations of this paragraph are subject to Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee] review.

An ROT who enters an order from off the floor must advise the person receiving the order that it is an order for an ROT and must state whether the order is opening or closing, for a customer or market maker account, or opening from off-floor pursuant to the previous paragraph.

While on the floor, an ROT may place opening orders for his market maker account with a Floor Broker or with a Specialist which may then be executed even if the ROT has left the floor prior to its execution.

An ROT may cancel from off the floor opening or closing orders for his market maker or customer accounts; but if he wishes to effect a change in the terms of an opening order (e.g., security, price, volume, series, class or contingencies) from off the floor such changed order must be executed in his customer account, except in accordance with the second paragraph of this Advice.

An ROT shall not give discretion to a Floor Broker and shall not give a Floor Broker “not held” orders. With respect to delta orders placed with a Floor Broker for the account of an ROT, such orders may only be placed as day orders and must have the applicable delta legibly recorded on both the broker’s floor ticket and the ROT’s record of the order.

FINE SCHEDULE (Implemented on a three-year running calendar basis)	
1st Occurrence	\$500.00

2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

B-5 Agency-Principal Restrictions

Except under extraordinary circumstances and with the prior approval of an Options Exchange Official, a member may not act as an ROT and as a Floor Broker during the same trading session in options on the same underlying security. A member has acted as a Floor Broker if he has accepted an order even though such order was not executed. However, an ROT may close out positions held in his customer account in options on the same underlying security while he is acting as an ROT in those options.

FINE SCHEDULE (Implemented on a two-year running calendar basis)	
1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

B-6 Priority of Options Orders for Equity Options, Index Options and U.S. Dollar-Settled Foreign Currency Options by Account Type (EQUITY OPTION, INDEX OPTION AND U.S. DOLLAR-SETTLED FOREIGN CURRENCY OPTION ONLY)

Section A

No change.

Section B

Orders of controlled accounts, other than ROTs and Specialists market making in-person, must be

(1) verbally communicated as for a controlled account when placed on the floor and when represented to the trading crowd and

(2) recorded as for a controlled account by making the appropriate notation in the Options Floor Broker Management System.

In any instance where an order is misrepresented in this fashion due to factors which give rise to the concern that it was the result of anything other than an inadvertent error, the Exchange may determine to bypass the fine schedule below and refer the incident to the Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee] for possible disciplinary proceedings in accordance with those procedures set forth under the Rule 8000 and 9000 Series[Exchange's Disciplinary Rule 960].

Section C – Section F

No change.

FINE SCHEDULE (Implemented on a two-year running calendar basis)

Section No fine applicable. Matters subject for review by the Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee].

Section 1st Occurrence \$500.00

B

2nd Occurrence \$1,000.00

3rd Occurrence \$2,000.00

4th Occurrence and thereafter Sanction is discretionary with Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee]

Section Fine not applicable

C

Section Fine not applicable

D

Section Fine not
E applicable

B-7 No change.

B-8 Use of Floor Brokers by an ROT While on the Floor

(a) – (b) No change.

FINE SCHEDULE (Implemented on a three-year running calendar basis)

1st Occurrence \$250.00

2nd Occurrence \$500.00

3rd Occurrence \$1,000.00

4th Occurrence and Thereafter Sanction is discretionary with Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee]

B-9 – B-11 No change.

B-12 ROTs and Specialists Entering Orders for Execution on Other Exchanges in Multiply Traded Options

(a) – (b) No change.

FINE SCHEDULE (Implemented on a three-year running calendar basis)

1st Occurrence \$250.00

2nd Occurrence \$500.00

3rd Occurrence \$1,000.00

4th Occurrence of Thereafter Sanction is discretionary with Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee]

C. FLOOR BROKERS

C-1 Ascertaining the Presence of Registered Options Traders in a Trading Crowd

A Floor Broker representing an order in options shall ascertain that at least one Registered Options Trader is present in the trading crowd at the post where such order is traded. This Floor Procedure Advice C-1 shall not apply to a Floor Broker in any foreign currency option if no Registered Options Trader registered in such foreign currency option is present on the Exchange's trading floor at that time.

FINE SCHEDULE (Implemented on a two-year running calendar basis)

1st Occurrence	\$250.00
2nd Occurrence	\$500.00
3rd Occurrence	\$1,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

C-2 Options Floor Broker Management System

Options Floor Broker Management System. In order to create an electronic audit trail for options orders represented by Floor Brokers on the Exchange's Options Floor, a Floor Broker or such Floor Broker's employees shall, contemporaneously upon receipt of an order and prior to the representation of such an order in the trading crowd, record all options orders represented by such Floor Broker onto the electronic Options Floor Broker Management System (as described in Rule 1080, Commentary .06). The following specific information with respect to orders represented by a Floor Broker shall be recorded by such Floor Broker or such Floor Broker's employees: (i) the order type (i.e., customer, firm, broker-dealer, professional) and order receipt time; (ii) the option symbol; (iii) buy, sell, cross or cancel; (iv) call, put, complex (i.e., spread, straddle), or contingency order as described in Rule 1066; (v) number of contracts; (vi) limit price or market order or, in the case of a complex or multi-leg order, net debit or credit, if applicable; (vii) whether the transaction is to open or close a position; and (viii) The Options Clearing Corporation ("OCC") clearing number of the broker-dealer that submitted the order (collectively, the "required information"). A Floor Broker must enter complete alpha/numeric identification assigned by the Exchange for all orders entered on behalf of Exchange Registered Option Traders. Any additional information with respect to the order shall be inputted into the Options Floor Broker Management System contemporaneously upon receipt, which may occur after the representation and execution of the order.

Pursuant to Rule 1000(f), Floor Brokers are not permitted to execute orders in the Exchange's options trading crowd (subject to certain exceptions). In the event of a malfunction in the Options Floor Broker Management System or in the event that the Exchange determines that Floor Brokers are permitted to execute orders in the Exchange's options trading crowd for a specific reason pursuant to Rule 1000(f)(iii), Floor Brokers shall record the required information on trade tickets, and shall not represent an order for execution which has not been time stamped with the time of entry on the trading floor. Such trade tickets shall be time stamped upon the execution of such an order. Floor Brokers or their employees shall either enter the required information that is recorded on such trade tickets into the Exchange's electronic trading system or ensure that such information is entered for inclusion in the electronic audit trail.

Floor Brokers or their employees shall enter the required information (as described above) for FLEX options, or ensure that such information is entered, into the Exchange's electronic audit trail in the same electronic format as the required information for equity, equity index and U.S. dollar-settled foreign currency options. Floor Brokers or their employees shall enter the required information for FLEX options into the electronic audit trail on the same business day that a specific event surrounding the lifecycle of an order in FLEX options (including, without limitation, orders, price or size changes, execution or cancellation) occurs.

FBMS is also designed to execute two-sided orders entered by Floor Brokers, including multi-leg orders up to 15 legs, after representation in the trading crowd. When a Floor Broker submits an order for execution through FBMS, the order will be executed based on market conditions and in accordance with Exchange rules. FBMS execution functionality will assist the Floor Broker in clearing the Exchange book, consistent with Exchange priority rules. If the order cannot be executed, the System will attempt to execute the order a number of times for a period of no more than one second, which period shall be established by the Exchange and announced by Options Trader Alert, after which it will be returned to the Floor Broker on the FBMS. The Floor Broker may resubmit the order for execution, as long as the quotes/orders that comprise the cross have not been withdrawn. Floor Brokers are responsible for handling all FBMS orders in accordance with Exchange priority and trade-through rules, including Rules 1014, 1033 and 1084.

FINE SCHEDULE (Implemented on a two-year running calendar basis)

1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00

3rd Occurrence \$2,000.00

4th Occurrence and Thereafter Sanction is discretionary with Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee]

C-3 Handling Orders of ROTs and Other Registered Options Market Makers

(a) – (d) No change.

FINE SCHEDULE (Implemented on a two-year running calendar basis)

1st Occurrence \$500.00

2nd Occurrence \$1,000.00

3rd Occurrence \$2,000.00

4th Occurrence and Thereafter Sanction is discretionary with Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee]

C-4 Floor Brokers Handling Orders for Same Firm

A Floor Broker may not accept opening or discretionary orders for an ROT who is associated with the same member organization as such Floor Broker or who is associated with another member organization which is pursuant to Exchange Rule 793 affiliated with the same member organization as such Floor Broker.

FINE SCHEDULE (Implemented on a three-year running calendar basis)

1st Occurrence \$500.00

2nd Occurrence \$1,000.00

3rd Occurrence \$2,000.00

4th Occurrence and Thereafter Sanction is discretionary with Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee]

C-5 ROTs Acting as Floor Brokers

Whenever an order is handled as agent by a Floor Broker who is also an ROT, the Floor Broker must advise at the time a market is sought from the crowd for the order that he is acting as a Floor Broker. Bids or offers made in person by an ROT will be assumed to be for his account unless otherwise specified.

An exemption to the above exists in the instance where a Floor Broker is representing an order in an issue in which the broker has previously that day represented himself as an agent, provided that the Floor Broker obtain the prior approval of an Options Exchange Official. In such cases, a Floor Broker is not required to further advise the crowd of his role as agent in that issue for the remainder of that day.

FINE SCHEDULE (Implemented on a two-year running calendar basis)

1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

C-7 Responsibility to Represent Orders to the Trading Crowd

(a) – (b) No change.

FINE SCHEDULE (Implemented on a two-year running calendar basis)

(a) Fine not applicable. Matters subject for review by the Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee].

(b)

1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u>

and Thereafter Enforcement[Business Conduct Committee.]

C-8 No change.

C-9 Floor Brokers and Clerks Trading in their Customer Accounts

All persons employed on the trading floor in association with a [M]member organization, other than ROTs and Specialists, are prohibited from initiating trades in Exchange options in their customer accounts while on the floor. A [M]member [O]organization which accepts an order for the customer account of such a person must process the order through the channels it normally provides for its other customer orders. When any such order is received by the [M]member [O]organization and delivered to the floor for execution, it may not be handled by any person with a beneficial interest in the account, or by any associated person with knowledge that the order is for the account of an associate. Once such a person has placed an order for his/her customer account in an option, that person is prohibited from brokering orders in that option for the remainder of that day or until such order has been executed or cancelled whichever is later. This provision shall not apply to any transaction permissible under Section 11(a) (1) of the Securities Exchange Act of 1934.

FINE SCHEDULE (Implemented on a three-year running calendar basis)

Matters subject to review by Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee].

D. No change.

E. STAFFING

E-1 Required Staffing of Options Floor

Every Options Specialist Unit, Floor Brokerage Unit, Clearing Firm, Floor Broker and ROT must have a representative available on the floor (except that a Remote Specialist must have a representative available via telephonic and/or electronic communication access) for the thirty minutes before the opening and the thirty minutes after the close of trading and one hour after the preliminary trade reports are distributed. Such representatives must be authorized to make appropriate changes and corrections to trades of or guaranteed by such Specialist Unit, Floor Brokerage Unit, Clearing Firm, Floor Broker and ROT. Additionally, on expiration such representatives must be available on the floor until the Exchange has announced the last call for adjustments in expiring options.

FINE SCHEDULE (Implemented on a two-year running calendar basis)

1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department,</u> <u>Department of Market Regulation, or Department of</u> <u>Enforcement</u> [Business Conduct Committee]

F. MISCELLANEOUS

F-1 Use of Identification Letters and Numbers

No change.

F-2 Allocation, Time Stamping, Matching and Access to Matched Trades

(a) – (e) No change.

FINE SCHEDULE (Implemented on a three-year running calendar basis).

1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department,</u> <u>Department of Market Regulation, or Department of</u> <u>Enforcement</u> [Business Conduct Committee]

F-2 (b)

1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,500.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department,</u> <u>Department of Market Regulation, or Department of</u> <u>Enforcement</u> [Business Conduct Committee]

F-3 No change.

F-4 Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements

(a) – (b) No change.

FINE SCHEDULE (Implemented on a two-year running calendar basis)

1st Occurrence	\$250.00
2nd Occurrence	\$500.00
3rd Occurrence	\$1,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

F-5 Changes or Corrections to Material Terms of a Matched Trade

(a) – (b) No change.

FINE SCHEDULE (Implemented on a three-year running calendar basis)

1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

F-6 Option Quote Parameters

When bidding and/or offering in equity option or index option issues, the following parameters should be utilized (i) on the opening and (ii) after the opening for those quoting verbally:

<i>Current Option Bid</i>	<i>Maximum Quote Spread</i>
Less than \$2.00	.25
\$2.00 to less than \$5.00	.40

\$5.00 to less than \$10.00	.50
\$10.00 to less than \$20.00	.80
\$20.00 and greater	1

After the opening, options trading on Phlx XL II may be quoted electronically with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid. The \$5 bid/ask differentials only apply following the opening rotation in each security (i.e., the bid/ask differentials specified above shall apply during the opening). Quotations provided in open outcry may not be made with \$5 bid/ask differentials and instead must comply with the bid/ask differential requirements described above.

The bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. For such series, the bid/ask differential may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded up to the nearest minimum increment.

Foreign Currency Options

When bidding and/or offering in U.S. dollar-settled foreign currency option issues, the following parameters should be utilized (i) on the opening and (ii) after the opening for those quoting verbally (in open outcry):

<i>Current Option Bid</i>	<i>Maximum Quote Spread</i>
Less than \$2.00	.25
\$2.00 to less than \$5.00	.40
\$5.00 to less than \$10.00	.50
\$10.00 to less than \$20.00	.80
\$20.00 and greater	1

After the opening, options trading on Phlx XL II may be quoted electronically with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid. The \$5 bid/ask differentials only apply following the opening rotation in each security (i.e., the bid/ask differentials specified above shall apply during the opening). Quotations provided in open outcry may not be made with \$5 bid/ask differentials and instead must comply with the bid/ask differential requirements described above.

The bid/ask differential as stated above shall apply to all listed series, including the longest term, except for the two longest term series open for trading in the Euro options and long-term foreign currency options.

Relief

Relief from the established bid/ask differentials may be granted upon the receipt of an approval of an Options Exchange Official.

Batching

The Exchange may aggregate individual violations and treat such violations as a single offense.

FINE SCHEDULE (Implemented on a one-year running calendar basis)

1st Occurrence	Warning letter
2nd Occurrence	Warning letter
3rd Occurrence	Warning letter
4th Occurrence	\$250.00
5th Occurrence	\$500.00
6th Occurrence	\$1,000.00
7th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

F-7 No change.

F-8 Failure to Comply with an Exchange Inquiry

Each member, member organization or associated person is required to promptly comply with any request of information made by the Exchange in connection with any regulatory inquiry, investigation or examination relating to the Exchange's disciplinary jurisdiction or regulatory obligations.

For the purposes of this Advice, information received within ten (10) business days from the date of the original request shall be deemed to meet the requirement of prompt compliance, except, for purposes of Exchange requests, information received within two

business days from the date of the original request shall be deemed to meet the requirement of prompt compliance.

The Exchange may under extenuating circumstances grant extensions to allow for responses beyond the allotted requirement. Requests for extensions must be submitted in writing to the appropriate department, prior to the due date of the outstanding request. Each additional request for information not furnished within the allotted time periods may be considered a separate occurrence for purposes of the fine schedule below.

FINE SCHEDULE (Implemented on a three-year running calendar basis)

1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department,</u> <u>Department of Market Regulation, or Department of</u> <u>Enforcement</u> [Business Conduct Committee]

Whenever the Exchange staff requests that a floor broker identify clients with respect to an order, regardless of whether that order has been executed or not, the floor broker must immediately provide the Exchange with sufficient information to reveal the identity of the floor broker's clients. If the floor broker fails to comply immediately with such request, the fines in the schedule above apply.

F-9 Affiliations

(i) – (ii) No change.

FINE SCHEDULE (Implemented on a three-year running calendar basis)

1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department,</u> <u>Department of Market Regulation, or Department of</u> <u>Enforcement</u> [Business Conduct Committee]

F-10 No change.

F-11 Splitting Orders

ROTs of the same Firm, affiliated or financially affiliated ROTs, when bidding or offering at the same price for the same option, are to be treated as one interest for purpose of splitting an order in the trading crowd.

For the purposes of this Advice, affiliated ROT's are ROTs required to report such affiliations pursuant to Rule 908 and financially affiliated ROT's are ROT's required to report financial arrangements pursuant to Rule 783.

FINE SCHEDULE (Implemented on a two-year running calendar basis)

1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence and Thereafter	Sanction is [D]discretionary with [the] <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

F-12 Responsibility for Assigning Participation

(a) – (d) No change.

FINE SCHEDULE (Implemented on a two-year running calendar basis)

1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

F-13 Supervisory Procedures Relating to ITSFEA

(a) – (b) No change.

FINE SCHEDULE (Implemented on a three-year running calendar basis)

1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department,</u> <u>Department of Market Regulation, or Department of</u> <u>Enforcement</u> [Business Conduct Committee]

F-14 No change.

F-15 Minor Infractions of Position/Exercise Limits and Hedge Exemptions

(a) Minor violations of the Exchange's position and exercise limits (Exchange Rule 1001 - Position Limits, Exchange Rule 1002 - Exercise Limits, Exchange Rule 1001A - Position Limits, and Exchange Rule 1002A - Exercise Limits) which do not exceed such limits by more than 5% may result in the issuance of a fine in accordance with section (a) of the fine schedule below.

In addition, when a position limit exemption for a specific period has lapsed without the position either being brought into compliance or a new exemption granted, a fine in accordance with section (a) of the fine schedule below may be issued.

Other violations of the position and exercise limit are subject to review by the Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee] in accordance with those procedures set forth under the Rule 8000 and 9000 Series[Exchange's Disciplinary Rules].

(b) Automatic hedge exemptions are available for stock option positions. Specifically, each option of a stock option position hedged by 100 shares of stock or securities convertible into such stock, is exempted from having to be included in the aggregation count for the purposes of the position and exercise limits. The exemption is limited, however, to an amount of option contracts no greater than twice the standard limit of the respective option. Permissible hedges are provided below:

long stock, short call

long stock, long put

short stock, long call

short stock, short put

(i) No change.

(ii) Hedge exemptions apply for only as long as the hedge is maintained. In any instance where the stock side to a hedge exemption is decreased, the appropriate number of options must be liquidated prior to or simultaneous with the corresponding decrease in any stock position utilized to provide an automatic option hedge exemption. Failure to appropriately reduce the respective option position following such a decrease in the stock position such that the position limit does not exceed the limit by more than 5% may result in the issuance of a fine in accordance with section (b)(ii) of the fine schedule below. Instances where the resulting position exceeds established limits by more than 5% are subject to review by the Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee] in accordance with those procedures set forth under the Rule 8000 and 9000 Series[Exchange's Disciplinary Rules].

FINE SCHEDULE (Implemented on a two-year running calendar basis)

(a)

1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

(b)

(i)

1st Occurrence	\$250.00
2nd Occurrence	\$500.00
3rd Occurrence	\$1,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

(ii)

1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department,</u> <u>Department of Market Regulation, or Department of</u> <u>Enforcement</u> [Business Conduct Committee]

F-16 – F-18 No change.**F-19 Clearing Agents' Responsibility for Carrying Positions in Market Maker Accounts**

A member organization of this Exchange which is also a clearing member of OCC carrying accounts for Specialists and ROTs/market makers is required to take reasonable steps to ensure that only those positions in Exchange listed options which are eligible for exempt credit treatment are carried in the market functions account. Any transaction on another Exchange in an option that is also listed on the Exchange is covered by this Advice. Reasonable steps include the adoption and implementation of procedures designed to detect any pattern of activity in contravention of this Advice.

FINE SCHEDULE (Implemented on a three-year running calendar basis)

1st Occurrence	\$500.00
2nd Occurrence	\$1,000.00
3rd Occurrence	\$2,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department,</u> <u>Department of Market Regulation, or Department of</u> <u>Enforcement</u> [Business Conduct Committee]

F-20 – F-22 No change.**F-23 Clerks in the Crowd**

Clerks, other than Specialist clerks, are prohibited from a sustained presence in the trading crowd. In addition, clerks are prohibited from requesting market quotations from

a Specialist or ROT, except that a Specialist clerk, under the supervision of a Specialist, may request the crowd's market in order to update disseminated markets or ascertain parity/priority splits in relation to the execution of an order. For purposes of this Advice, a clerk is any associated person not registered or eligible to effect transactions on the floor as a Specialist, ROT or Floor Broker, including member[s] organizations whose membership privileges have been suspended or terminated as well as other member[s] organizations without trading privileges.

A sustained presence shall be a period of time beyond such time that would, under the prevailing circumstances, be needed by the clerk to complete the allowable business function which brought the clerk to that crowd in the first place.

FINE SCHEDULE (Implemented on a three-year running calendar basis)

1st Occurrence	\$250.00
2nd Occurrence	\$500.00
3rd Occurrence	\$1,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

F-24 No change.

F-25 Fingerprinting Floor Personnel

Member[s, and member] organizations are required to comply with Section 17(f) of the Securities Exchange Act of 1934 respecting the fingerprinting of required employees. Applicants for a permit must also be fingerprinted. Such fingerprints must be submitted to the FINRA for identification and appropriate processing prior to any employee performing the functions listed in SEC rule 17f-2.

FINE SCHEDULE (Implemented on a two-year running calendar basis)

1st Occurrence	\$250.00
2nd Occurrence	\$500.00
3rd Occurrence	\$1,000.00
4th Occurrence	Sanction is discretionary with <u>Phlx Regulation Department,</u>

and Thereafter Department of Market Regulation, or Department of Enforcement[Business Conduct Committee]

F-27 Options Exchange Official Rulings

Options Exchange Officials are empowered to render rulings on the trading floor to resolve trading disputes occurring on and respecting activities on the trading floor. All rulings rendered by Options Exchange Officials are effective immediately and must be complied with promptly. Failure to promptly comply with a ruling concerning a trading dispute may result in referral to the Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee]. Failure to promptly comply with other rulings issued pursuant to Order and Decorum Regulations or Floor Procedure Advices and not concerning a trading dispute may result in an additional violation. Options Exchange Officials need not render decisions in any instance where the request for a ruling was not made within a reasonable period of time. An Options Exchange Official should not render a decision or authorize a citation where such Options Exchange Official was involved in or affected by the dispute, as well as in any situation where the Options Exchange Official is not able to objectively and fairly render a decision.

Options Exchange Officials shall endeavor to be prompt in rendering decisions. However, in any instance where an Options Exchange Official has determined that the benefits of further discovery as to the facts and circumstances of any matter under review outweigh the monetary risks of a delayed ruling, the Options Exchange Official may determine to delay rendering the ruling until such time as that further discovery is completed. In issuing decisions for the resolution of trading disputes, Options Exchange Officials shall institute the course of action deemed by the ruling Options Exchange Official to be more fair to all parties under the circumstances at the time. An Options Exchange Official may direct the execution of an order on the floor, or adjust the transaction terms or participants to an executed order on the floor. However, an Options Exchange Official may nullify a transaction if they determine the transaction to have been in violation of Rule 1014 (Obligations and Restrictions Applicable to Specialists and Registered Options Traders) or Rule 1033 (Bids And Offers-Premium).

Exchange staff may determine that an Options Exchange Official is ineligible to participate in a particular ruling where it appears that such Options Exchange Official has a conflict of interest. For purposes of this Rule, and without limitation, a conflict of interest exists where an Options Exchange Official: (a) is directly or indirectly affiliated with a party seeking an Options Exchange Official ruling; (b) is a participant or is directly or indirectly affiliated with a participant in a transaction that is the subject of an Options Exchange Official ruling; (c) is a debtor or creditor of a party seeking an Options

Exchange Official ruling; or (d) is an immediate family member of a party seeking an Options Exchange Official ruling. Exchange staff may consider other circumstances, on a case-by-case basis, in determining the eligibility or ineligibility of a particular Options Exchange Official to participate in a particular ruling due to a conflict of interest.

All Options Exchange Official rulings concerning the adjustment and nullification of transactions are reviewable by the Exchange Review Council[Market Operations Review Committee].

(i) Regulatory staff must be advised within 15 minutes of an Options Exchange Official's ruling that a party to such ruling has determined to appeal from such ruling to the Exchange Review Council[Market Operations Review Committee]. The Exchange may establish the procedures for the submission of a request for a review of an Options Exchange Official ruling. Options Exchange Official rulings concerning the nullification or adjustment of transactions may be sustained, overturned or modified by the Exchange Review Council[Market Operations Review Committee]. In making a determination, the Exchange Review Council[Market Operations Review Committee] may consider facts and circumstances not available to the ruling Options Exchange Official as well as action taken by the parties in reliance on the Options Exchange Official's ruling (e.g., cover, hedge and related trading activity).

(ii) All decisions made by the [Market Operations Review Committee]Exchange Review Council in connection with initial rulings on requests for relief and with the review of an Options Exchange Official ruling pursuant to Rule 124(d) shall be documented in writing and maintained by the Exchange in accordance with the record keeping requirements set forth in the Securities Exchange Act of 1934, as amended, and the rules thereunder.

(iii) A member or member organization seeking the [Market Operations Review Committee]Exchange Review Council review of an Options Exchange Official ruling shall be assessed a fee of \$250.00 for each Options Exchange Official ruling to be reviewed that is sustained and not overturned or modified by the [Market Operations Review Committee]Exchange Review Council.

(iv) Decisions of the [Market Operations Review Committee]Exchange Review Council concerning the review of Options Exchange Official rulings relating to the nullification or adjustment of transactions shall be final and may not be appealed to the Exchange's Board of Directors.

(v) Failure to promptly comply with an Options Exchange Official or [Market Operations Review Committee]Exchange Review Council decision under this Rule may result in referral to the Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee].

FINE SCHEDULE

\$250.00

F-28 No change.**F-30 Options Trading Floor Training**

All members and persons employed by or associated with [such member or]a member organization shall successfully complete mandatory training, as required by the Exchange. Training topics include, but are not limited to, training related to that member's or person's function at the Exchange, changes in existing automated systems or any new technology that is utilized by the Exchange, compliance with Exchange Rules and federal securities laws, and issues related to conduct, health and safety on the trading floor. In addition, floor members shall complete mandatory training programs, on at least a semi-annual basis, that address compliance with the federal securities laws and the Exchange's Rules in place to prevent and deter unlawful trading by floor members.

Failure to attend the scheduled mandatory training described above may result in the issuance of a fine in accordance with the fine schedule below.

FINE SCHEDULE (Implemented on a three-year running calendar basis)

1st Occurrence \$500.00

2nd Occurrence \$1,000.00

3rd Occurrence \$2,000.00

4th Occurrence Sanction is discretionary with Phlx Regulation Department,
and Thereafter Department of Market Regulation, or Department of
Enforcement[Business Conduct Committee]

F-31 Communications and Equipment

(1) - (8) No change.

FINE SCHEDULE (Implemented on a three year running calendar basis)

1st \$250.00
Occurrence

2nd \$500.00

Occurrence

3rd \$1,000.00

Occurrence

4th Sanction is discretionary with Phlx Regulation Department, Department of
 Occurrence Market Regulation, or Department of Enforcement[Business Conduct
 Committee]

F-32 No change.

F-33 Failure to Provide Notification of Changes in Business Operations

Any [member or]member organization for which the Exchange is the Designated Examining Authority (“DEA”) shall provide prior written notification to the Exchange or its designee of any change in the business operations of such [member or]member organization which would cause the [member or]member organization to be subject to additional or modified net capital requirements, examination schedules or other registration, examination or regulatory requirements.

For the purposes of this Advice, the appropriate time frame for notification is at least 10 business days prior to the change in business operations.

FINE SCHEDULE (Implemented on a three year running calendar basis)

1st \$250.00

Occurrence

2nd \$500.00

Occurrence

3rd \$1,000.00

Occurrence

4th and Sanction is discretionary with Phlx Regulation Department, Department of
 Thereafter Market Regulation, or Department of Enforcement[Business Conduct
 Committee]

F-34 Failure to Timely Submit Amendments to Form U4, Form U5 and Form BD

Any [member, and]member organization that is required to file Form U4, Form U5 or Form BD pursuant to Exchange Rules 600, 611-613, 616, or 620, or the Securities Exchange Act of 1934 and the rules promulgated thereunder, is required to amend the

applicable Form U4, Form U5 or Form BD to keep such forms current at all times. Member[s, and member] organizations and participant organizations shall amend Form U4, Form U5 or Form BD not later than thirty (30) days after the filer knew or should have known of the facts which gave rise to the need for the amendment.

FINE SCHEDULE (Implemented on a running 12 month period)

1st Occurrence \$500.00

2nd Occurrence \$1,000.00

3rd Occurrence \$2,000.00

4th and Thereafter Sanction is discretionary with Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee]

F-35 No change.

G. INDICES

G-1 Index Option Exercise Advices

In accordance with the provisions of Exchange Rule 1042A, all Specialists, ROTs, customers and Firms must complete an exercise advice when exercising any American style index option contract(s) and exercise the amount of option contracts indicated on the exercise advice.

Specialists, ROTs, customers and Firms must time stamp and submit the completed exercise advice to Exchange staff at the Surveillance Post or in the trading crowd no later than five minutes after the close of trading on the day of the exercise with respect to any American style index option traded on the Exchange. Exercise advices for index options are not required on (a) the business day prior to expiration in series expiring on a day other than a business day or (b) the expiration day in series expiring on a business day.

Those Firms utilizing the electronic systems of the Options Clearing Corporation to meet the time requirements of this Advice must transmit to the Options Clearing Corporation index exercise instructions according to the time frames described above.

The fine schedule below provides sanctions for infractions of the index option exercise advice procedures which are minor in nature. Any violation of the procedure which has been deemed serious by the Exchange will be referred directly to the Exchange's Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement[Business Conduct Committee] where stronger sanctions may result.

FINE SCHEDULE (Implemented on a two-year running calendar basis)

1st Occurrence	\$250.00
2nd Occurrence	\$500.00
3rd Occurrence	\$1,000.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department, Department of Market Regulation, or Department of Enforcement</u> [Business Conduct Committee]

H. REGULATIONS Pursuant to Rule [60]9216(c)

Regulation 1 - Smoking and Alcohol

Smoking is prohibited on the trading floor and the lower level areas adjacent to the trading floor except for those areas specifically designated for smoking.

1st Occurrence	\$250.00
2nd Occurrence	\$500.00
3rd Occurrence	\$1,000.00
4th and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department</u> [Business Conduct Committee]

Alcoholic beverages are prohibited on the trading floor and the lower level areas adjacent to the trading floor.

1st Occurrence	\$1,000.00
2nd Occurrence	Sanction is discretionary with <u>Phlx Regulation Department</u> [Business Conduct Committee]

Regulation 2 - Food, Liquids and Beverages, Trash, Litter and Vandalism**(a) Food, Liquids and Beverages**

Food, liquids and beverages while allowed on the trading floor, should be kept and consumed in a way that does not unreasonably interfere with others. All drinks should be in cans or covered containers. Food and drink may not be consumed while in transit on the trading floor.

1st Occurrence \$250.00

2nd Occurrence \$500.00

3rd Occurrence \$1,000.00

4th and Thereafter Sanction is discretionary with Phlx Regulation Department[Business Conduct Committee]

(b) Trash and Litter

All debris resulting from the consumption of food and drink, and other non-business trash, must be properly disposed of. Throwing or dropping objects on the trading floor, including food or drink, is strictly prohibited. All trading posts/booths must be free of debris, trash or litter at the end of each trading day.

The following fine schedule will apply to a violation of this section:

1st Occurrence \$250.00

2nd Occurrence \$500.00

3rd Occurrence \$1,000.00

4th and Thereafter Sanction is discretionary with Phlx Regulation Department[Business Conduct Committee]

(c) Vandalism

The abuse, destruction, or theft (“Vandalism”) of any property on the Exchange’s premises, whether or not owned by the Exchange, is a serious offense and will be dealt with appropriately, including prompt disciplinary action.

The following fine schedule will apply to a violation of this section:

1st Occurrence \$3,000.00 and restitution

2nd Occurrence \$5,000.00 and restitution

3rd Occurrence \$10,000.00 and restitution

4th and Thereafter Sanction is discretionary with Phlx Regulation Department[Business Conduct Committee]

Each Floor Manager, Post Supervisor, or Firm Representative will be responsible for monitoring staff compliance with this Regulation. A violation of this Regulation may result in fines to the members, member organizations and [their]associated persons.

Regulation 3 - Identification Badges/Access Cards

(i) Identification badges must be worn chest high in full view and must accurately reflect the respective person's associations and affiliations.

1st Occurrence Official Warning

2nd Occurrence \$100.00

3rd Occurrence \$200.00

4th and Thereafter Sanction is discretionary with Phlx Regulation Department[Business Conduct Committee]

(ii) No change.

Regulation 4 - Order

(a) Members and [their]associated persons shall not conduct themselves in a disorderly manner on the trading floor or on the premises immediately adjacent to the trading floor. Further, members, participants and [their]associated persons shall not conduct themselves in an indecorous manner that is disruptive to the conduct of business on the trading floor, including but not limited to the use of profanity.

The fines to be imposed for such violations shall be as follows:

1st Occurrence \$500.00

2nd Occurrence \$1,000.00

3rd Occurrence \$2,500.00

4th Occurrence and Thereafter Sanction is discretionary with Phlx Regulation Department[Business Conduct Committee]

(b) Members and [their]associated persons shall not direct any threatening, abusive, harassing or intimidating speech or conduct at anyone while on the trading floor or on the premises immediately adjacent to the trading floor. The fines to be imposed for such violations shall be as follows:

1st Occurrence \$2,500.00

2nd Occurrence \$5,000.00

3rd and thereafter Sanction is discretionary with Phlx Regulation Department[Business Conduct Committee]

(c) Members and [their]associated persons shall not possess a firearm on the trading floor or on the premises immediately adjacent to the trading floor. As stated in Rule [60]9216(c)(2), members, participants and [their]associated persons shall be excluded from the floor if they possess a firearm. In addition, the fines to be imposed for such violations shall be as follows

1st Occurrence \$5,000.00

2nd Occurrence Sanction is discretionary with Phlx Regulation Department[Business Conduct Committee]

(d) Members and [their]associated persons shall not possess illegal controlled substances on the trading floor or on the premises immediately adjacent to the trading floor.

1st Occurrence \$5,000.00

2nd Occurrence Sanction is discretionary with Phlx Regulation Department[Business Conduct Committee]

(e) No change.

(f) Each Floor Manager, Post Supervisor, or Firm Representative will be responsible for monitoring staff compliance with this Regulation. A violation of this Regulation may result in fines to the members, member organizations and [their]associated persons.

Regulation 5 - Visitors

Non-member visitors will be permitted on the trading floor at the discretion of an Exchange official or Options Exchange Official. All visitors must be signed in by a member or Exchange official and accompanied at all times by a member, associated person [of a member]or an Exchange official.

1st Occurrence Official Warning

2nd Occurrence \$50.00

3rd Occurrence \$100.00

4th Occurrence \$200.00

5th and Thereafter Sanction is discretionary with Phlx Regulation Department[Business Conduct Committee]

Each Floor Manager, Post Supervisor, or Firm Representative will be responsible for monitoring staff compliance with this Regulation. A violation of this Regulation may result in fines to the members, member organizations and [their]associated persons.

Non-member visitors who are performing contract work at the Exchange on behalf of a member are required to provide, upon request, a certificate of insurance evidencing Professional Liability Insurance in respect of all claims for injury, loss or damage arising out of any errors, acts or omissions in the performance of his or her duties for a sum of not less than \$1,000,000 for any one occurrence or series of occurrences and list Nasdaq PHLX as an insured. This includes any non-member visitors who are requesting access to perform any type of work at the Exchange or are utilizing any building facilities.

1st Occurrence \$1,000.00

2nd Occurrence \$5,000.00

3rd and Thereafter Sanction is discretionary with Phlx Regulation Department[Business Conduct Committee]

Regulation 6 - Dress

The Dress Code must be complied with at the point of entry to the trading floor. The Dress Code is in effect on the trading floor before, during and after trading hours. The Dress Code outlining acceptable and unacceptable dress for members and [their]member organization staff, and changes thereto, shall be communicated to members and member organizations by the Exchange in writing. Changes to the Dress Code shall be effective

three business days after they are so communicated. In addition, the Dress Code will be posted in at least one visible location on the trading floor of the Exchange.

Each member will be responsible for compliance with this Regulation; and each member organization will be responsible for monitoring staff compliance with this Regulation. A violation of this Regulation may result in fines to the members, member organizations and [their]associated persons.

The following is the fine schedule for dress code violations:

1st Occurrence	\$100.00
2nd Occurrence	\$250.00
3rd Occurrence	\$500.00
4th Occurrence and Thereafter	Sanction is discretionary with <u>Phlx Regulation</u> <u>Department</u> [Business Conduct Committee]

Regulation 7 - Proper Utilization of the Security System

a) Attempt to Circumvent the Security System of the Exchange

Any member or employee of a [M]member [O]organization who wishes to enter or exit the Exchange trading facilities must do so through the areas where the Exchange security systems are located.

1st Occurrence	\$250.00
2nd Occurrence	\$500.00
3rd and Thereafter	Sanction is discretionary with <u>Phlx Regulation Department</u> [Business Conduct Committee]

b) Required Filing for Floor Member Organization Employee Status Notices with the Exchange

Following the termination of, or the initiation of a change in the trading status of any member or any non-member/clerk and trading floor personnel including clerks, interns, stock execution clerks and any other associated person, of member organizations who have been issued an Exchange access card and trading floor badge, the appropriate Exchange form must be completed, approved and dated by a firm, principal, officer, or member of the firm with authority to do so, and submitted to the appropriate Exchange Department as soon as possible, but no later than 9:30 A.M. the next business day by the

member organization employer. Further, every effort should be made to obtain the employee's access card and trading floor badge and to submit these to the appropriate Exchange Department.

1st Occurrence \$100.00

2nd Occurrence \$200.00

3rd and Thereafter Sanction is discretionary with Phlx Regulation Department[Business Conduct Committee]

c) Required Filing for the Termination of, or the Initiation of a Change in the Status of, a Business Relationship between [M]member[s] organizations and their Clearing Organizations

Following the commencement or termination of a clearing arrangement between member[s] organizations and their clearing organization, a completed "Clearing Arrangement Notice" must be submitted to the Exchange as soon as possible, but no later than 9:30 AM the next business day by such clearing organization.

1st Occurrence \$100.00

2nd Occurrence \$200.00

3rd and Thereafter Sanction is discretionary with Phlx Regulation Department[Business Conduct Committee]

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8000. Investigations and Sanctions

8001. Regulation of the Exchange and its Member Organizations

The Exchange and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions described in these rules on behalf of the Exchange. Exchange rules that refer to the Phlx Regulation Department, Exchange Regulation staff, Exchange staff, and Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.

Notwithstanding the fact that the Exchange has entered into the Regulatory Contract with FINRA to perform some of the Exchange's functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.

8100. General Provisions**8110. Availability of Manual to Customers**

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

8120. Definitions

(a) Unless otherwise provided, terms used in the Rule 8000 Series shall have the meaning as defined in Rule 1.

(b) The term “Adjudicator” shall have the meaning as defined in Rule 9120.

8200. Investigations**8210. Provision of Information and Testimony and Inspection and Copying of Books****(a) Authority of the Phlx Regulation Department, Including FINRA Staff**

For the purpose of an investigation, complaint, examination, or proceeding authorized by the By-Laws or Exchange Rules, the Phlx Regulation Department, including FINRA staff shall have the right to:

(1) require a member, member organization, person associated with a member organization, or person subject to the Exchange’s jurisdiction to provide information orally, in writing, or electronically (if the requested information is, or is required to be, maintained in electronic form) and to testify at a location specified by the Phlx Regulation Department, including FINRA staff, under oath or affirmation administered by a court reporter or a notary public if requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding; and

(2) inspect and copy the books, records, and accounts of such member, member organization or person with respect to any matter involved in the investigation, complaint, examination, or proceeding.

(b) Other SROs and Regulators

The Phlx Regulation Department, including FINRA staff, also may exercise the authority set forth in paragraph (a) for the purpose of an investigation, complaint, examination, or proceeding conducted by another domestic or foreign self-regulatory organization, association, securities or contract market, or regulator of such markets with which the Exchange has entered into an agreement providing for the exchange of information and

other forms of material assistance solely for market surveillance, investigative, enforcement, or other regulatory purposes.

(c) Requirement to Comply

No member, member organization or person shall fail to provide information or testimony or to permit an inspection and copying of books, records, or accounts pursuant to this Rule.

(d) Notice

A notice under this Rule shall be deemed received by the member, member organization or person to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the member organization or the last known residential address of the member or person as reflected in the Central Registration Depository. If the Phlx Regulation Department staff, including FINRA staff, responsible for mailing or otherwise transmitting the notice to the member, member organization or person has actual knowledge that the address in the Central Registration Depository is out of date or inaccurate, then a copy of the notice shall be mailed or otherwise transmitted to:

- (1) the last known business address of the member organization or the last known residential address of the member or person as reflected in the Central Registration Depository, and
- (2) any other more current address of the member, member organization or the person known to the Adjudicator or the Phlx Regulation Department, including FINRA staff who is responsible for mailing or otherwise transmitting the notice.

(e) Electronic Interface

In carrying out its responsibilities under this Rule, the Exchange may, as appropriate, establish programs for the submission of information to FINRA on a regular basis through a direct or indirect electronic interface between FINRA and Exchange member organizations.

(f) Inspection and Copying

A witness, upon proper identification, may inspect the official transcript of the witness's own testimony. Upon written request, a person who has submitted documentary evidence or testimony in an investigation may procure a copy of the person's documentary evidence or the transcript of the person's testimony upon payment of the appropriate fees, except that prior to the issuance of a complaint arising from the investigation, the Phlx Regulation Department, including FINRA staff, may for good cause deny such request.

8211. Automated Submission of Trading Data

(a) A member organization shall submit the trade data specified below in automated format as may be prescribed by the Phlx Regulation Department, including FINRA staff, from time to time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by the Phlx Regulation Department, including FINRA staff.

(b) If the transaction was a proprietary transaction effected or caused to be effected by the member organization for any account in which such member organization, or person associated with a member organization, is directly or indirectly interested, such member organization shall submit or cause to be submitted the following information:

(1) Clearing house number, or alpha symbol as used by the member organization submitting the data;

(2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the member organization(s) on the opposite side of the transaction;

(3) Identifying symbol assigned to the security;

(4) Date transaction was executed;

(5) Number of shares, or quantity of bonds or options contracts for each specific transaction and whether each transaction was a purchase, sale, short sale, or, if an options contract, whether open long or short or close long or short;

(6) Transaction price;

(7) Account number; and

(8) Market center where transaction was executed.

(c) If the transaction was effected or caused to be effected by the member organization for any customer account, such member organization shall submit or cause to be submitted the following information:

(1) The data described in subparagraphs (b)(1) through (8) above;

(2) The customer name, address(es), branch office number, registered representative number, whether order was solicited or unsolicited, date account opened, employer name, and the tax identification number(s); and

(3) If the transaction was effected for another member organization, whether the other member organization was acting as principal or agent.

(d) In addition to the above trade data, a member organization shall submit such other information in such automated format as may from time to time be required by the Phlx Regulation Department.

(e) Pursuant to the Rule 9600 Series, the Exchange may exempt a member organization from the requirement that the data prescribed in paragraphs (b) through (d) above be submitted to the Phlx Regulation Department, including FINRA staff, in an automated format for good cause shown.

8212. Reserved

8213. Reserved

8220. Reserved

8300. Sanctions

8310. Sanctions for Violation of the Rules

(a) Imposition of Sanction

After compliance with the Rule 9000 Series, the Exchange may impose one or more of the following sanctions on a member, member organization or person associated with a member organization for each violation of the federal securities laws, rules or regulations thereunder, or the Exchange Rules, or may impose one or more of the following sanctions on a member, member organization or person associated with a member organization for any neglect or refusal to comply with an order, direction, or decision issued under the Rules of the Exchange:

(1) censure a member, member organization or person associated with a member organization;

(2) impose a fine upon a member, member organization or person associated with a member organization;

(3) suspend the membership of a member organization, suspend the permit of a member, or suspend the registration of a person associated with a member organization for a definite period or a period contingent on the performance of a particular act;

(4) expel a member, member organization, cancel the membership of a member organization, revoke or cancel the permit of a member, or revoke or cancel the registration of a person associated with a member organization;

(5) suspend or bar a member, member organization or person associated with a member organization from association with all member organizations;

(6) impose a temporary or permanent cease and desist order against a member, member organization or a person associated with a member organization; or

(7) impose any other fitting sanction.

(b) Assent to Sanction

Each party to a proceeding resulting in a sanction shall be deemed to have assented to the imposition of the sanction unless such party files a written application for appeal, review, or relief pursuant to the Rule 9000 Series.

IM-8310-1. Effect of a Suspension, Revocation, Cancellation, or Bar

If the Exchange or the Commission issues an order that imposes a suspension, revocation, or cancellation of the registration of a person associated with a member organization or a member, or bars a person or member from further association with any member organization, a member organization shall not allow such person or member to remain associated with it in any capacity, including a clerical or ministerial capacity. If the Exchange or the Commission suspends a person associated with a member organization or a member, the member organization also shall not pay or credit any salary, or any commission, profit, or other remuneration that results directly or indirectly from any securities transaction, that the person associated with a member organization or member might have earned during the period of suspension.

IM-8310-2. Reserved

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

(a) The Phlx Regulation Department shall, in response to a request, release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by the Exchange or any committee thereof; provided, however, that each copy of:

(1) a disciplinary complaint shall be accompanied by the following statement: "The issuance of a disciplinary complaint represents the initiation of a formal proceeding by Nasdaq PHLX in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint. Because this complaint is unadjudicated, you may wish to contact the respondent before drawing any conclusions regarding the allegations in the complaint."

(2) a disciplinary decision that is released prior to the expiration of the time period provided under the Rule 9000 Series for appeal or call for review within the

Exchange or while such an appeal or call for review is pending, shall be accompanied by a statement that the findings and sanctions imposed in the decision may be increased, decreased, modified, or reversed by the Exchange;

(3) a final decision of the Exchange that is released prior to the time period provided under the Act for appeal to the Commission or while such an appeal is pending, shall be accompanied by a statement that the findings and sanctions of the Exchange are subject to review and modification by the Commission; and

(4) a final decision of the Exchange that is released after the decision is appealed to the Commission shall be accompanied by a statement as to whether the effectiveness of the sanctions has been stayed pending the outcome of proceedings before the Commission.

(b)

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

(2) Information released to the public pursuant to paragraph (b)(1) shall be accompanied by the statement required under paragraph (a)(1).

(c)

(1) The Phlx Regulation Department shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member organization or member; suspension or revocation of a member’s permit; or suspension or revocation of the registration of a member or person associated with a member organization; or suspension or barring of a member organization, member or person associated with a member organization from association with all member organizations; or imposition of monetary sanctions of \$10,000 or more upon a member organization, member or person associated with a member organization; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or

enforcement determination where the release of information is deemed by the Chief Regulatory Officer to be in the public interest. The Phlx Regulation Department also may release to the public information with respect to any decision issued pursuant to the Rule 9550 Series imposing a suspension or cancellation of the member organization or member or a suspension or bar of the association of a member or a person with a member organization, unless the Phlx Regulation Department determines otherwise. The Phlx Regulation Department may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary or other decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. The Phlx Regulation Department also shall release to the public information with respect to any temporary cease and desist order issued pursuant to the Rule 9800 Series. The Phlx Regulation Department may release to the public information on any disciplinary or other decision issued pursuant to the Rule 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

(A) The Phlx Regulation Department shall release to the public, in unredacted form, information with respect to any disciplinary decision issued pursuant to the Rule 9300 Series that does not meet one or more of the criteria in IM-8310-3(c)(1) for the release of information to the public, provided that the underlying decision issued pursuant to the Rule 9200 Series meets one or more of the criteria in IM-8310-3(c)(1) for the release of information to the public, and information regarding such decision has been released to the public in unredacted form.

(B) In the event there is more than one respondent in a disciplinary decision issued pursuant to the Rule 9000 Series, and sanctions imposed on one or more, but not all, of the respondents meet one or more of the criteria in IM-8310-3(c)(1) for the release of information to the public, the Phlx Regulation Department shall release to the public, in unredacted form, information with respect to the respondent(s) who meet such criteria, and may release to the public, in redacted form, information with respect to the respondent(s) who do not meet such criteria. Notwithstanding the foregoing, the Phlx Regulation Department shall release to the public, in unredacted form, information with respect to any respondent in a disciplinary decision issued pursuant to the Rule 9300 Series if the sanctions imposed on such respondent in the underlying decision issued pursuant to the Rule 9200 Series meet one or more of the criteria for release of information to the public, and information with respect to that respondent has been released in unredacted form.

(2) Information released to the public pursuant to paragraph (c)(1) shall be accompanied by a statement to the extent required for that type of information under paragraphs (a)(2)-(4).

(d) If a decision issued pursuant to the Rule 9000 Series other than by the Exchange Review Council is not appealed to or called for review by the Exchange Review Council, the decision shall become effective on a date set by the Phlx Regulation Department but not before the expiration of 45 days after the date of decision.

(e) Notwithstanding paragraph (d), expulsions and bars imposed pursuant to the provisions of Rules 9216 and 9270 shall become effective upon approval or acceptance by the Exchange Review Council, and information regarding any sanctions imposed pursuant to those Rules may be released to the public pursuant to paragraph (c) immediately upon such approval or acceptance.

(f) If a decision issued pursuant to the Rule 9000 Series is called for review by the Exchange Board, the decision shall be stayed pending a final determination and decision by the Board.

(g) If a decision of the Exchange imposing monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, or suspension of a member, member organization and/or barring of a person from being associated with all member organizations is appealed to the Commission, notice thereof shall be given to the membership and to the press as soon as possible after receipt by the Exchange of notice from the Commission of such appeal and the Exchange's notice shall state whether the effectiveness of the Board's decision has been stayed pending the outcome of proceedings before the Commission.

(h) In the event an appeal to the courts is filed from a decision by the Commission in a case previously appealed to it from a decision of the Exchange, involving the imposition of monetary sanctions of \$10,000 or more or a penalty of expulsion, revocation, or suspension of a member, member organization and/or barring of a person from being associated with all member organizations, notice thereof shall be given to the membership as soon as possible after receipt by the Exchange of a formal notice of appeal. Such notice shall include a statement whether the order of the Commission has been stayed.

(i) Any order issued by the Commission of revocation or suspension of a member organization's broker/dealer registration with the Commission; or the suspension or expulsion of a member or member organization from the Exchange; or the barring of a person associated with a member organization from association with all broker/dealers or membership; or the imposition of monetary sanctions of \$10,000 or more shall be released to the public through a notice containing the effective date thereof sent as soon as possible after receipt by the Exchange of the order of the Commission.

(j) Cancellations of membership or registration pursuant to the Rules of the Exchange shall be released to the public as soon after the effective date of the cancellation as possible.

(k) Releases to the public referred to in paragraphs (b) and (c) above shall identify the Rules of the Exchange or SEC Rules violated, and shall describe the conduct constituting such violation. Releases may also identify the member organization with which an individual was associated at the time the violations occurred if such identification is determined by the Phlx Regulation Department to be in the public interest.

(l) The Phlx Regulation Department shall release to the public, in the form issued by the Exchange Review Council, information with respect to any decision issued by the Exchange Review Council pursuant to Rule 923(a). In its discretion, the Exchange Review Council may have redacted certain information from such decisions prior to their issuance.

8320. Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay

(a) Payment to Treasurer

All fines and other monetary sanctions shall be paid to the Treasurer of the Exchange.

Subject to the following conditions and procedures, a member or member organization may pay a regulatory fine via an installment plan:

(1) The member or member organization must check the installment plan option on the election of payment form included with the letter of acceptance, waiver, and consent (“AWC”).

(2) The fine under the AWC must be fifty thousand dollars (\$50,000) or more. A fine of less than fifty thousand dollars (\$50,000) is not eligible for the installment plan.

(3) A down payment of twenty-five percent (25%) or more of the total fine must be submitted with the signed AWC.

(4) An installment package, including a promissory note and payment schedule, will be mailed to the member or member organization upon receipt of the down payment, as required in paragraph (3) above.

(5) An executed (signed and notarized) promissory note for the unpaid balance of the fine must be returned with the first installment payment.

(6) The term of the installment plan shall not exceed four (4) years after the execution of the AWC. The member or member organization may elect monthly or quarterly payments.

(b) Summary Suspension or Expulsion

After seven days notice in writing, the Exchange may summarily suspend or expel from membership a member or member organization that fails to:

(1) pay promptly a fine or other monetary sanction imposed pursuant to Rule 8310 or cost imposed pursuant to Rule 8330 when such fine, monetary sanction, or cost becomes finally due and payable; or

(2) terminate immediately the association of a person who fails to pay promptly a fine or other monetary sanction imposed pursuant to Rule 8310 or a cost imposed pursuant to Rule 8330 when such fine, monetary sanction, or cost becomes finally due and payable.

(c) Summary Revocation of Registration

After seven days notice in writing, the Exchange may summarily revoke the registration of a person associated with a member organization if such person fails to pay promptly a fine or other monetary sanction imposed pursuant to Rule 8310 or a cost imposed pursuant to Rule 8330 when such fine, monetary sanction, or cost becomes finally due and payable.

8330. Costs of Proceedings

A member, member organization or person associated with a member organization disciplined pursuant to Rule 8310 shall bear such costs of the proceeding, as the Adjudicator deems fair and appropriate under the circumstances.

9000. Code of Procedure

9001. Regulatory Contract with FINRA

The Exchange and FINRA are parties to the FINRA Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions described in the Rule 9000 Series on behalf of the Exchange. Rules of the Exchange that refer to the Phlx Regulation Department, the Phlx Regulation Department staff, Exchange staff, and Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the FINRA Regulatory Contract.

Notwithstanding the fact that the Exchange has entered into the FINRA Regulatory Contract with FINRA to perform some of the Exchange's functions, the Exchange shall retain ultimate legal responsibility for, and control of, such functions.

9100. Application and Purpose

9110. Application

(a) Proceedings

The Rule 9000 Series is the Code of Procedure and includes proceedings for disciplining a member, member organization or person associated with a member organization; proceedings for regulating the activities of a member organization experiencing financial or operational difficulties; proceedings for summary or non-summary suspensions, cancellations, bars, prohibitions, or limitations; and proceedings for obtaining relief from the eligibility requirements of the Exchange By-Laws and the Rules of the Exchange. The Rule 9100 Series is of general applicability to all proceedings set forth in the Rule 9000 Series, unless a Rule specifically provides otherwise.

(b) Rights, Duties, and Obligations of Members, Member Organizations and Associated Persons

Unless otherwise specified, a member and a person associated with a member organization shall have the same rights as a member organization and shall be subject to the same duties and obligations under the Code of Procedure.

Except as otherwise permitted under the By-Laws or the Act and as set forth in more detail in the Rule 9000 Series, in any disciplinary proceeding under the Rules, any member, member organization or person associated with a member organization shall be given the opportunity to have a hearing at which such member, member organization or person associated with an member organization shall be entitled to be heard in person or by counsel or by a representative as provided in the Rules. Such persons may present any relevant material in accordance with the Rules. In any such proceeding against a member, member organization or against a person associated with a member organization to determine whether the member, member organization or the person associated with a member organization shall be disciplined:

- (1) specific charges shall be brought;
- (2) such member, member organization or person associated with a member organization shall be notified of and be given an opportunity to defend against such charges;
- (3) a record shall be kept; and

(4) any determination shall include a statement setting forth:

(i) any act or practice, in which such member, member organization or person associated with a member organization may be found to have engaged, or which such member, member organization or person associated with a member organization may be found to have omitted;

(ii) the rule, regulation, or statutory provision of which any such act or practice, or omission to act, is deemed to be in violation;

(iii) the basis upon which any findings are made; and

(iv) the sanction imposed.

(c) Incorporation of Defined Terms and Cross References

Unless otherwise provided, terms used in the Rule 9000 Series shall have the meaning as defined in Rule 1 and Rule 9120.

(d) Jurisdiction

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

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

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

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

9120. Definitions

(a) "Adjudicator"

The term "Adjudicator" means:

(1) a body, board, committee, group, or natural person that presides over a proceeding and renders a decision;

(2) a body, board, committee, group, or natural person that presides over a proceeding and renders a recommended or proposed decision which is acted upon by an Adjudicator described in (1); or

(3) a natural person who serves on a body, board, committee, or group described in (1) or (2).

The term includes a Review Subcommittee as defined in paragraph (bb), a Subcommittee as defined in paragraph (dd), an Extended Proceeding Committee as defined in paragraph (n), and a Statutory Disqualification Committee as defined in paragraph (cc).

(b) "Chief Hearing Officer"

The term "Chief Hearing Officer" means the Hearing Officer that manages the Office of Hearing Officers, or his or her delegatee. The Chief Hearing Officer may be FINRA's Chief Hearing Officer pursuant to the Regulatory Contract, if approved by the Exchange Board of Directors at least annually.

(c) "Chief Regulatory Officer"

The term "Chief Regulatory Officer" means the Chief Regulatory Officer of the Exchange, or his or her delegatee, who shall be a person who reports to the Chief Regulatory Officer of the Exchange.

(d) "Code"

The term "Code" refers to the Code of Procedure.

(e) "Counsel to the Exchange Review Council"

The term “Counsel to the Exchange Review Council” means an attorney that reports to the Chief Regulatory Officer of the Exchange who is responsible for advising the Exchange Review Council, the Review Subcommittee, a Subcommittee, or an Extended Proceeding Committee regarding a disciplinary proceeding on appeal or review before the Exchange Review Council.

(f) “Department of Enforcement”

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

(g) “Department of Market Regulation”

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

(h) “Department of Member Regulation”

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

(i) “Director”

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

(j) “Document”

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

(k) “Extended Hearing”

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

(l) “Extended Hearing Panel”

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

(m) “Extended Proceeding”

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

(n) “Extended Proceeding Committee”

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

(o) “Head of Enforcement”

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

(p) “Head of Market Regulation”

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

(q) “Head of Member Regulation”

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

(r) “Hearing Officer”

The term “Hearing Officer” means an attorney who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 9200 Series regarding disciplinary proceedings, the Rule 9550 Series regarding expedited proceedings, and the Rule 9800 Series regarding temporary cease and desist proceedings brought against members, member organizations and associated persons. Hearing Officers may be drawn from FINRA’s pool of Hearing Officers pursuant to the Regulatory Contract, if approved by the Exchange Board of Directors at least annually.

(s) “Hearing Panel”

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

(t) “Interested Staff”

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

(1) a disciplinary proceeding under the Rule 9200 Series and the Rule 9300 Series:

(A) the Head of the Phlx Regulation Department;

(B) an Exchange employee of the Phlx Regulation Department who reports, directly or indirectly, to the Head of the Phlx Regulation Department;

(C) an Exchange employee who directly participated in the authorization of the complaint;

(D) an Exchange employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and a department head to whom such employee reports;

(E) the Head of the Department of Enforcement;

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

(G) a FINRA employee who directly participated in the authorization of the complaint;

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

(I) the Head of the Department of Market Regulation; or

(J) an employee of the Department of Market Regulation who reports, directly or indirectly, to the Head of the Department of Market Regulation; or

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

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

(B) an Exchange employee or a FINRA employee who reports, directly or indirectly, to such person;

(C) an Exchange employee or a FINRA employee who directly participated in the authorization or initiation of the proceeding;

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

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

(3) a proceeding under the Rule 9600 Series:

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

(B) an Exchange employee or a FINRA employee who reports, directly or indirectly, to such person;

(C) an Exchange employee or a FINRA employee who directly participated in the exemption proceeding;

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

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

(4) a proceeding under the Rule 9800 Series:

(A) the Head of the Phlx Regulation Department;

(B) an employee of the Phlx Regulation Department who reports, directly or indirectly, to the Head of the Phlx Regulation Department;

(C) the Head of Enforcement;

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

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

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

(G) the Head of the Department of Market Regulation; or

(H) a FINRA employee who reports, directly or indirectly, to the Head of the Department of Market Regulation.

(u) “the Exchange Board”

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

(v) “Phlx Regulation” or “Phlx Regulation Department”

The term “Phlx Regulation” or “Phlx Regulation Department” means the department of the Exchange that administers the Code, and includes the Phlx Enforcement Department.

(w) “Office of Disciplinary Affairs”

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

(x) “Office of Hearing Officers”

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

(y) “Panelist”

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

(z) “Party”

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

(1) in the Rule 9200 Series, the Rule 9300 Series, and the Rule 9800 Series, the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation or a Respondent;

(2) in the Rule 9400 Series, the Phlx Regulation Department, Department of Enforcement or the Department of Market Regulation, or a member, member organization or associated person that is the subject of a notice under Rule 9400(a)(2);

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

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

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

(aa) “Respondent”

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

(bb) “Review Subcommittee”

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

(cc) “Statutory Disqualification Committee”

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

(dd) “Subcommittee”

The term “Subcommittee” means an Adjudicator that is:

(1) constituted under Rule 9331(a) to participate in the Exchange Review Council’s consideration of an appeal or a review of a disciplinary proceeding pursuant to the Rule 9300 Series;

(2) constituted under Rule 9559(q) or Rule 9630 to conduct a review proceeding.

9130. Service; Filing of Papers

9131. Service of Complaint and Document Initiating a Proceeding**(a) Service on Each Party**

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

(b) How Served

A complaint or document initiating a proceeding shall be served pursuant to Rule 9134.

(c) Filing Requirement

A complaint that is served upon a Respondent and each document initiating a proceeding that is served upon a Party, along with the certificate of service executed in connection with the service upon such Respondent or Party, shall be filed with the Phlx Regulation Department pursuant to Rule 9135.

9132. Service of Orders, Notices, and Decisions by Adjudicator**(a) Service on Each Party**

An order, notice, or decision issued by a Hearing Officer, Hearing Panel or Extended Hearing Panel under the Rule 9200 Series shall be served on each Party, or each Party's counsel, or other person the Party designates to represent him or her in a proceeding by the Office of Hearing Officers. An order, notice, or decision issued by any other Adjudicator shall be served by that Adjudicator.

(b) How Served

An order, notice, or decision shall be served pursuant to Rule 9134.

(c) Service Upon Counsel or Other Person Acting In Representative Capacity

Whenever service is required to be made upon a person represented by counsel or a representative who has filed a notice of appearance pursuant to Rule 9141, service shall be made upon counsel or the representative. The Adjudicator, at its discretion, may also order that service be made upon the person.

9133. Service of Papers Other Than Complaints, Orders, Notices, or Decisions**(a) Service on Each Party**

Other than a complaint, order, notice, or decision, any paper, including an answer and a motion, shall be served on each Party by the Party on whose behalf such paper was prepared or by his or her counsel or representative.

(b) How Served

The paper shall be served pursuant to Rule 9134.

(c) Filing Requirement

The paper that is served upon a Party, along with the certificate of service executed in connection with the service upon such Party, shall be filed with the Phlx Regulation Department pursuant to Rule 9135.

(d) Service upon Counsel or Other Person Acting in Representative Capacity

Whenever service is required to be made upon a person represented by counsel or a representative who has filed a notice of appearance pursuant to Rule 9141, service shall be made upon counsel or the representative. The Adjudicator, at its discretion, may also order that service be made upon the person.

9134. Methods of, Procedures for Service

(a) Methods

The following methods of service are permitted:

(1) Personal Service

Personal service may be accomplished by handing a copy of the papers to the person required to be served; leaving a copy at the person's office with an employee or other person in charge thereof; or leaving a copy at the person's dwelling or usual place of abode with a person of suitable age and discretion then residing therein;

(2) Service by Mail by U.S. Postal Service

Service by mail may be accomplished by mailing the papers through the U.S. Postal Service by using first class mail, first class certified mail, first class registered mail, or Express Mail, except that a complaint shall be served upon a Respondent by U.S. Postal Service first class certified mail or Express Mail; or

(3) Service by Courier

Service by courier may be accomplished by sending the papers through a courier service that generates a written confirmation of receipt or of attempts at delivery.

(b) Procedures**(1) Service on Natural Persons**

Papers served on a natural person may be served at the natural person's residential address, as reflected in the Central Registration Depository, if applicable. When a Party or other person responsible for serving such person has actual knowledge that the natural person's Central Registration Depository address is out of date, duplicate copies shall be served on the natural person at the natural person's last known residential address and the business address in the Central Registration Depository of the entity with which the natural person is employed or affiliated. Papers may also be served at the business address of the entity with which the natural person is employed or affiliated, as reflected in the Central Registration Depository, or at a business address, such as a branch office, at which the natural person is employed, or at which the natural person is physically present during a normal business day. The Hearing Officer may waive the requirement of serving documents (other than complaints) at the addresses listed in the Central Registration Depository if there is evidence that these addresses are no longer valid, and there is a more current address available. If a natural person is represented by counsel or a representative, papers served on the natural person, excluding a complaint or a document initiating a proceeding, shall be served on the counsel or representative.

(2) Service on Entities

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

(3) When Service Is Complete

Personal service and service by courier or express delivery are complete upon delivery. Service by mail is complete upon mailing.

9135. Filing of Papers with Adjudicator: Procedure**(a) When to File**

Papers that are required to be filed with an Adjudicator within a time limit specified by the Adjudicator or within a time limit set forth in the Rules shall be deemed timely if received within the time limit, unless otherwise ordered by an Adjudicator, except complaints, which shall be deemed timely filed upon mailing or delivery to the Office of Hearing Officers. Other papers that are required to be filed shall be deemed timely if, on the same day such papers are served, they are also hand-delivered, mailed via U.S. Postal service first class mail, or sent by courier to the Office of Hearing Officers.

(b) Where to File

All papers required to be filed pursuant to the Rule 9200 Series and any notice of appeal or review required to be filed pursuant to the Rule 9300 Series shall be filed with the Office of Hearing Officers. All other papers required to be filed pursuant to the Rule 9000 Series shall be filed where specified in the Rule, or if not specified in the Rule, with the Adjudicator, unless the Adjudicator orders otherwise.

(c) Certificate of Service

Papers filed with an Adjudicator or the Office of Hearing Officers shall be accompanied by a certificate of service stating the name of the person or persons served, the date on which service is made, the method of service and, if service is not made in person, the address to which service is made. Such certificate shall be executed by the person who made the service. If the method of service on a Party is different from the method of service on any other Party, the certificate shall state why such different method was used.

9136. Filing of Papers: Form

(a) Specifications

Papers filed in connection with any proceeding under the Rule 9200 Series and the Rule 9300 Series shall:

- (1) be on unglazed white paper measuring 8 1/2 × 11 inches, but to the extent that the reduction of a larger document would render it illegible, such document may be filed on larger paper;
- (2) be typewritten or printed in either 10 or 12 point typeface or otherwise reproduced by a process that produces a permanent and plainly legible copy;
- (3) include at the head of the paper, or on a title page, the title of the proceeding, the names of the Parties, the subject of the particular paper or pleading, and the number assigned to the proceeding;
- (4) be paginated at the bottom of the page and with all margins at least one inch wide;

(5) be double-spaced, with double-spaced footnotes and single-spaced indented quotations; and

(6) be stapled, clipped, or otherwise fastened in the upper left corner, but not bound.

(b) Signature Required

All papers shall be signed and dated pursuant to Rule 9137.

(c) Number of Copies

A signed original and three copies of all papers shall be filed with the Adjudicator.

(d) Form of Briefs

A brief containing more than ten pages shall include a table of contents, and an alphabetized table of cases, statutes, and other authorities cited, with references to the pages of the brief wherein they are cited.

(e) Scandalous or Impertinent Matter

Any scandalous or impertinent matter contained in any brief, pleading, or other filing, or in connection with any oral presentation in a proceeding may be stricken on order of an Adjudicator. Any matter stricken by an Adjudicator by this Rule shall be marked “Stricken” and preserved. Matters stricken in a proceeding governed by the Rule 9200 Series shall be preserved under Rule 9267(b).

9137. Filing of Papers: Signature Requirement and Effect

(a) General Requirements

Following the issuance of a complaint in a disciplinary proceeding, or the initiation of another proceeding, every filing of a Party represented by counsel or a representative shall be signed by at least one counsel or representative of record in his or her name and shall state the business address and telephone number of such counsel or representative. A Party who appears on his or her own behalf shall sign his or her individual name and state his or her address and telephone number on every filing.

(b) Effect of Signature

(1) The signature of a counsel, representative, or Party shall constitute a certification that:

(A) the person signing the filing has read the filing;

(B) to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and

(C) the filing is not made for any improper purpose, such as to harass, cause unnecessary delay, or needlessly to increase the cost of adjudication.

(2) If a filing is not signed, an Adjudicator may strike the filing, unless it is signed promptly after the omission is called to the attention of the person making the filing.

9138. Computation of Time

(a) Calendar Day

In the Rule 9000 Series, “day” means calendar day.

(b) Formula

In computing any period of time, the day of the act, event, or default from which the period of time designated in the Code begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays shall be excluded from the computation when the period prescribed is ten days or less, not including any additional time for service by mail allowed by paragraph (c).

(c) Additional Time For Service by Mail

If service is made by U.S. Postal Service first class, certified, or registered mail, three days shall be added to the prescribed period for response.

9140. Proceedings

9141. Appearance and Practice; Notice of Appearance

(a) Representing Oneself

In any proceeding, a person may appear on his or her own behalf. When a person first makes any filing or otherwise appears on his or her own behalf before an Adjudicator in a proceeding, he or she shall file with the Adjudicator, or otherwise state on the record, and keep current, an address at which any notice or other written communication required to be served upon or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

(b) Representing Others

A person shall not be represented before an Adjudicator, except as provided in this paragraph. Subject to the prohibitions of Rules 9150 and 9280, a person may be represented in any proceeding by an attorney at law admitted to practice before the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States. A member of a partnership may represent the partnership; and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association. When a person first makes any filing or otherwise appears in a representative capacity before an Adjudicator in a proceeding, that person shall file with the Adjudicator, and keep current a Notice of Appearance. The Notice of Appearance is a written notice stating the name of the proceeding; the representative's name, business address, and telephone number; and the name and address of the person or persons represented. Any individual appearing or practicing in a representative capacity before an Adjudicator may be required to file a power of attorney with the Adjudicator showing his or her authority to act in such capacity.

9142. Withdrawal by Attorney or Representative

An attorney for a Party or other person authorized to represent others by Rule 9141 may withdraw by giving notice to the Adjudicator. The notice shall be in writing, set forth the good cause for withdrawal, and, unless circumstances do not permit, be given at least 30 days prior to withdrawal.

9143. Ex Parte Communications

(a) Prohibited Communications

Unless on notice and opportunity for all Parties to participate, or to the extent required for the disposition of ex parte matters as authorized by the Rule 9000 Series:

(1) No Party, or counsel to or representative of a Party, or Interested Staff shall make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding to an Adjudicator who is participating in a decision with respect to that proceeding, or to Exchange Staff who is participating or advising in the decision of an Adjudicator with respect to that proceeding; and

(2) No Adjudicator who is participating in a decision with respect to a proceeding, or no Exchange Staff who is participating or advising in the decision of an Adjudicator with respect to a proceeding shall make or knowingly cause to be made to a Party, a counsel or representative to a Party, or Exchange Staff an ex parte communication relevant to the merits of that proceeding.

(b) Disclosure of Prohibited Communication

An Adjudicator who is participating in a decision with respect to a proceeding, or Exchange Staff who is participating or advising in the decision of an Adjudicator, who receives, makes, or knowingly causes to be made a communication prohibited by this Rule shall place in the record of the proceeding:

- (1) all such written communications;
- (2) memoranda stating the substance of all such oral communications; and
- (3) all written responses and memoranda stating the substance of all oral responses to all such communications.

(c) Remedies

Upon receipt of a communication made or knowingly caused to be made by any Party, any counsel or representative to a Party, or any Interested Staff in violation of subparagraph (a)(1), the Phlx Regulation Department or an Adjudicator may, to the extent consistent with the interests of justice, the policies underlying the Act, and the Rules of the Exchange, order the Party responsible for the communication, or the Party who may benefit from the ex parte communication made, to show cause why the Party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by reason of such ex parte communication. All participants to a proceeding may respond to any allegations or contentions contained in a prohibited ex parte communication placed in the record. Such responses shall be placed in the record.

(d) Timing

In a disciplinary proceeding governed by the Rule 9200 Series and the Rule 9300 Series, the prohibitions of this Rule shall apply beginning with the authorization of a complaint as provided in Rule 9211, unless the person responsible for the communication has knowledge that the complaint shall be authorized, in which case the prohibitions shall apply beginning at the time of his or her acquisition of such knowledge.

(e) Waiver of Ex Parte Prohibition

(1) Offer of Settlement

If a Respondent submits an offer of settlement under Rule 9270, the submission constitutes a waiver by such Respondent of any claim that the prohibitions against ex parte communications were violated by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer

of settlement and order of acceptance, including acceptance or rejection of such offer of settlement and order of acceptance.

(2) Letter of Acceptance, Waiver, and Consent

If a member, member organization or a person associated with a member organization submits an executed letter of acceptance, waiver, and consent under Rule 9216(a), the submission constitutes a waiver by such member, member organization or person associated with a member organization of any claim that the prohibitions against ex parte communications were violated by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

(3) Minor Rule Violation Plan and Violation Letters

If a member, member organization or a person associated with a member organization submits an executed minor rule violation plan letter or violation letter under Rule 9216(b), the submission constitutes a waiver by such member, member organization or person associated with a member organization of any claim that the prohibitions against ex parte communications by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or violation letter, or other consideration of the minor rule violation plan letter or violation letter, including acceptance or rejection of such minor rule plan violation letter or violation letter.

9144. Separation of Functions

(a) Interested Staff

Except as counsel or a witness in a proceeding or as provided in the Rule 9550 Series, Interested Staff is prohibited from advising an Adjudicator regarding a decision or otherwise participating in a decision of an Adjudicator. An Adjudicator is prohibited from advising Interested Staff regarding a decision or otherwise participating in a decision of Interested Staff, including the decision to issue a complaint and a decision whether to appeal or cross-appeal a disciplinary proceeding to the Exchange Review Council.

(b) Separation of Adjudicators

A Hearing Officer, including the Chief Hearing Officer, or a Panelist of a Hearing Panel or an Extended Hearing Panel, is prohibited from participating in: a decision whether to issue a complaint pursuant to Rule 9211; a decision whether to appeal or cross-appeal a

disciplinary proceeding to the Exchange Review Council pursuant to Rule 9311; and a discussion or decision relating to a call for review, a review, or an appeal pursuant to the Rule 9300 Series. A Director is prohibited from participating in a discussion or a decision relating to the above referenced acts with the Review Subcommittee or the Adjudicators referenced above.

(c) Waiver of Prohibitions of Separation of Functions

(1) Offer of Settlement

If a Respondent submits an offer of settlement under Rule 9270, the submission constitutes a waiver by such Respondent of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance or rejection of such offer of settlement and order of acceptance.

(2) Letter of Acceptance, Waiver, and Consent

If a member, member organization or a person associated with a member organization submits an executed letter of acceptance, waiver, and consent under Rule 9216(a), the submission constitutes a waiver by such member, member organization or person associated with a member organization of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the proposed letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

(3) Minor Rule Violation Plan and Violation Letters

If a member, member organization or a person associated with a member organization submits an executed minor rule violation plan letter or violation letter under Rule 9216(b), the submission constitutes a waiver by such member, member organization or person associated with a member organization of any claim of violation of paragraph (a) or (b) by a person or body in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or violation letter, or other consideration of the minor rule violation plan letter or violation letter, including acceptance or rejection of such minor rule violation plan letter or violation letter.

9145. Rules of Evidence; Official Notice

(a) Rules of Evidence

The formal rules of evidence shall not apply in a proceeding brought under the Rule 9000 Series.

(b) Official Notice

In a proceeding governed by the Rule 9000 Series, an Adjudicator may take official notice of such matters as might be judicially noticed by a court, or of other matters within the specialized knowledge of the Exchange as an expert body. Before an Adjudicator proposes to take official notice of a matter, it shall permit a Party the opportunity to oppose or otherwise comment upon the proposal to take official notice.

9146. Motions**(a) General Requirement for Motions**

A Party may make a written or oral motion, subject to limitations set forth below. A Party or other person may make a motion under Rule 9146(k), subject to limitations set forth below.

(b) Adjudicator May Require a Written Motion

If a Party makes an oral motion, an Adjudicator may order that such motion be set forth in writing, after considering the facts and circumstances, including whether:

- (1) the hearing or conference in which the Party makes such motion is being recorded; and
- (2) the opposing Parties shall be fully informed and shall have adequate notice and opportunity to respond to such motion.

(c) Specificity

All motions shall state the specific relief requested and the basis therefor.

(d) Time For Filing Opposition or Other Response to Motion

Unless otherwise ordered by an Adjudicator, any Party may file an opposition or other response to a written motion and the opposition or response shall be filed within 14 days after service of the motion. If no response is filed within the response period, the Party failing to respond shall be deemed to have waived any objection to the granting of the motion. A Party shall be afforded an opportunity to respond to an oral motion at the time the oral motion is made, unless the Adjudicator orders that the Party shall be granted additional time to respond.

(e) Oral Argument

An Adjudicator may allow oral argument on motions. Oral argument may take place in person or by telephone.

(f) Frivolous Motions

An Adjudicator may deny dilatory, repetitive, or frivolous motions without awaiting a response.

(g) No Stay

Unless otherwise ordered by an Adjudicator, the filing of a motion does not stay a proceeding.

(h) Reply

The moving Party shall have no right to reply to the opposition or other response of the other Parties unless an Adjudicator permits a reply to be filed. Unless otherwise ordered by an Adjudicator, a movant's reply submission shall be filed within five days after the Adjudicator serves the order granting the motion to file a reply or a Party serves the opposition or other response to which the Adjudicator previously ordered that a reply could be filed.

(i) Page Limit, Format Requirements

Unless otherwise ordered by an Adjudicator, submissions in support of or in opposition to motions shall not exceed ten double-spaced pages, including double-spaced footnotes, exclusive of pages containing any table of contents, table of authorities, or addenda.

(j) Disposition of Procedural Motions; Disposition of Motions for Summary Disposition

(1) In the Rule 9200 Series, a motion on a procedural matter may be decided by a Hearing Officer. A motion for summary disposition of a cause of action set forth in a complaint shall be decided by a majority vote of the Hearing Panel or, if applicable, the Extended Hearing Panel.

(2) In the Rule 9300 Series, a motion on a procedural matter may be decided by Counsel to the Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or the Exchange Review Council. A motion for disposition of a cause of action shall be decided by the Exchange Review Council, except that a motion to dismiss a case for abandonment made under Rule 9344 may be decided by the Review Subcommittee.

(3) In the Rule 9500 Series, a motion shall be decided by an Adjudicator.

(k) Motion For Protective Order

(1) A Party, a person who is the owner, subject, or creator of a Document subject to production under Rule 8210 or any other Rule which may be introduced as evidence in a disciplinary proceeding, or a witness who testifies at a hearing in a disciplinary proceeding may file a motion requesting a protective order to limit disclosure or prohibit from disclosure to other Parties, witnesses or other persons, except the Department of Enforcement and the Department of Market Regulation and the Phlx Regulation Department staff, Documents or testimony that contain confidential information. The motion shall include a general summary or extract of the Documents or testimony without revealing confidential details. If the movant seeks a protective order against disclosure to other Parties, copies of the Documents shall not be served on the other Parties. Unless the Documents are unavailable, the movant shall file for in camera inspection a sealed copy of the Documents for which the order is sought. If the movant is not a Party, the motion shall be served on each Party by the movant using a method in Rule 9134(a) and filed with the Adjudicator. A motion for a protective order shall be granted only upon a finding that disclosure of the Document or testimony would have a demonstrated adverse business effect on the movant or would involve an unreasonable breach of the movant's personal privacy.

(2) If a protective order is granted, the order shall set forth the restrictions on use and disclosure of such Document or testimony. An Adjudicator does not have the authority to issue a protective order that would limit in any manner the use by the staff of the Phlx Regulation Department of such Documents or testimony in the Phlx Regulation Department staff's performance of their regulatory and self-regulatory responsibilities and functions, including the transmittal, without restriction to the recipient, of such Documents or testimony to state, federal, or foreign regulatory authorities or other self-regulatory organizations. An Adjudicator does not have the authority to issue a protective order that purports to protect from production such Documents or testimony in the event that the Exchange is subject to a subpoena requiring that the Documents or testimony be produced.

(l) General

All motions, oppositions or responses, replies, and any other filings made in a proceeding shall comply with Rules 9133, 9134, 9135, 9136 and 9137.

9147. Rulings On Procedural Matters

The Exchange Board, the Exchange Review Council, a Hearing Officer, or any other Adjudicator shall have full authority, except as otherwise provided by the Code, to rule

on a procedural motion and any other procedural or administrative matter arising during the course of a proceeding conducted pursuant to the Code, subject to the rights of review or appeal provided by the Code.

9148. Interlocutory Review

Except as provided in Rule 9280, there shall be no interlocutory review of a ruling or order issued by any Adjudicator in a proceeding governed by the Code. If an Adjudicator grants interlocutory review of a ruling or order, such review shall not stay a proceeding, except under Rule 9280 or as otherwise ordered by the Adjudicator.

9150. Exclusion from Rule 9000 Series Proceeding

(a) Exclusion

An Adjudicator may exclude an attorney for a Party or other person authorized to represent others by Rule 9141 from acting as counsel, acting in any representative capacity, or otherwise appearing in a particular Rule 9000 Series proceeding for contemptuous conduct under Rule 9280 or unethical or improper professional conduct in that proceeding. If an attorney for a Party, or other person authorized to represent others by Rule 9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or person may seek review by the Exchange Review Council of such exclusion under Rule 9280(c).

(b) Other Proceedings Not Precluded

Prohibiting an attorney or other person authorized to represent others by Rule 9141 from practicing or appearing in an Exchange proceeding shall not preclude the Exchange from initiating other proceedings against such person.

9160. Recusal or Disqualification

No person shall participate as an Adjudicator in a matter governed by the Code as to which he or she has a conflict of interest or bias, or circumstances otherwise exist where his or her fairness might reasonably be questioned. In any such case the person shall recuse himself or herself, or shall be disqualified as follows:

(a) Exchange Board

The Chair of the Exchange Board shall have authority to order the disqualification of a Director, and a majority of the Exchange Board excluding the Chair of the Exchange Board, shall have authority to order the disqualification of the Chair;

(b) Exchange Review Council, Review Subcommittee, or Certain Subcommittees

The Chair of the Exchange Review Council shall have authority to order the disqualification of a member of the Exchange Review Council or the Review Subcommittee, a member of a Subcommittee appointed pursuant to Rule 9559(q) or the Rule 9600 Series, a Hearing Panel appointed pursuant to the Rule 9520 Series, and the Statutory Disqualification Committee; and a majority of the Exchange Review Council excluding the Chair of the Exchange Review Council shall have authority to order the disqualification of the Chair of the Exchange Review Council;

(c) Rule 9331 Subcommittee or Extended Proceeding Committee

Disqualification of a Panelist of a Subcommittee or Extended Proceeding Committee appointed under the Rule 9300 Series shall be governed by Rule 9332;

(d) Reserved

(e) Panelist of Hearing Panel or Extended Hearing Panel

Disqualification of a Panelist of a Hearing Panel or Extended Hearing Panel appointed under the Rule 9200 Series shall be governed by Rule 9234; and

(f) Hearing Officer

Disqualification of a Hearing Officer of a Hearing Panel or an Extended Hearing Panel shall be governed by Rule 9233.

9200. Disciplinary Proceedings

9210. Complaint and Answer

9211. Authorization of Complaint

(a) Complaint

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

When the number of violations under Exchange Rules is determined based upon an exception-based surveillance program, the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may aggregate, or “batch,”

individual violations of Exchange order handling Rules and consider such “batched” violations as a single offense only in accordance with the guidelines set forth in the Exchange’s Numerical Criteria for Bringing Cases for Violations of Exchange Order Handling Rules. In addition, the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may batch individual violations of Rule 1014(c)(i)(A) pertaining to quote spread parameters (and corresponding Options Floor Procedure Advice F-6). In the alternative, the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may request authorization from the FINRA Office of Disciplinary Affairs to issue a complaint when (i) the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be egregious.

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

(b) Commencement of Disciplinary Proceeding

A disciplinary proceeding shall begin when the complaint is served and filed.

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

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

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

Regulation on each Party pursuant to Rules 9131 and 9134, and filed at the time of service with the Office of Hearing Officers pursuant to Rules 9135, 9136, and 9137.

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

(b) Amendments to Complaint

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

(c) Withdrawal of Complaint

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

(d) Disciplinary Proceeding Docket

The Office of Hearing Officers shall promptly record each complaint filed with it in the Exchange's disciplinary proceeding docket, and record in the disciplinary proceeding docket each event, filing, and change in the status of a disciplinary proceeding.

9213. Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel

(a) Assignment of Hearing Officer

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

(b) Appointment of Panelists

As soon as practicable after assigning a Hearing Officer to preside over a disciplinary proceeding, the Chief Hearing Officer shall appoint Panelists pursuant to Rules 9231 and 9232 to a Hearing Panel or, if the Chief Hearing Officer determines that an Extended Hearing Panel should be appointed, to an Extended Hearing Panel.

9214. Consolidation or Severance of Disciplinary Proceedings

(a) Consolidation Initiated by Chief Hearing Officer

The Chief Hearing Officer may order the consolidation of two or more disciplinary proceedings, upon his or her own motion, under circumstances where such consolidation would further the efficiency of the disciplinary process, and where the subject complaints involve common questions of law or fact, or one or more of the same Respondents. In determining whether to order the consolidation of such disciplinary proceedings, the Chief Hearing Officer shall consider:

- (1) whether the same or similar evidence reasonably would be expected to be offered at each of the hearings;
- (2) whether the proposed consolidation would conserve the time and resources of the Parties; and
- (3) whether any unfair prejudice would be suffered by one or more Parties as a result of the consolidation.

If the Chief Hearing Officer proposes to consolidate two or more disciplinary proceedings, the Chief Hearing Officer shall serve upon the Parties notice of the proposed consolidation of disciplinary proceedings, together with a copy of each relevant

complaint and any answer that has been filed thereto, pursuant to Rule 9132. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to consolidation.

(b) Consolidation Initiated by a Party

A Party may file a motion to consolidate two or more disciplinary proceedings if such consolidation would further the efficiency of the disciplinary process, if the subject complaints involve common questions of law or fact or one or more of the same Respondents, or if one or more of the factors favoring consolidation set forth in paragraph (a) appear to be present. If a Party moves to consolidate two or more disciplinary proceedings, the Party shall file such motion, together with a copy of each relevant complaint and any answer thereto that has been filed, with the Office of Hearing Officers, and, pursuant to Rule 9133, shall serve the same upon the Parties in each of the cases proposed to be consolidated. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to consolidation, and shall serve the response upon the Parties in each of the cases proposed to be consolidated. The Chief Hearing Officer shall issue an order approving or denying the request for consolidation.

(c) Impact on Hearing Panel or Extended Hearing Panel

If the Chief Hearing Officer issues an order to consolidate two or more disciplinary proceedings for which Hearing Panels or, if applicable, Extended Hearing Panels, have been appointed, the Chief Hearing Officer's order shall specify which Hearing Panel or, if applicable, Extended Hearing Panel, shall preside over the consolidated disciplinary proceeding, or shall appoint a new Hearing Panel or, if applicable, Extended Hearing Panel, to preside, based on the criteria set forth in Rules 9231 and 9232.

(d) Severance Initiated by Chief Hearing Officer

The Chief Hearing Officer may order the severance of a disciplinary proceeding into two or more disciplinary proceedings, upon his or her own motion. In determining whether to order the severance of such disciplinary proceedings, the Chief Hearing Officer shall consider:

- (1) whether the same or similar evidence reasonably would be expected to be offered at each of the possible hearings;
- (2) whether the severance would conserve the time and resources of the Parties; and
- (3) whether any unfair prejudice would be suffered by one or more Parties if the severance is (not) ordered.

If the Chief Hearing Officer proposes to sever a disciplinary proceeding, the Chief Hearing Officer shall serve upon the Parties notice of the proposed severance of disciplinary proceedings pursuant to Rule 9132. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to severance.

(e) Severance Initiated by a Party

A Party may file a motion to sever a disciplinary proceeding if one or more of the factors favoring severance set forth in paragraph (d) appear to be present. If a Party moves to sever a disciplinary proceeding, the Party shall file such motion with the Office of Hearing Officers, and, pursuant to Rule 9133, shall serve the same upon each of the parties to the action proposed to be severed. The Parties shall have 14 days after service to file a response, stating any arguments in favor of or opposition to severance, and shall serve the response upon the Parties in the case proposed to be severed. The Chief Hearing Officer shall issue an order approving or denying the request for severance.

(f) Impact on Hearing Panel or Extended Hearing Panel of Severance

If the Chief Hearing Officer issues an order to sever a disciplinary proceeding for which a Hearing Panel or, if applicable, Extended Hearing Panel, has been appointed, the Chief Hearing Officer's order shall specify whether the same Hearing Panel or, if applicable, Extended Hearing Panel, shall preside over the severed disciplinary proceedings, or shall appoint a new Hearing Panel(s) or, if applicable, Extended Hearing Panel(s), to preside over any or all of the severed proceedings, based on the criteria set forth in Rules 9231 and 9232.

9215. Answer to Complaint

(a) Form, Service, Notice

Pursuant to Rule 9133, each Respondent named in a complaint shall serve an answer to the complaint on all other Parties within 25 days after service of the complaint on such Respondent, and at the time of service shall file such answer with the Office of Hearing Officers pursuant to Rules 9135, 9136 and 9137. The Hearing Officer assigned to a disciplinary proceeding pursuant to Rule 9213 may extend such period for good cause. Upon the receipt of a Respondent's answer, the Office of Hearing Officers shall promptly send written notice of the receipt of such answer to all Parties.

(b) Content, Affirmative Defenses

Unless otherwise ordered by the Hearing Officer, an answer shall specifically admit, deny, or state that the Respondent does not have and is unable to obtain sufficient information to admit or deny, each allegation in the complaint. When a Respondent intends to deny only part of an allegation, the Respondent shall specify so much of it as is

admitted and deny only the remainder. A statement of lack of information shall be deemed a denial. Any allegation not denied in whole or in part shall be deemed admitted. Any affirmative defense shall be asserted in the answer.

(c) Motion for More Definite Statement

A Respondent may file with an answer a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state why each such matter of fact or law should be required to be made more definite. If the motion is granted, the order granting such motion shall set the periods for filing such a statement and any answer thereto.

(d) Amendments to Answer

Upon motion by a Respondent, the Hearing Officer may, after considering good cause shown by the Respondent and any unfair prejudice which may result to any other Party, permit an answer to be amended.

(e) Extension of Time to Answer Amended Complaint

If a complaint is amended pursuant to Rule 9212(b), the time for filing an answer or amended answer shall be the greater of the original time period within which the Respondent is required to respond, or 14 days after service of the amended complaint. If any Respondent has already filed an answer, such Respondent shall have 14 days after service of the amended complaint, unless otherwise ordered by the Hearing Officer, within which to file an amended answer.

(f) Failure to Answer, Default

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

9216. Acceptance, Waiver, and Consent; Violation of Floor Procedure Advices; Violation of Order and Decorum Regulations

(a) Acceptance, Waiver, and Consent Procedures

(1) Notwithstanding Rule 9211, if the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation has reason to believe a violation has occurred and the member, member organization or associated person does not dispute the violation, the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may prepare and request that the member, member organization or associated person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's, member organization's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Exchange Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by the Phlx Regulation Department staff.

(2)

(A) If a member, member organization or person associated with a member organization submits an executed letter of acceptance, waiver, and consent, by the submission such member, member organization or person associated with a member organization also waives:

(i) any right of such member, member organization or person associated with a member organization to claim bias or prejudgment of the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent; and

(ii) any right of such member, member organization or person associated with a member organization to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the letter of acceptance, waiver, and consent, or other consideration of the letter of acceptance, waiver, and consent, including acceptance or rejection of such letter of acceptance, waiver, and consent.

- (B) If a letter of acceptance, waiver, and consent is rejected, the member, member organization or associated person shall be bound by the waivers made under subparagraphs (a)(1) and (a)(2)(A) for conduct by persons or bodies occurring during the period beginning on the date the letter of acceptance, waiver, and consent was executed and submitted and ending upon the rejection of the letter of acceptance, waiver, and consent.
- (3) If the member, member organization or associated person executes the letter of acceptance, waiver, and consent, it shall be submitted to the Exchange Review Council. The Review Subcommittee or the Office of Disciplinary Affairs may accept such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council. The Review Subcommittee may reject such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council.
- (4) If the letter is accepted by the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs, it shall be deemed final and shall constitute the complaint, answer, and decision in the matter. If the letter is rejected by the Review Subcommittee or the Exchange Review Council, the Phlx Regulation Department may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member, member organization or associated person shall not be prejudiced by the execution of the letter of acceptance, waiver, and consent under subparagraph (a)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

(b) Procedure for Violation of Floor Procedure Advices Other than Regulations Concerning Violation of Order, Decorum, Health, Safety and Welfare on the Exchange

- (1) The following process is followed for fines assessed under a plan pursuant to SEC Rule 19d-1(c)(2):
- (A) Notwithstanding Rule 9211, the Exchange Review Council may, subject to the requirements set forth in subparagraphs (b)(1)(B) through (b)(1)(E) and in SEC Rule 19d-1(c)(2), impose a fine (not to exceed \$2,500) on any member, member organization, or any partner, officer, director or person employed by or associated with any member organization with respect to any rule listed in IM-9216. If the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation has reason to believe a violation has occurred and if the member, member organization or associated person does not dispute the violation, the Phlx Regulation Department, the Department of Enforcement or the

Department of Market Regulation may prepare and request that the member, member organization or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's, member organization's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Exchange Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by the Phlx Regulation Department staff.

(B)

(i) If a member, member organization or person associated with a member organization submits an executed minor rule violation plan letter, by the submission such member, member organization or person associated with a member organization also waives:

(a) any right of such member, member organization or person associated with a member organization to claim bias or prejudice of the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter; and

(b) any right of such member, member organization or person associated with a member organization to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation plan letter or other consideration of the minor rule violation plan letter, including acceptance or rejection of such minor rule violation plan letter.

(ii) If a minor rule violation plan letter is rejected, the member, member organization or person associated with a member organization shall be bound by the waivers made under subparagraphs (b)(1)(A) and (b)(1)(B)(i) for conduct by persons or bodies occurring during the period beginning on the

date the minor rule violation plan letter was executed and submitted and ending upon the rejection of the minor rule violation plan letter.

(C) If the member, member organization or person associated with a member organization executes the minor rule violation plan letter, it shall be submitted to the Exchange Review Council. The Review Subcommittee or the Office of Disciplinary Affairs may accept such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council. The Review Subcommittee may reject such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council.

(D) If the letter is accepted by the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs, it shall be deemed final and the Exchange shall report the violation to the Commission as required by the Commission pursuant to a plan approved under SEC Rule 19d-1(c)(2). If the letter is rejected by the Review Subcommittee or the Exchange Review Council, the Phlx Regulation Department may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member, member organization or associated person shall not be prejudiced by the execution of the minor rule violation plan letter under subparagraph (b)(1)(A) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

(E) For purposes of imposing fines under the Option Floor Procedure Advices, when the number of violations under Exchange Rules is determined based upon an exception-based surveillance program the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may aggregate, or “batch,” individual violations of order handling Options Floor Procedure Advices, and consider such “batched” violations as a single Occurrence only in accordance with the guidelines set forth in the Exchange’s Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules. In addition, the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may batch individual violations of Rule 1014(c)(i)(A) pertaining to quote spread parameters (and corresponding Options Floor Procedure Advice F-6). In the alternative, the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may request authorization from the FINRA Office of Disciplinary Affairs to issue a complaint when (i) the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be egregious.

(2) The following process is followed for fines assessed that are not subject to a plan pursuant to SEC Rule 19d-1(c)(2):

(A) Notwithstanding Rule 9211, the Exchange Review Council may, subject to the requirements set forth in subparagraphs (b)(2)(B) through (b)(2)(E), impose a fine, in excess of \$2,500 but not to exceed \$10,000, on any member, member organization, or any partner, officer, director or person employed by or associated with any member organization with respect to any rule listed in IM-9216. If the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation has reason to believe a violation has occurred and if the member, member organization or associated person does not dispute the violation, the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may prepare and request that the member, member organization or associated person execute a violation letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's, member organization's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Exchange Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by the Phlx Regulation Department staff.

(B)

(i) If a member, member organization or person associated with a member organization submits an executed violation letter, by the submission such member, member organization or person associated with a member organization also waives:

(a) any right of such member, member organization or person associated with a member organization to claim bias or prejudgment of the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the violation letter or other consideration of the violation letter, including acceptance or rejection of such violation letter; and

(b) any right of such member, member organization or person associated with a member organization to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of

Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the violation letter or other consideration of the violation letter, including acceptance or rejection of such violation plan letter.

(ii) If a violation letter is rejected, the member, member organization or person associated with a member organization shall be bound by the waivers made under subparagraphs (b)(2)(A) and (b)(2)(B)(i) for conduct by persons or bodies occurring during the period beginning on the date the violation plan letter was executed and submitted and ending upon the rejection of the violation letter.

(C) If the member, member organization or associated person executes the violation letter, it shall be submitted to the Exchange Review Council. The Review Subcommittee or the Office of Disciplinary Affairs may accept such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council. The Review Subcommittee may reject such letter or refer it to the Exchange Review Council for acceptance or rejection by the Exchange Review Council.

(D) If the letter is accepted by the Exchange Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs, it shall be deemed final and the Exchange shall report the violation to the Commission as required by the Commission pursuant to SEC Rule 19d-1(c)(1). If the letter is rejected by the Review Subcommittee or the Exchange Review Council, the Phlx Regulation Department may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member, member organization or associated person shall not be prejudiced by the execution of the violation letter under subparagraph (b)(2)(A) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

(E) For purposes of imposing fines under the Option Floor Procedure Advices, when the number of violations under Exchange Rules is determined based upon an exception-based surveillance program the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may aggregate, or "batch," individual violations of order handling Options Floor Procedure Advices, and consider such "batched" violations as a single Occurrence only in accordance with the guidelines set forth in the Exchange's Numerical Criteria for Bringing Cases for Violations of Phlx Order Handling Rules. In addition, the Phlx Regulation Department, Department of Enforcement, or the

Department of Market Regulation may batch individual violations of Rule 1014(c)(i)(A) pertaining to quote spread parameters (and corresponding Options Floor Procedure Advice F-6). In the alternative, the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may request authorization from the FINRA Office of Disciplinary Affairs to issue a complaint when (i) the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation determines that there exists a pattern or practice of violative conduct without exceptional circumstances, or (ii) any single instance of violative conduct without exceptional circumstances is deemed to be egregious.

(c) Procedure for Violation of Regulations that Relate to Administration of Order, Decorum, Health, Safety and Welfare on the Exchange

Notwithstanding Rule 9211 and paragraph (b) above, an Options Exchange Official or Exchange Staff may impose the following sanctions on members, member organizations and associated persons for violations of regulations relating to order, decorum, health, safety and welfare under Section H of the Option Floor Procedure Advices. In most cases, the Exchange will enforce compliance with the regulations under Section H of the Option Floor Procedure Advices pursuant to this rule. While ordinarily a finding of a violation will result in the appropriate pre-set fine and/or sanction, an Options Exchange Official or Exchange Staff may request authorization of a complaint directly from the Office of Disciplinary Affairs, or refer the matter to the Department of Enforcement or the Department of Market Regulation, where it shall proceed in accordance with the Rule 8000 and 9000 Series. In the case of repeat violations of a regulation by the same individual, the amount of the fine is determined by the number of such violations which have occurred within the year immediately preceding the current violation.

(1) An Options Exchange Official and Exchange Staff may impose on members, member organizations and associated persons, fines for breaches of regulations that relate to administration of order, decorum, health, safety, and welfare on the Exchange or an Options Exchange Official may request authorization of a complaint directly from the Office of Disciplinary Affairs, or refer the matter to the Department of Enforcement or the Department of Market Regulation, where it shall proceed in accordance with Rule 8000 and 9000 Series.

The procedure to be followed in cases where a pre-set fine of up to \$10,000.00 is summarily assessed is as follows:

(A) Notice of Fine. Notice of fine for breach of such regulations shall be given by the issuance of a written citation. Exchange Staff shall serve the written citations that are issued by the Options Exchange Official. The cited party may accept or contest the written citation.

(B) Time and Place of Hearing. If the written citation is contested, the Exchange shall fix a mutually convenient time and place of hearing, notice of which must be given in advance and may be given orally.

(C) Record. An appropriate record shall be kept. The costs of the making of such a transcript, including, but not limited to, the costs for the court reporter, reproduction of the transcript and producing copies thereof, shall be equally borne by the Exchange and by the cited party.

(D) Procedure. The hearing shall be conducted by a Hearing Director appointed by the Chair of the Exchange Review Council, and will be conducted in whatever manner will permit full presentation of the evidence.

(E) Finding. The finding of the Hearing Director shall be rendered at the close of the hearing. The Hearing Director may decide that: (i) the citation should be overturned; (ii) the citation is valid as issued; or (iii) the citation as issued should be modified to specify either a higher or lower fine than the one on the notice as issued.

(F) Forum Fee. If a person contests a citation imposed under Rule 9216(c) and the citation is upheld by the reviewing body, the reviewing body will impose a forum fee against the person in the amount of \$100.

(G) No Right of Appeal. The finding of the Hearing Director shall be final. There shall be no appeal from such finding.

(H) Report to Securities and Exchange Commission (SEC). A report in appropriate form shall be made to the SEC. As provided by SEC Rule 19d-1(c)(1), no report shall be made in the case of citations for breaches of regulations relating to order, decorum, health, safety and welfare or administration of the Exchange if a citation is not contested and the fine is \$1,000 or less, or if the Hearing Director finds in favor of the appellant.

(2) An Options Exchange Official and an officer of the Exchange may exclude a member and any associated person from the trading floor for breaches of regulations that relate to administration of order, decorum, health, safety and welfare on the Exchange that occurred on the trading floor or on the premises immediately adjacent to the trading floor. Specifically, members and associated persons shall be excluded if they pose an immediate threat to the safety of persons or property, are seriously disrupting Exchange operations, or are in possession of a firearm. Members or associated persons so excluded may be excluded for a period of up to five (5) business days.

(A) For purposes of this Rule, an “officer of the Exchange” shall refer to an officer who is a vice president or higher.

(B) For purposes of this Rule and the Regulations promulgated thereunder, the “premises immediately adjacent to the trading floor” shall include the following: (1) all premises other than the trading floor that are under Exchange control, and (2) premises in the building where the Exchange maintains its principal office and place of business, namely FMC Tower, 2929 Walnut Street, Philadelphia, Pennsylvania.

(C) Exclusion from the floor may not be the exclusive sanction for breaches of this Rule and the regulations thereunder. In addition to exclusion, a member or associated person may also be subject to a fine or Exchange staff may request authorization of a complaint directly from the Office of Disciplinary Affairs, or refer the matter to the Department of Enforcement or the Department of Market Regulation, where it shall proceed in accordance with Rule 8000 and 9000 Series.

(D) If a member shall be excluded for a period exceeding forty-eight hours, an expedited hearing (“Expedited Hearing”) will be held before the Chair of the Exchange Review Council or a member of the Exchange Review Council designated by the Chair (“Expedited Hearing Officer”) within forty-eight (48) business hours after the members’ exclusion from the trading floor. Written notice will be provided to the member of the date, time and place of the hearing. The member may be represented by counsel. The Expedited Hearing Officer or his or her designee shall conduct an Expedited Hearing. The Expedited Hearing Officer shall allow both the member or his or her representative and Exchange staff to present arguments. The Expedited Hearing Officer shall make a determination of whether to continue the member's exclusion from the trading floor for a period of up to five (5) business days. The determination shall be based on the severity of the threat posed to persons on the trading floor, the disruptiveness caused by the actor and the safety and welfare of persons on the trading floor. The Expedited Hearing Officer shall make a ruling at the time of the hearing and a written decision will be provided to the member following the hearing. Members shall not be excluded from electronic trading, but will not be permitted to be physically present on the trading floor for the duration of any exclusion.

(E) The procedure to be followed when a member is to be excluded from the trading floor is as follows:

(i) **No Further Right of Appeal.** The determination that a member shall be excluded is final. There shall be no appeal from such determination.

(ii) Report to the SEC. A report in appropriate form shall be made to the SEC. However, no report shall be made in a case where a clerical employee is excluded from the trading floor for not more than five days for a breach of regulations relating to order, decorum, health, safety and welfare or administration of the Exchange if the clerical employee has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies at the Exchange with respect to the matter, as provided by Rule 19b-1(c) of the Act.

IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)

• **EQUITY FLOOR PROCEDURE ADVICES (fines equal to or less than \$2,500)**

A-1 Record of Orders on PSX

A-2 Failure to Comply with an Exchange Inquiry

A-3 Supervisory Procedures Relating to ITSFEA

A-4 Fingerprinting Personnel

A-5 Training

A-6 Failure to Provide Notification of Changes in Business Operations

A-7 Failure to Timely Submit Amendments to Form U4, Form U5 and Form BD

• **OPTION FLOOR PROCEDURE ADVICES AND ORDER & DECORUM REGULATIONS (fines equal to or less than \$2,500; does not include Order & Decorum Regulations under Paragraph (H))**

B-1 Responsibility to Make Markets

B-2 Crowd Courtesy

B-3 Trading Requirements

B-4 ROTs Entering Orders from On-Floor and Off-Floor for Execution on the Exchange

B-5 Agency-Principal Restrictions

B-6 Priority of Options Orders for Equity Options, Index Options and U.S. Dollar-Settled Foreign Currency Options by Account Type (EQUITY OPTION, INDEX OPTION AND U.S. DOLLAR-SETTLED FOREIGN CURRENCY OPTION ONLY), Section F

B-8 Use of Floor Brokers by an ROT While on the Floor

B-12 ROTs and Specialists Entering Orders for Execution on Other Exchanges in Multiply Traded Options

C-1 Ascertaining the Presence of Registered Options Traders in a Trading Crowd

C-2 Options Floor Broker Management System

C-3 Handling Orders of ROTs and Other Registered Options Market Makers

C-4 Floor Brokers Handling Orders for Same Firm

C-5 ROTs Acting as Floor Brokers

C-7 Responsibility to Represent Orders to the Trading Crowd

C-9 Floor Brokers and Clerks Trading in their Customer Accounts

E-1 Required Staffing of Options Floor

F-2 Allocation, Time Stamping, Matching and Access to Matched Trades

F-4 Orders Executed as Spreads, Straddles, Combinations or Synthetics and Other Order Ticket Marking Requirements

F-5 Changes or Corrections to Material Terms of a Matched Trade

F-6 Option Quote Parameters

F-8 Failure to Comply with an Exchange Inquiry

F-9 Affiliations

F-11 Splitting Orders

F-12 Responsibility for Assigning Participation

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9220. Request for Hearing; Extensions of Time, Postponements, Adjournments

9221. Request for Hearing

(a) Respondent Request for Hearing

With the filing of any Respondent's answer, such Respondent may:

- (1) request a hearing; and
- (2) propose an appropriate location for the hearing.

If a Respondent requests a hearing, a hearing shall be granted. A Respondent who fails to request a hearing with the filing of his or her answer waives the right to a hearing unless a Hearing Officer, Hearing Panel, or, if applicable, an Extended Hearing Panel, grants, for good cause shown, a later filed motion by such Respondent requesting a hearing.

(b) Hearing Officer Order Requiring Hearing

In the absence of a request for a hearing from any Respondent, the Hearing Officer may order any complaint set down for hearing.

(c) Authority of Hearing Panel, Extended Hearing Panel to Order Hearing

If all Respondents waive a hearing, and the Hearing Officer does not order a hearing on his or her own motion, the Hearing Panel or, if applicable, the Extended Hearing Panel, may order a hearing or may consider the matter on the record, as defined in Rule 9267. If fewer than all Respondents waive a hearing, the Hearing Officer, the Hearing Panel, or, if applicable, the Extended Hearing Panel, may, in the exercise of its discretion, order that a hearing be held as to all Respondents. Alternatively, the Hearing Officer, the Hearing Panel, or, if applicable, the Extended Hearing Panel, may conduct a hearing as to only those Respondents who requested a hearing and consider the matter on the record as to those Respondents who waived a hearing.

(d) Notice of Hearing

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing, and whether the hearing shall be held before a Hearing Panel or an Extended Hearing Panel, and shall serve such notice on the Parties at least 28 days before the hearing, unless:

- (1) in the discretion of the Hearing Officer, he or she determines that extraordinary circumstances require a shorter notice period; or
- (2) the Parties waive the notice period.

9222. Extensions of Time, Postponements, and Adjournments

(a) Availability

At any time prior to the issuance of the decision of the Hearing Panel or, if applicable, the Extended Hearing Panel, the Hearing Officer may, for good cause shown, extend or shorten any time limits prescribed by the Code for the filing of any papers and may, consistent with paragraph (b), postpone or adjourn any hearing.

(b) Limitations on Postponements, Adjournments, and Extensions

A hearing shall begin at the time and place ordered, unless the Hearing Officer, for good cause shown, changes the place of the hearing, postpones the commencement of the hearing, or adjourns a convened hearing for a reasonable period of time, subject to the limitations in subparagraph (b)(2).

(1) Additional Considerations

In considering a motion for the postponement of the start of a hearing or, adjournment once a hearing has begun, the Hearing Officer shall consider:

- (A) the length of the proceeding to date;
- (B) the number of postponements, adjournments, or extensions already granted;
- (C) the stage of the proceedings at the time of the request;
- (D) potential harm to the investing public if an extension of time, adjournment, or postponement is granted; and
- (E) such other matters as justice may require.

(2) Time Limit

Postponements, adjournments, or extensions of time for filing papers shall not exceed 28 days unless the Hearing Officer states on the record or provides by written order the reasons a longer period is necessary.

9230. Appointment of Hearing Panel, Extended Hearing Panel

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

(a) Appointment

The Chief Hearing Officer shall appoint a Hearing Panel or an Extended Hearing Panel to conduct the disciplinary proceeding and issue a decision.

(b) Hearing Panel

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in paragraph (e) and in Rule 9234(a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member organization of the Exchange or retired therefrom.

(1) The Chief Hearing Officer shall select as a Panelist a person who:

(A) previously served on the Exchange Review Council;

(B) previously served on a disciplinary subcommittee of the Exchange Review Council, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees;

(C) previously served as a Director, or as a Governor of the Exchange prior to its acquisition by Nasdaq, Inc., but does not serve currently in that position; or

(D) is a FINRA Panelist approved by the Exchange Board at least annually, including a member of FINRA's Market Regulation Committee or a person who previously served on the Market Regulation Committee not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed, or from other sources the Board deems appropriate given the responsibilities of Panelists.

(c) Extended Hearing Panel

Upon consideration of the complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material, the Chief Hearing Officer may determine that a matter shall be designated an Extended Hearing, and that

such matter shall be considered by an Extended Hearing Panel. The Extended Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234(a), (c), (d), or (e). The Hearing Officer will serve as the chair of the Extended Hearing Panel. The Panelists shall be associated with a member organization of the Exchange, or retired therefrom. The Chief Hearing Officer shall have discretion to compensate any or all Panelists of an Extended Hearing Panel at the rate then in effect for arbitrators appointed under the FINRA Rule 12000 and 13000 Series. The Chief Hearing Officer shall select as a Panelist a person who meets the criteria set forth in paragraph (b)(1).

(d) Observer

A person who is qualified to serve as a Panelist may be designated by the Chief Hearing Officer to serve as an observer to a Hearing Panel or an Extended Hearing Panel. If the Chief Hearing Officer designates more than two people to serve as observers to a Hearing Panel or an Extended Hearing Panel, the Chief Hearing Officer shall obtain the consent of the Parties. An observer may attend any hearing of a disciplinary proceeding and observe the proceeding, but may not vote or participate in any other manner in the hearing or the deliberations of the Hearing Panel or the Extended Hearing Panel, or participate in the administration of the disciplinary proceeding.

(e) Appointment of Replacement Hearing Officer

In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. To ensure fairness to the parties and expedite completion of the proceeding when a replacement Hearing Officer is appointed after the hearing has commenced, the replacement Hearing Officer has discretion to exercise the following powers:

(1) Allow the Hearing Panelists to resolve the issues in the proceeding and issue a decision without the participation of the replacement Hearing Officer in the decision. The replacement Hearing Officer may advise the Hearing Panelists regarding legal issues, and shall exercise the powers of the Hearing Officer under Rule 9235(a), including preparing and signing the decision on behalf of the Hearing Panel, in accordance with Rule 9268; or

(2) Certify familiarity with the record and participate in the resolution of the issues in the case and in the issuance of the decision. In exercising this power, the replacement Hearing Officer may recall any witness before the Hearing Panel.

9232. Criteria for Selection of Panelists and Replacement Panelists

The Chief Hearing Officer shall select Panelists from the categories of persons eligible to serve as Panelists as set forth in Rule 9231(b)(1) based upon the following criteria:

- (1) expertise;
- (2) the absence of any conflict of interest or bias, and any appearance thereof;
- (3) availability; and,
- (4) the frequency with which a person has served as a Panelist on a Hearing Panel or an Extended Hearing Panel during the past two years, favoring the selection of a person as a Panelist who has never served or served infrequently as a Panelist during the period.

9233. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers

(a) Recusal, Withdrawal of Hearing Officer

If at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Hearing Officer shall notify the Chief Hearing Officer and the Chief Hearing Officer shall issue and serve on the Parties a notice stating that the Hearing Officer has withdrawn from the matter. In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. In such a case, the replacement Hearing Officer shall proceed according to Rule 9231(e).

(b) Motion for Disqualification

A Party may move for the disqualification of a Hearing Officer. A motion shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Hearing Officer's fairness might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts. Such motions shall be filed not later than 15 days after the later of:

- (1) when the Party learned of the facts believed to constitute the disqualification; or
- (2) when the Party was notified of the assignment of the Hearing Officer.

(c) Disposition of Disqualification Motion

A motion for disqualification of a Hearing Officer shall be decided by the Chief Hearing Officer who shall promptly investigate whether disqualification is required and issue a

written ruling on the motion. In the event of a disqualification of the Hearing Officer, the Chief Hearing Officer shall appoint a replacement Hearing Officer.

9234. Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Panelists

(a) Recusal, Withdrawal of Panelist

If at any time a Panelist of a Hearing Panel or an Extended Hearing Panel determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Panelist shall notify the Hearing Officer and the Hearing Officer shall issue and serve on the Parties a notice stating that the Panelist has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer may, in the exercise of discretion, determine whether to appoint a replacement Panelist. In the event that both Panelists withdraw, are incapacitated, or otherwise are unable to continue service after being appointed, the Chief Hearing Officer shall appoint two replacement Panelists.

(b) Disqualification: Motion of Party; Order of Chief Hearing Officer

(1) A Party may file a motion to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel. A motion shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts.

(2) Such motions shall be filed not later than 15 days after the later of:

(A) when the Party learned of the facts believed to constitute the disqualification;
or

(B) when the Party was notified of the appointment of the Panelist.

(3) The Chief Hearing Officer may order the disqualification of a Panelist of a Hearing Panel or an Extended Hearing Panel if the Chief Hearing Officer determines that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be questioned, and shall state the facts constituting the grounds for disqualification.

(c) Disposition of Disqualification Motion: Challenge to Single Member of Hearing Panel

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

(d) Disposition of Disqualification Motion: Challenge to Both Panelists of Hearing Panel or Extended Hearing Panel

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

(e) Disposition of Disqualification Motion: Challenge to Both Panelists of Hearing Panel or Extended Hearing Panel and Hearing Officer

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

(f) Criteria for Replacement Panelist

If the Chief Hearing Officer appoints a replacement Panelist by operation of this Rule, the Chief Hearing Officer shall do so using the criteria set forth in Rule 9232.

9235. Hearing Officer Authority

(a) Hearing Officer Authority

The Hearing Officer shall be selected by the Chief Hearing Officer and shall have authority to do all things necessary and appropriate to discharge his or her duties. In addition to the powers exercised by all members of the Hearing Panel or, if applicable,

the Extended Hearing Panel, the powers of the Hearing Officer include, but are not limited to:

- (1) holding pre-hearing and other conferences and requiring the attendance at any such conference of at least one representative of each Party who has authority to negotiate the resolution of issues in controversy;
- (2) regulating the course of the hearing;
- (3) ordering the Parties to present oral arguments at any stage of the disciplinary proceeding;
- (4) resolving any and all procedural and evidentiary matters, discovery requests, and other non-dispositive motions, subject to any limitations set forth elsewhere in the Code;
- (5) reopening any hearing, upon notice to all Parties, prior to the issuance of the decision of the Hearing Panel or, if applicable, the Extended Hearing Panel;
- (6) creating and maintaining the official record of the disciplinary proceeding; and
- (7) drafting a decision that represents the views of the majority of the Hearing Panel or, if applicable, the Extended Hearing Panel.

(b) Authority in the Absence of Hearing Officer

If the Hearing Officer appointed to a case is temporarily unavailable or unable for any reason to discharge his or her duties in a particular proceeding under conditions not requiring the appointment of a replacement Hearing Officer, the Chief Hearing Officer or the Deputy Chief Hearing Officer in his or her discretion may exercise the necessary authority in the same manner as if he or she had been appointed Hearing Officer in the particular proceeding.

9240. Pre-Hearing Conference and Submission

9241. Pre-Hearing Conference

(a) Purposes

The purposes of a pre-hearing conference include, but are not limited to:

- (1) expediting the disposition of the proceeding;
- (2) establishing procedures to manage the proceeding efficiently; and
- (3) improving the quality of the hearing through more thorough preparation.

(b) Procedure

On his or her own motion or at the request of a Party, the Hearing Officer may, in his or her discretion, order counsel or any Party to meet for a pre-hearing conference. Such conferences also may be held with one or more persons participating by telephone or other remote means.

(c) Subjects to be Discussed

At a pre-hearing conference, the Hearing Officer shall schedule an expedited proceeding as required by Rule 9290, and may consider and take action with respect to any or all of the following:

- (1) simplification and clarification of the issues;
- (2) exchange of witness and exhibit lists and copies of exhibits;
- (3) stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;
- (4) matters of which official notice may be taken;
- (5) the schedule for exchanging pre-hearing motions or briefs, if any;
- (6) the method of service and filing of papers by the Parties;
- (7) determination of hearing dates;
- (8) amendments to the complaint or answers thereto;
- (9) production of documents as set forth in Rule 9251; and
- (10) such other matters as may aid in the orderly and expeditious disposition of the proceeding.

(d) Scheduling

An initial pre-hearing conference, unless determined by the Hearing Officer to be unnecessary or premature, shall be held within 21 days after filing of an answer, or after the expiration of the second period provided for filing an answer as set forth in Rule 9215(f). When a complaint names multiple Respondents, the 21-day period shall commence from the later of (i) the date on which the last timely answer was filed, or (ii) if one or more Respondents have failed to answer, from the expiration of the second period provided for filing an answer under Rule 9215(f).

(e) Pre-hearing Order

At or following the conclusion of any conference held pursuant to this Rule, the Hearing Officer shall enter a written ruling or order that recites any agreements reached and any procedural determinations made by the Hearing Officer.

(f) Failure to Appear: Default

The Hearing Officer may issue a default decision, pursuant to Rule 9269, against a Party that fails to appear, in person or through counsel or a representative, at a pre-hearing conference of which the Party has been due notice.

9242. Pre-Hearing Submission

(a) Requirement to Furnish Information

Prior to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, the Hearing Officer, in the exercise of his or her discretion, may order a Party to furnish to all other Parties and the Hearing Panel or, if applicable, the Extended Hearing Panel, such information as deemed appropriate, including any or all of the following:

- (1) an outline or narrative summary of a Party's case or defense;
- (2) the legal theories upon which a Party shall rely;
- (3) a list and copies of documents that a Party intends to introduce at the hearing;
- (4) a list of witnesses who shall testify on a Party's behalf, including the witnesses' names, occupations, addresses, and a brief summary of their expected testimony; and,
- (5) if a witness shall be called to testify as an expert, a statement of the expert's qualifications, a listing of other proceedings in which the expert has given expert testimony, a list of the expert's publications, and copies of those publications that are not readily available to the other Parties and the Hearing Panel or, if applicable, the Extended Hearing Panel.

9250. Discovery

9251. Inspection and Copying of Documents in Possession of Staff

(a) Documents to be Available for Inspection and Copying

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

- (A) requests for information issued pursuant to Rule 8210;
- (B) every other written request directed to persons not employed by the Exchange to provide Documents or to be interviewed;
- (C) the Documents provided in response to any such requests described in (A) and (B) above;
- (D) all transcripts and transcript exhibits; and
- (E) all other Documents obtained from persons not employed by the Exchange.

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

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

(b) Documents That May Be Withheld

(1) The Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may withhold a Document if:

- (A) the Document is privileged or constitutes attorney work product;
- (B) the Document is an examination or inspection report, an internal memorandum, or other note or writing prepared by an Exchange employee that shall not be offered in evidence;

(C) the Document would disclose (i) an examination, investigatory or enforcement technique or guideline of the Exchange, a federal, state, or foreign regulatory authority, or any self-regulatory organization; (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by the Exchange, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or

(D) the Hearing Officer grants leave to withhold a Document or category of Documents as not relevant to the subject matter of the proceeding, or for other good cause shown.

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

(c) Withheld Document List

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

(d) Timing of Inspection and Copying

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

Regulation shall make Documents available to all other Respondents not later than the later of:

(1) 21 days after the filing date of the last timely answer, or

(2) the expiration of the second period provided for filing an answer as set forth in Rule 9215(f).

(e) Place and Time of Inspection and Copying

Documents subject to inspection and copying pursuant to this Rule shall be made available to the Respondent for inspection and copying at the Exchange office where they are ordinarily maintained, or at such other location as the Hearing Officer, in his or her discretion, shall designate, or as the Parties otherwise agree. A Respondent shall be given access to the Documents during normal business hours. A Respondent shall not be given custody of or be permitted to remove the Documents.

(f) Copying Costs

A Respondent may obtain a photocopy of all Documents made available for inspection. A Respondent shall be responsible for the cost of photocopying. Unless otherwise ordered, charges for copies made at the request of a Respondent shall be at a rate to be established by the Exchange.

(g) Failure to Make Documents Available — Harmless Error

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

9252. Requests for Information

(a) Content and Timing of Requests

A Respondent who requests that the Exchange invoke Rule 8210 to compel the production of Documents or testimony at the hearing shall do so in writing and serve copies on all Parties. Such request shall: be submitted to the Hearing Officer no later than 21 days before the scheduled hearing date; describe with specificity the Documents, the category or type of Documents, or the testimony sought; state why the Documents, the category or type of Documents, or the testimony are material; describe the requesting

Party's previous efforts to obtain the Documents, the category or type of Documents, or the testimony through other means; and state whether the custodian of each Document, or the custodian of the category or type of Documents, or each proposed witness is subject to the Exchange's jurisdiction.

(b) Standards for Issuance

A request that the Phlx Regulation Department compel the production of Documents or testimony shall be granted only upon a showing that: the information sought is relevant, material, and non-cumulative; the requesting Party has previously attempted in good faith to obtain the desired Documents and testimony through other means but has been unsuccessful in such efforts; and each of the persons from whom the Documents and testimony are sought is subject to the Exchange's jurisdiction. In addition, the Hearing Officer shall consider whether the request is unreasonable, oppressive, excessive in scope, or unduly burdensome, and whether the request should be denied, limited, or modified.

(c) Limitations on Requests

If, after consideration of all the circumstances, the Hearing Officer determines that a request submitted pursuant to this Rule is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she shall deny the request, or grant it only upon such conditions as fairness requires. In making the foregoing determination, the Hearing Officer may inquire of the other Parties whether they shall stipulate to the facts sought to be proved by the Documents or testimony sought. If the Hearing Officer grants the request, the Hearing Officer shall order that requested Documents be produced to all Parties not less than ten days before the hearing, and order that witnesses whose testimony was requested appear and testify at the hearing. If the Hearing Officer grants the request ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, the Documents or testimony shall be produced immediately to all Parties.

9253. Production of Witness Statements

(a) Availability

Notwithstanding the provisions of Rule 9251(b),

(1) A Respondent in a disciplinary proceeding may file a motion requesting that the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation produce for inspection and copying any statement of any person called or to be called as a witness by the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation that pertains, or is expected

to pertain, to his or her direct testimony and which is “a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement,” as that phrase is used in 18 U.S.C. § 3500(e)(2).

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

(b) Failure to Produce — Harmless Error

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

9260. Hearing and Decision

9261. Evidence and Procedure in Hearing

(a) Submission of Documentary Evidence and List of Witnesses Before Hearing

No later than ten days before the hearing, or at such earlier date as may be specified by the Hearing Officer, each Party shall submit to all other Parties and to the Hearing Officer copies of documentary evidence and the names of the witnesses each Party intends to present at the hearing.

(b) Party’s Right to Be Heard

If a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the Party’s representative.

(c) Request to Submit Additional Evidence

Notwithstanding paragraph (a), a Party, for good cause shown, may seek to submit any additional evidence at the hearing as the Hearing Officer, in his or her discretion, determines may be relevant and necessary for a complete record.

9262. Testimony

A person who is subject to the jurisdiction of the Exchange shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

9263. Evidence: Admissibility**(a) Criteria for Receiving and Excluding Evidence**

The Hearing Officer shall receive relevant evidence, and may exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial.

(b) Objections

Objections to the admission or exclusion of evidence shall be made on the record and shall succinctly state the grounds relied upon. Excluded material shall be deemed a supplemental document, which shall be attached to the record and retained under Rule 9267.

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

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

(b) After Commencement of Hearing on Merits

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

(c) Case Not Fully Adjudicated on Motion

If on motion under this rule a decision is not rendered upon the whole case or for all the relief asked and a hearing is necessary, the Hearing Panel or, if applicable, the Extended Hearing Panel, at the hearing of the motion, by examining the pleadings and the evidence before it and by questioning counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, and directing such further proceedings in the action as are just. Upon the hearing of the action the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

(d) Form of Papers

A motion for summary disposition pursuant to paragraph (a) shall be accompanied by the following: a statement of undisputed facts; a supporting memorandum of points and authorities; and affidavits or declarations that set forth such facts as would be admissible at the hearing and show affirmatively that the affiant is competent to testify to the matters stated therein. A memorandum of points and authorities in support or opposition shall not exceed 35 pages.

(e) Rulings on Motion

The Hearing Officer may promptly deny or defer decisions on any motion for summary disposition, however, only the Hearing Panel or, if applicable, the Extended Hearing Panel, may grant a motion for summary disposition, except the Hearing Officer may grant motions for summary disposition with respect to questions of jurisdiction. The Hearing Panel or, if applicable, the Extended Hearing Panel, may grant the motion for summary disposition if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law. If a Party files a motion under paragraph (a), the facts alleged in the pleadings of the Party against whom the motion is made shall be taken as true, except as modified by stipulations or admissions made by the non-moving Party, by uncontested affidavits or declarations, or by facts officially noticed pursuant to Rule 9145. If a Party opposing a motion for summary disposition made under paragraph (a) cannot present, by affidavit prior to the hearing, facts essential to justify the Party's opposition to the motion, the Hearing Panel

or, if applicable, the Extended Hearing Panel, may deny the motion for summary disposition or defer the decision on the motion.

9265. Record of Hearing

(a) Recordation

A hearing shall be recorded by a court reporter and a transcript shall be prepared. Unless otherwise ordered by a Hearing Officer, a pre-hearing conference shall be recorded by a court reporter and a transcript shall be prepared.

(b) Availability of a Transcript

A transcript of a pre-hearing conference and a transcript of a hearing shall be available to a Party for purchase from the court reporter at prescribed rates. A witness may purchase from the court reporter a transcript of his or her own testimony.

(c) Transcript Correction

Prior to the filing of post-hearing briefs or proposed findings and conclusions, or within such earlier time as ordered by the Hearing Officer, a Party or witness may seek to correct his or her transcript. A proposed correction of the transcript shall be submitted to the Hearing Officer by affidavit. Upon notice to all Parties to the disciplinary proceeding, the Hearing Officer may order the correction to the transcript as requested or sua sponte.

9266. Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs

(a) Discretion of Hearing Officer to Require Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs

At the discretion of the Hearing Officer, the Parties may be ordered to file proposed findings of facts and conclusions of law, or post-hearing briefs, or both. The Hearing Officer may order that such proposed findings and conclusions be filed together with, or as part of, post-hearing briefs.

(b) Reference to Record Required

Proposed findings of fact or other statements of fact in briefs shall be supported by specific references to the record.

(c) Period for Filing

In any case in which the Hearing Officer ordered the filing of proposed findings or conclusions of law, or post-hearing briefs, the Hearing Officer shall, after consultation with the Parties, prescribe the period within which proposed findings and conclusions of law and post-hearing briefs are to be filed. Such period shall be reasonable under all the

circumstances but the total period allowed for the filing of post-hearing submissions shall not exceed 60 days after the conclusion of the hearing unless the Hearing Officer, for good cause shown, permits a different period and sets forth in an order the reasons why a longer period is necessary.

(d) Form, Length of Papers

Unless the Hearing Officer orders otherwise, each post-hearing submission shall not exceed 25 pages, exclusive of cover sheets, tables of contents, and tables of authorities.

9267. Record; Supplemental Documents Attached to Record; Retention

(a) Contents of the Record, Retention

The record shall consist of:

- (1) the complaint, answers, each notice of hearing, pre-hearing order, and any amendments thereto;
- (2) each application, motion, submission, and other paper, and any amendments, motions, objections, and exceptions to or regarding them;
- (3) each transcript of a pre-hearing conference and of a hearing, and each stipulation, transcript of testimony, Document, and other item admitted into evidence;
- (4) each written communication accepted at the discretion of the Hearing Officer;
- (5) with respect to a motion to disqualify a Hearing Officer under Rule 9233 or a Panelist under Rule 9234, each affidavit or transcript of testimony taken and the ruling made in connection with the request;
- (6) all proposed findings and conclusions;
- (7) each written ruling, order, and decision issued by the Chief Hearing Officer, Hearing Officer, Hearing Panel or, if applicable, Extended Hearing Panel; and,
- (8) any other Document or item accepted into the record by the Hearing Officer, the Hearing Panel or, if applicable, the Extended Hearing Panel.

(b) Supplemental Documents Attached To Record; Retention

(1) A supplemental Document attached to the record is any Document submitted to the Hearing Officer that did not become part of the record, including:

- (A) a Document not admitted by the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel;

(B) any matter stricken from any filing or stricken during an oral presentation, including any matter stricken from any filing or stricken during any oral presentation because the Adjudicator determined it was scandalous or impertinent as provided in Rule 9136(e); and

(C) a list of Documents, if any, that a Respondent unsuccessfully sought by motion to inspect and copy under Rule 9251(c).

(2) A supplemental Document attached to the record shall not constitute part of the record, but shall be retained until the date upon which the Exchange's decision becomes final disciplinary action or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(c) Substitution of Copies

Parties may submit to the Hearing Officer for substitution a true copy of a Document in the record.

9268. Decision of Hearing Panel or Extended Hearing Panel

(a) Majority Decision

Within 60 days after the final date allowed for filing proposed findings of fact, conclusions of law, and post-hearing briefs, or by a date established at the discretion of the Chief Hearing Officer, the Hearing Officer shall prepare a written decision that reflects the views of the Hearing Panel or, if applicable, the Extended Hearing Panel, as determined by majority vote.

(b) Contents of Decision

The decision shall include:

- (1) a statement describing the investigative or other origin of the disciplinary proceeding;
- (2) the specific statutory or rule provisions that were alleged to have been violated;
- (3) a statement setting forth the findings of fact with respect to any act or practice the Respondent was alleged to have committed or omitted;
- (4) the conclusions of the Hearing Panel, or Extended Hearing Panel, as to whether the Respondent violated any provision alleged in the complaint;
- (5) a statement of the Hearing Panel, or the Extended Hearing Panel, in support of the disposition of the principal issues raised in the proceeding;

(6) a statement describing any sanction imposed, the reasons therefor, and the date upon which such sanction shall become effective. Unless otherwise provided in the decision, the sanction(s) shall become effective on a date to be determined by the Phlx Regulation Department staff; and

(7) a statement, when the sanctions include a permanent cease and desist order, that is consistent with the requirements of Rule 9291(a) concerning the content, scope, and form of a permanent cease and desist order.

(c) Dissenting Opinion

Within 65 days after the final date allowed for filing proposed findings of fact and conclusions of law, and post-hearings briefs, or by a date established at the discretion of the Chief Hearing Officer, the Hearing Officer or any Panelist may prepare a written dissenting opinion.

(d) Service, Notice, And Dissemination Requirements

The Office of Hearing Officers shall promptly serve the decision of the Hearing Panel, or the Extended Hearing Panel, and any dissenting opinion on the Parties; publish notice of the decision and any dissenting opinion in the Central Registration Depository; and provide a copy of the decision and any dissenting opinion to each member organization of the Exchange with which a Respondent is associated.

(e) Appeal or Review

(1) If not timely appealed pursuant to Rule 9311 or timely called for review pursuant to Rule 9312, the majority decision shall constitute final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1).

(2) The majority decision with respect to an Exchange member or member organization that is an affiliate of the Exchange within the meaning of Rule 985(b) shall constitute final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1) and may not be appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312.

9269. Default Decisions

(a) Issuance of Default Decisions

(1) The Hearing Officer may issue a default decision against a Respondent that fails to answer the complaint within the time afforded under Rule 9215, or a Party that fails to appear at any hearing that a Party is required to attend under the Rule 9200 Series of which the Party has due notice.

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

(3) The Hearing Officer may order a Party that fails to appear at the pre-hearing conference or the hearing to pay the costs incurred by other Parties in connection with their appearance.

(4) The Office of Hearing Officers shall provide a copy of the default decision to each Exchange member organization with which a Respondent is associated.

(b) Contents of Decision

The contents of a default decision shall conform to the requirements of Rule 9268(b).

(c) Review of Default Decision

A Party may, for good cause shown, file a motion to set aside a default, dismissal, and the imposition of costs. Upon a showing of good cause, the Hearing Officer that entered the original order shall decide the motion. If the Hearing Officer that issued the original order is not available, the Chief Hearing Officer shall appoint another Hearing Officer to decide the motion.

(d) Final Disciplinary Action of the Exchange; Effectiveness of Sanctions

(1) If a default decision is not appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312 within 25 days after the date the Office of Hearing Officers serves it on the Parties, the default decision shall become the final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become effective on a date to be determined by the Phlx Regulation Department staff, except that a bar or expulsion shall become effective immediately upon the default decision becoming the final disciplinary action of the Exchange. The decision shall be served on a Respondent by courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar or an expulsion.

(2) A default decision with respect to an Exchange member or member organization that is an affiliate of the Exchange within the meaning of Rule 985(b) shall constitute final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1) and may not be appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312.

9270. Settlement Procedure**(a) When Offer Allowed; No Stay of Proceeding**

A Respondent who is notified that a proceeding has been instituted against him or her may propose in writing an offer of settlement at any time. If a Respondent proposes an offer of settlement before the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Officer. If a Respondent proposes an offer of settlement after the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Panel or, if applicable, the Extended Hearing Panel.

(b) Settlement Offer Shall Conform to Rule

A Respondent who makes an offer of settlement shall do so in conformity with the provisions of this Rule and shall not make such an offer of settlement frivolously or propose a sanction inconsistent with the seriousness of the violations to be found.

(c) Content and Signature Requirements

An offer of settlement shall be in writing and signed by the person making the offer, and, if the person is represented by counsel or a representative, signed also by the counsel or representative. The offer of settlement shall contain in reasonable detail:

- (1) a statement describing the investigative or other origin of the disciplinary action;
- (2) the specific statutory or rule provisions that the member, member organization or associated person is alleged to have violated;
- (3) a statement containing the acts or practices which the member, member organization or associated person is alleged to have engaged in or omitted;
- (4) a statement consenting to findings of fact and violations consistent with the statements contained in the offer of settlement required by subparagraphs (c)(2) and (c)(3);
- (5) a proposed sanction to be imposed that is consistent with the current Exchange Enforcement Sanctions User's Guide, or, if inconsistent with the Enforcement Sanctions User's Guide, a detailed statement supporting the proposed sanction must be provided;
- (6) if applicable, a proposed permanent cease and desist order to be imposed that is consistent with the requirements of Rule 9291(a) concerning the content, scope, and form of a permanent cease and desist order; and

(7) the effective date of any sanction(s) imposed, or a statement that the effective date of the sanction(s) will be a date to be determined by the Phlx Regulation Department staff.

(d) Waiver

(1) If a Respondent submits an offer of settlement, by the submission such Respondent waives:

(A) any right of such Respondent to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Exchange Review Council, the Commission, and the courts, or any right otherwise to challenge or contest the validity of the order issued, if the offer of settlement and order of acceptance are accepted;

(B) any right of such Respondent to claim bias or prejudgment of the Chief Hearing Officer, Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, a Panelist on a Hearing Panel, or, if applicable, an Extended Hearing Panel, the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of acceptance, including acceptance, or rejection of such offer of settlement and order of acceptance; and

(C) any right of such Respondent to claim that a person or body violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the order of acceptance, or other consideration of the offer of settlement and order of settlement, including acceptance or rejection of such offer of settlement and order of acceptance.

(2) If an offer of settlement and an order of acceptance are rejected, the Respondent shall be bound by the waivers made in this paragraph (d) for conduct by persons or bodies occurring during the period beginning from the date the offer of settlement was submitted and ending upon the rejection of the offer of settlement and order of acceptance.

(e) Uncontested Offers of Settlement

If a Respondent makes an offer of settlement and the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation does not oppose it,

the offer of settlement is uncontested. If an offer of settlement is determined to be uncontested by the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation before a hearing on the merits has begun, the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation shall transmit the uncontested offer of settlement and a proposed order of acceptance to the Exchange Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of the Exchange within the meaning of Rule 985) with its recommendation. If an offer of settlement is determined to be uncontested by the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation after a hearing on the merits has begun, the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation shall transmit the offer of settlement and a proposed order of acceptance to the Hearing Panel or, if applicable, the Extended Hearing Panel for acceptance or rejection. If accepted by the Hearing Panel or, if applicable, Extended Hearing Panel, the offer of settlement and the order of acceptance shall be forwarded to the Exchange Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of the Exchange within the meaning of Rule 985) to accept or reject.

(1) A proposed order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions (including, if applicable, a permanent cease and desist order) consistent with the terms of the offer of settlement.

(2) Before an offer of settlement and an order of acceptance shall become effective, they shall be submitted to and accepted by the Exchange Review Council or the Office of Disciplinary Affairs. The Office of Disciplinary Affairs may accept such offer of settlement and order of acceptance or refer them to the Exchange Review Council. The Review Subcommittee may accept or reject such offer of settlement and order of acceptance or refer them to the Exchange Review Council for acceptance or rejection by the Exchange Review Council. In the case of a Respondent that is an affiliate of the Exchange within the meaning of Rule 985, the offer of settlement and order of acceptance shall be accepted or rejected by the Office of Disciplinary Affairs and shall not be referred to the Exchange Review Council.

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

(f) Contested Offers of Settlement

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

(1) If a contested offer of settlement is approved by the Hearing Panel or, if applicable, Extended Hearing Panel, the Hearing Officer shall draft an order of acceptance of the offer of settlement. The order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions (including, if applicable, a permanent cease and desist order) consistent with the terms of the offer of settlement. The offer of settlement, any written opposition thereto, and the order of acceptance shall be forwarded to the Exchange Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of the Exchange within the meaning of Rule 985) to accept or reject.

(2) Before an offer of settlement and order of acceptance shall become effective, they shall be submitted to, and accepted by, the Exchange Review Council or the Office of Disciplinary Affairs. The Review Subcommittee may accept or reject such offer of settlement and order of acceptance or refer them to the Exchange Review Council for acceptance or rejection by the Exchange Review Council. In the case of a Respondent that is an affiliate of the Exchange within the meaning of Rule 985, the offer of settlement and order of acceptance shall be accepted or rejected by the Office of Disciplinary Affairs and shall not be referred to the Exchange Review Council.

(3) If the offer of settlement and order of acceptance are accepted by the Office of Disciplinary Affairs, the Exchange Review Council or the Review Subcommittee, the Chief Regulatory Officer shall issue the order and notify the Office of Hearing Officers, and provide a copy of an issued order of acceptance to each Exchange member organization with which a Respondent is associated.

(g) Final Disciplinary Action

The proceeding shall conclude as of the date the order of acceptance is issued. The order of acceptance shall constitute final disciplinary action of the Exchange. The sanction shall take effect as set forth in the order.

(h) Rejection of Offer of Settlement

If an uncontested offer of settlement or an order of acceptance is rejected by the Hearing Panel or, if applicable, the Extended Hearing Panel, the Review Subcommittee, the Office of Disciplinary Affairs, or the Exchange Review Council, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. If a contested offer of settlement or an order of acceptance is rejected by the Hearing Panel or, if applicable, the Extended Hearing Panel, the Review Subcommittee, the Office of Disciplinary Affairs, or the Exchange Review Council, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. The rejected offer and proposed order of acceptance shall not constitute a part of the record in any proceeding against the Respondent making the offer.

(i) Disciplinary Proceeding With Multiple Respondents

When a disciplinary proceeding names multiple Respondents, settlement offers may be accepted or rejected as to any one or all of the Respondents submitting offers. The proceedings shall thereafter be terminated as to those Respondents whose offers of settlement are accepted, but such Respondents may be required to participate in any hearing conducted as to those Respondents that did not submit offers of settlement or whose offers of settlement were rejected.

(j) No Prejudice from Rejected Offer of Settlement

If an offer of settlement is rejected by a Hearing Panel or, if applicable, an Extended Hearing Panel, the Review Subcommittee, the Office of Disciplinary Affairs, or the Exchange Review Council, the Respondent shall not be prejudiced by the offer, which may not be introduced into evidence in connection with the determination of the issues involved in the pending complaint or in any other proceeding.

9280. Contemptuous Conduct

(a) Persons Subject to Sanctions

If a Party, attorney for a Party, or other person authorized to represent others by Rule 9141, engages in conduct in violation of an order of a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, or other contemptuous conduct during a proceeding, a Hearing Officer, Hearing Panel or, if applicable, an Extended Hearing Panel, may:

(1) subject the Party, attorney for a Party, or other person authorized to represent others by Rule 9141, to the sanctions set forth in paragraph (b); and

(2) exclude an attorney for a Party, or other person authorized to represent others by Rule 9141, under Rule 9150.

(b) Sanctions Other Than Exclusion

A Hearing Officer, Hearing Panel or, if applicable, an Extended Hearing Panel, may make such orders as are just in regard to a Party, an attorney for a Party, or other person authorized to represent others by Rule 9141.

(1) Such orders may include:

(A) an order providing that the matters on which the order is made or any other designated facts shall be taken to be established for the purposes of the disciplinary proceeding in accordance with the claim of the Party obtaining the order;

(B) an order providing that the disobedient Party may not support or oppose designated claims or defenses, or may not introduce designated matters in evidence;

(C) an order providing that pleadings or a specified part of the pleading shall be stricken, or an order providing that the proceeding shall be stayed until the Party subject to the order obeys it;

(D) in lieu of any of the foregoing orders or in addition thereto, an order providing that contemptuous conduct includes the failure to obey any order; and

(E) an order as provided in subparagraphs (A), (B), and (C) where a Party has failed to comply with an order to produce a person for examination, unless the Party failing to comply shows that such Party is unable to produce such person for examination.

(2) A Party that without substantial justification fails to disclose information required by the Rule 9240 Series and the Rule 9250 Series or otherwise required by order of the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel, shall not, unless such failure is harmless, be permitted to use as evidence at a hearing, in a motion or in any other filing of papers, or in oral argument, any witness or information not so disclosed. In addition to, or in lieu of this sanction, the Hearing Officer, Hearing Panel or, if applicable, the Extended Hearing Panel, on motion and after affording an opportunity to be heard, may impose other appropriate sanctions.

These sanctions may include any of the sanctions provided for in subparagraphs (b)(1)(A) through (C).

(c) Exchange Review Council Review of Exclusions

If an attorney for a Party, or other person authorized to represent others by Rule 9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or other person may seek review of the exclusion by filing a motion to vacate with the Exchange Review Council. Such motion to vacate shall be filed and served on all Parties within five days after service of the exclusion order. Any response shall be filed with the Exchange Review Council and served on all Parties within five days after the service of the motion to vacate. The Exchange Review Council or the Review Subcommittee shall consider such motion on an expedited basis and promptly issue a written order. The filing of a motion to vacate shall stay all aspects of the disciplinary proceeding until at least seven days after service of the order of the Exchange Review Council or the Review Subcommittee. The review proceedings shall be conducted on the basis of the written record without oral argument.

(d) Adjournment

The hearing, conferences, or other activities relating to the disciplinary proceeding shall be stayed pending the review by the Exchange Review Council or the Review Subcommittee of an exclusion order in paragraph (c). In the event that the Exchange Review Council or the Review Subcommittee upholds an exclusion of an attorney or other person authorized to represent others by Rule 9141, the Hearing Officer may, upon motion by a Party represented by an attorney or other person subject to an order of exclusion, grant an adjournment to allow the retention of new counsel or selection of a new representative. In determining whether to grant an adjournment or the length of an adjournment, the Hearing Officer shall consider whether there are other counsel or representatives of record on behalf of the Party, the availability of other counsel or other members of an excluded attorney's firm, or the availability of other representatives for the Party, and any other relevant factors.

9290. Expedited Disciplinary Proceedings

For any disciplinary proceeding, the subject matter of which also is subject to a temporary cease and desist proceeding initiated pursuant to Rule 9810 or a temporary cease and desist order, hearings shall be held and decisions shall be rendered at the earliest possible time. An expedited hearing schedule shall be determined at a pre-hearing conference held in accordance with Rule 9241.

9291. Permanent Cease and Desist Orders

(a) Content, Scope and Form Requirements

When a decision issued under Rule 9268 or Rule 9269 or an order of acceptance issued under Rule 9270 imposes a permanent cease and desist order, it shall:

- (1) order a Respondent (and any successor of a Respondent, where the Respondent is a member organization) to cease and desist permanently from violating a specific rule or statutory provision;
- (2) set forth the violation; and
- (3) describe in reasonable detail the act or acts the Respondent (and any successor of a Respondent, where the Respondent is a member organization) shall take or refrain from taking.

(b) Delivery Requirement

Where a Respondent is a member organization, Respondent shall deliver a copy of a permanent cease and desist order, within one business day of receiving it, to its associated persons.

9300. Review of Disciplinary Proceeding by the Exchange Review Council and the Exchange Board; Application for Commission Review**9310. Appeal to or Review by the Exchange Review Council****9311. Appeal by Any Party; Cross-Appeal****(a) Time to File Notice of Appeal**

A Respondent or Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may file a written notice of appeal within 25 days after service of a decision issued pursuant to Rule 9268 or Rule 9269; provided, however, that a decision with respect to a Respondent that is an affiliate of the Exchange within the meaning of Rule 985 may not be appealed to the Exchange Review Council.

(b) Effect

An appeal to the Exchange Review Council from a decision issued pursuant to Rule 9268 or Rule 9269 shall operate as a stay of that decision until the Exchange Review Council issues a decision pursuant to Rule 9349 or, in cases called for discretionary review by the Exchange Board, until a decision is issued pursuant to Rule 9351. Any such appeal, however, will not stay a decision, or that part of a decision, that imposes a permanent cease and desist order.

(c) Notice of Appeal Content and Signature Requirements

A Party appealing pursuant to this Rule shall file a written notice of appeal with the Office of Hearing Officers and serve the notice on the Parties. The notice of appeal shall be signed by the appealing Party, or his or her counsel or representative, and shall contain:

- (1) the name of the disciplinary proceeding;
- (2) the disciplinary proceeding docket number;
- (3) the name of the Party on whose behalf the appeal is made;
- (4) a statement on whether oral argument before the Exchange Review Council is requested; and
- (5) a brief statement of the findings, conclusions, or sanctions as to which exceptions are taken.

(d) Notice of Cross-Appeal

A Party who is served with a notice of appeal may file a written notice of cross-appeal and serve the notice of cross-appeal on the Parties. The notice of cross-appeal shall be filed within five days after service of the notice of appeal. The notice of cross-appeal shall be signed by the Party cross-appealing, or his or her counsel, and shall contain the information set forth in subparagraphs (c)(1), (c)(2), (c)(4), and (c)(5), and the name of the Party on whose behalf the cross-appeal is made.

(e) Waiver of Issues Not Raised

The Exchange Review Council may, in its discretion, deem waived any issue not raised in the notice of appeal or cross-appeal. The Exchange Review Council, the Review Subcommittee, a Subcommittee, the Chief Regulatory Officer or, if applicable, an Extended Proceeding Committee, shall provide the Parties with notice of, and an opportunity to submit briefs on, any issue that shall be considered by the Exchange Review Council if such issue was not previously set forth in the notice of appeal. Parties may submit motions to either the Review Subcommittee or the Exchange Review Council challenging requests for briefing made by the Chief Regulatory Officer under this Rule of issues that were not previously set forth in the notice of appeal.

(f) Withdrawal of Notice of Appeal or Cross-Appeal

A Party may withdraw a notice of appeal or a notice of cross-appeal filed by him or her at any time by filing a written notice of withdrawal of appeal or cross-appeal with the Office of Hearing Officers and serving notice thereof on the Parties. The notice of withdrawal of appeal or cross-appeal shall contain: the name of the disciplinary proceeding; the disciplinary proceeding docket number; and the name of the Party on

whose behalf the notice of appeal or cross-appeal was filed previously. The notice of withdrawal of appeal or cross-appeal shall be signed by the Party, or his or her counsel or representative. Upon the withdrawal of a notice of appeal, any outstanding cross-appeal shall be treated as an appeal unless it is withdrawn.

9312. Review Proceeding Initiated By the Exchange Review Council

(a) Call for Review

(1) Rule 9268 Decision

A decision issued pursuant to Rule 9268 may be subject to a call for review by any member of the Exchange Review Council or, pursuant to authority delegated from the Exchange Review Council, by any member of the Review Subcommittee. A decision issued pursuant to Rule 9268 shall be subject to a call for review within 45 days after the date of service of the decision. If called for review, such decision shall be reviewed by the Exchange Review Council.

(2) Rule 9269 Decision

A default decision issued pursuant to Rule 9269 shall be subject to a call for review by the Chief Regulatory Officer, on his or her own motion within 25 days after the date of service of the decision. If called for review, such decision shall be reviewed by the Exchange Review Council.

(3) Decision Regarding Affiliate of the Exchange

Notwithstanding anything herein to the contrary, a decision with respect to a member or member organization that is an affiliate of the Exchange within the meaning of Rule 985 may not be called for review by the Exchange Review Council.

(b) Effect

Institution of review by a member of the Exchange Review Council on his or her own motion, a member of the Review Subcommittee on his or her own motion, or the Chief Regulatory Officer, on his or her own motion, shall operate as a stay of a final decision issued pursuant to Rule 9268 or Rule 9269 as to all Parties subject to the notice of review, until the Exchange Review Council issues a decision pursuant to Rule 9349, or, in cases called for discretionary review by the Exchange Board, until a decision is issued pursuant to Rule 9351. Institution of any such review, however, will not stay a decision, or that part of a decision, that imposes a permanent cease and desist order.

(c) Requirements

(1) If a member of the Exchange Review Council, a member of the Review Subcommittee, or, for a disciplinary proceeding decided under Rule 9269, the Chief Regulatory Officer determines to call a case for review, a written notice of review shall be served promptly on each Party to the proceeding and filed with the Office of Hearing Officers. Such notice of review shall contain:

(A) the name of the disciplinary proceeding;

(B) the disciplinary proceeding docket number; and

(C) a brief statement of the findings, conclusions, or sanctions with respect to which the Exchange Review Council, the Review Subcommittee, or the Chief Regulatory Officer determined that a call for review was necessary.

(2) The statement contained in the notice of review shall not limit the scope of the Exchange Review Council's authority under Rule 9346 to review any issues raised in the record. The Exchange Review Council, the Review Subcommittee, a Subcommittee, the Chief Regulatory Officer or, if applicable, an Extended Proceeding Committee, shall provide the Parties with notice of, and an opportunity to submit briefs on, any issue that shall be considered by the Exchange Review Council if such issue was not previously set forth in the notice of review. Parties may submit motions to either the Review Subcommittee or the Exchange Review Council challenging requests for briefing made by the Chief Regulatory Officer under this Rule of issues that were not previously set forth in the notice of appeal.

(d) Effect of Withdrawal of Notice of Appeal, Cross-Appeal

If the review of a disciplinary proceeding by the Exchange Review Council is terminated before the Exchange Review Council issues a decision on the merits because all appealing Parties file a notice of withdrawal of appeal and no Party previously filed a notice of cross-appeal, or all Parties who previously filed a notice of cross-appeal file a notice of withdrawal of cross-appeal:

(1) a member of the Exchange Review Council or the Review Subcommittee shall have the right to call for review a decision issued pursuant to Rule 9268 in accordance with Rule 9312(a)(1), except that the 45 day period during which a call for review may be made shall begin on the day the Exchange receives the last filed notice of withdrawal of appeal or, if applicable, the last filed notice of withdrawal of cross-appeal; and,

(2) the Chief Regulatory Officer shall have the right to call for review a decision issued pursuant to Rule 9269 in accordance with Rule 9312(a)(2), except that the 25 day period during which a call for review may be made shall begin on the day the

Exchange receives the last filed notice of withdrawal of appeal or, if applicable, the last filed notice of withdrawal of cross-appeal.

9313. Counsel to the Exchange Review Council

(a) Authority

A Counsel to the Exchange Review Council shall have authority to take ministerial and administrative actions to further the efficient administration of a proceeding, including the authority to:

- (1) direct the Office of Hearing Officers to complete and transmit a record of a disciplinary proceeding to the Exchange Review Council in accordance with Rule 9267;
- (2) establish or amend a briefing schedule under Rule 9347(b) but not shorten a briefing schedule except with the consent of the Parties;
- (3) permit a brief or any other document required to be filed to vary from the requirements of the Rule 9130 Series as provided in Rule 9347(a);
- (4) establish the date, time, and location of an oral argument and provide for notice of the hearing under Rule 9341;
- (5) for other than a Party and counsel or a person acting in a representative capacity, determine who may attend a hearing;
- (6) rule on a motion by a Party to request to lengthen or shorten a period of time prescribed by the Code for the filing of any papers, or request that a hearing be postponed or adjourned under Rule 9322, except that a period may not be shortened and a hearing may not be postponed or adjourned without the consent of the Parties; and
- (7) create and maintain the official record of the disciplinary proceeding on appeal or review.

(b) Review

A Party seeking the review of a decision of a Counsel to the Exchange Review Council may make a motion to the Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee.

9320. Transmission of Record; Extensions of Time, Postponements, Adjournments

9321. Transmission of Record

Within 21 days after the filing of a notice of appeal or notice of review, or at such later time as the Exchange Review Council may designate, the Office of Hearing Officers shall assemble and prepare an index to the record, transmit the record and the index to the Exchange Review Council, and serve copies of the index upon all Parties. The Hearing Officer who participated in the disciplinary proceeding, or the Chief Hearing Officer, shall certify that the record transmitted to the Exchange Review Council is complete.

9322. Extensions of Time, Postponements, Adjournments

(a) Availability

At any time prior to the issuance of a decision pursuant to Rule 9349, the Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Exchange Review Council, for good cause shown, may extend or shorten a period prescribed by the Code for the filing of any papers, except that Counsel to the Exchange Review Council may shorten a period so prescribed only with the consent of the Parties. The Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Exchange Review Council, for good cause shown, may postpone or adjourn a hearing consistent with paragraph (b), except that Counsel to the Exchange Review Council may postpone or adjourn a hearing only with the consent of the Parties.

(b) Limitations on Postponements, Adjournments, and Changes in Location

Oral argument shall begin at the time and place ordered, unless the Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Exchange Review Council, for good cause shown, postpones, adjourns, or changes the location of the oral argument, except that Counsel to the Exchange Review Council may postpone or adjourn the oral argument only with the consent of the Parties. In considering a motion for the postponement or adjournment of an oral argument, the Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee, or Counsel to the Exchange Review Council shall consider, in addition to any other relevant factors:

- (1) the length of time the disciplinary proceeding has been pending to date, and the timeliness of the request for a postponement, an adjournment, or an extension;
- (2) the number of postponements, adjournments, or extensions already granted;
- (3) the stage of the proceedings at the time of the request;
- (4) the prejudice to the other Parties;

(5) the potential harm to the investing public if an extension of time, an adjournment, or a postponement is granted; and

(6) any other matter that justice may require.

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

9331. Appointment of Subcommittee or Extended Proceeding Committee

(a) Appointment by the Exchange Review Council

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

(1) Subcommittee

Except as provided in subparagraph (2), for each disciplinary proceeding appealed or called for review, the Exchange Review Council or the Review Subcommittee shall appoint a Subcommittee to participate, subject to Rule 9345, in the appeal or review. A Subcommittee shall be composed of two or more persons who shall be current or former members of the Exchange Review Council or former Directors.

(2) Extended Proceeding Committee

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

(b) Function

If a hearing is held, the Subcommittee or, if applicable, the Extended Proceeding Committee, shall hear oral arguments and consider, if allowed under Rule 9346(b), any new evidence. Based on the hearing and the record on appeal or review, the Subcommittee or, if applicable, the Extended Hearing Committee, shall make a

recommendation to the Exchange Review Council regarding the disposition of all matters on appeal, cross-appeal, or review. The recommendation shall be in the form of a written recommended decision.

9332. Disqualification and Recusal

(a) Recusal, Withdrawal of Member or Panelist

If at any time a member of the Exchange Review Council, including a member of the Review Subcommittee, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the Exchange Review Council determines that the member, the Panelist, or the Counsel to the Exchange Review Council has a conflict of interest or bias or circumstances otherwise exist where the fairness of the member, the Panelist, or the Counsel to the Exchange Review Council might reasonably be questioned, the member, the Panelist, or the Counsel to the Exchange Review Council shall notify the Chair of the Exchange Review Council, and the Chair of the Exchange Review Council shall issue and serve on the Parties a notice stating that the member, the Panelist, or the Counsel to the Exchange Review Council has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or is otherwise unable to continue service after a hearing has been convened, the Chair of the Exchange Review Council shall appoint a replacement Panelist. In the event that a member of the Review Subcommittee withdraws, is incapacitated, or is otherwise unable to continue service after assignment, the Chair of the Exchange Review Council shall appoint another member of the Exchange Review Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the withdrawal action was taken. The replacement member of the Review Subcommittee must have the same classification (Industry or Non-Industry) as the member who withdrew. In the event that a Counsel to the Exchange Review Council withdraws, is incapacitated, or is otherwise unable to continue service after assignment, the Chief Regulatory Officer shall assign a replacement Counsel to the Exchange Review Council.

(b) Motion for Disqualification

A Party may move for the disqualification of a member of the Exchange Review Council, the Review Subcommittee, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the Exchange Review Council. All such motions shall be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the fairness of the member, the Panelist, or the Counsel to the Exchange Review Council might reasonably be questioned, and shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification, and the dates on which the Party learned of those facts. Such motions shall be filed not later than 15 days after the later of:

- (1) when the Party learned of the facts believed to constitute the disqualification; or
- (2) when the Party was notified of the composition of the Subcommittee or, if applicable, the Extended Proceeding Committee or the assignment to the disciplinary proceeding of the Counsel to the Exchange Review Council.

(c) Disposition of Disqualification Motions: Challenges to Single Member of the Exchange Review Council or Review Subcommittee, Single Panelist of Subcommittee or Extended Hearing Committee, or Counsel to the Exchange Review Council

Motions for disqualification of a member of the Exchange Review Council, including a member of the Review Subcommittee, a Panelist of a Subcommittee or an Extended Proceeding Committee, or a Counsel to the Exchange Review Council shall be decided by the Chair of the Exchange Review Council, who shall promptly determine whether disqualification is required and issue a written ruling on the motion. If a member of the Review Subcommittee is disqualified, the Chair of the Exchange Review Council shall appoint another member of the Exchange Review Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the motion was made. The replacement member of the Review Subcommittee must have the same classification (Member, Industry or Non-Industry) as the member being replaced. If a Panelist is disqualified, the Chair of the Exchange Review Council shall appoint a replacement Panelist. If a Counsel is disqualified, the Chief Regulatory Officer shall assign a replacement Counsel to the Exchange Review Council.

(d) Disposition of Disqualification Motions: Challenges to Multiple Members or Panelists

(1) Exchange Review Council

If a Party files a motion to disqualify more than one member of the Exchange Review Council, the Chair of the Exchange Review Council shall promptly determine whether disqualification is required, and shall issue a written ruling on the matter. In the event of such disqualification, the remaining members of the Exchange Review Council shall consider the review or appeal of the disciplinary matter.

(2) Review Subcommittee

If a Party files a motion to disqualify more than one member of the Review Subcommittee, the Chair of the Exchange Review Council shall promptly determine whether disqualification is required, and shall issue a written ruling on the matter. If members of the Review Subcommittee are disqualified, the Chair of the Exchange

Review Council shall appoint other members of the Exchange Review Council to serve on the Review Subcommittee for the limited purpose of considering the issues raised in the disciplinary proceeding in which the motion was made. The replacement members of the Review Subcommittee must have the same classification (Member, Industry or Non-Industry) as the members being replaced.

(3) Subcommittee; Extended Proceeding Committee

If a Party files a motion to disqualify more than one Panelist of a Subcommittee or an Extended Proceeding Committee, the Chair of the Exchange Review Council shall promptly determine whether disqualification is required, and shall issue a written ruling on the motion. If multiple Panelists are disqualified, the Chair of the Exchange Review Council shall appoint replacement Panelists.

9340. Proceedings

9341. Oral Argument

(a) Request for Oral Argument

A Party may request oral argument before the Subcommittee or, if applicable, the Extended Proceeding Committee. Oral argument shall be requested in writing either in the Party's notice of appeal or cross-appeal or within 15 days after service of the Exchange Review Council's notice of review. Subject to the limitations of Rules 9342 and 9344, oral argument shall be granted if timely requested. The right to oral argument set forth in this Rule is unaffected by a Party's waiver of, or failure to request, a hearing pursuant to the Rule 9200 Series.

(b) Discretion to Proceed With or Without Oral Argument

In the absence of a request for oral argument, the Subcommittee or, if applicable, the Extended Proceeding Committee, in its discretion, may order that a matter be set down for oral argument or may consider the matter on the basis of the record.

(c) Notice Regarding Oral Argument

If oral argument is held, a notice stating the date, time, and location of the oral argument shall be served on the Parties at least 21 days before the hearing. The Parties may agree in writing to waive the notice period or, in extraordinary circumstances, the Subcommittee or, if applicable, the Extended Proceeding Committee, or Counsel to the Exchange Review Council may provide for a shorter notice period, except that Counsel to the Exchange Review Council may provide for a shorter notice period only with the consent of the Parties.

(d) Attendance Required

The Parties shall make oral arguments before the Subcommittee or, if applicable, the Extended Proceeding Committee. Unless otherwise agreed to by all of the Parties, all Panelists comprising the Subcommittee or, if applicable, the Extended Proceeding Committee shall be present for the oral argument.

(e) Time Limits

Unless the Subcommittee or, if applicable, the Extended Proceeding Committee, orders otherwise for good cause shown, each Party's oral argument before the Subcommittee or, if applicable, the Extended Proceeding Committee, shall be limited to a total of 30 minutes.

(f) Recordation; Transcript Correction

(1) Oral arguments shall be recorded by a court reporter and a transcript shall be prepared.

(2) A transcript of a hearing shall be available to a Party for purchase from the court reporter at prescribed rates. A witness may purchase a transcript of his or her own testimony from the court reporter.

(3) Prior to the filing of post-hearing briefs or within such earlier time as reasonably ordered by the Subcommittee or, if applicable, the Extended Proceeding Committee, a Party or witness may seek to correct his or her transcript. A proposed correction of the transcript shall be submitted by affidavit to the Subcommittee or, if applicable, the Extended Proceeding Committee. Upon notice to all Parties to the disciplinary proceeding, the Subcommittee or, if applicable, the Extended Proceeding Committee may order the correction to the transcript as requested or sua sponte.

9342. Failure to Appear at Oral Argument

A Party who requests oral argument but fails to appear after being duly notified shall be deemed to have waived any opportunity for oral argument provided under the Rule 9300 Series. The Subcommittee or, if applicable, the Extended Proceeding Committee, shall permit argument to go forward as to those Parties who appear. The Subcommittee or, if applicable, the Extended Proceeding Committee, in the exercise of its discretion, may consider the matter on the basis of the record without oral argument as to those Parties who failed to appear.

9343. Disposition Without Oral Argument

If an oral argument is not held, the matter shall be considered by a Subcommittee or, if applicable, an Extended Proceeding Committee, on the basis of the record, as defined in Rule 9267, and supplemented by any written materials submitted to or issued by the

Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council in connection with the appeal, cross-appeal, or call for review.

9344. Failure to Participate Below; Abandonment of Appeal

(a) Failure to Participate Below

When an appealing Party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, but shows good cause for the failure to participate, the Exchange Review Council or the Review Subcommittee may dismiss the appeal and remand the matter for further proceedings, or may order that the appeal proceed. If the appealing Party did not participate in the disciplinary proceeding before a Hearing Officer, a Hearing Panel or, if applicable, an Extended Hearing Panel, and fails to show good cause for the failure to participate, the matter shall be considered by the Subcommittee or, if applicable, the Extended Proceeding Committee, and the Exchange Review Council on the basis of the record and other documents, as provided in Rules 9346 and 9347. Alternatively, the Exchange Review Council or Review Subcommittee may remand the disciplinary proceeding with instructions. For purposes of this paragraph, failure to participate shall include failure to file an answer or otherwise respond to a complaint, or failure to appear at a scheduled hearing, but shall not include failure to request a hearing pursuant to Rule 9221.

(b) Abandonment of Appeal

If an appealing Party fails to advise the Exchange Review Council or the Review Subcommittee of the basis for seeking review or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the Exchange Review Council or the Review Subcommittee may dismiss the appeal as abandoned, and the decision of the Hearing Officer, the Hearing Panel or, if applicable, the Extended Hearing Panel, shall become the final disciplinary action of the Exchange. If a cross-appealing Party fails to advise the Exchange Review Council or the Review Subcommittee of the basis for seeking review or otherwise fails to provide information or submit a written brief in response to a request pursuant to Rules 9346 and 9347, the Exchange Review Council or the Review Subcommittee may dismiss the cross-appeal as abandoned. Upon a showing of good cause, the Exchange Review Council may withdraw any dismissal entered pursuant to this Rule.

9345. Subcommittee or Extended Proceeding Committee Recommended Decision to the Exchange Review Council

A Subcommittee or, if applicable, an Extended Proceeding Committee, shall present a recommended decision in writing to the Exchange Review Council before the meeting of the Exchange Review Council at which the disciplinary proceeding shall be considered.

9346. Evidence in the Exchange Review Council Proceedings**(a) Scope of Review**

Except as otherwise set forth in this paragraph, the Exchange Review Council's review shall be limited to consideration of:

(1) the record, as defined in Rule 9267, supplemented by briefs and other papers submitted to the Subcommittee or, if applicable, the Extended Proceeding Committee, and the Exchange Review Council; and

(2) any oral argument permitted under this Code.

A Party may introduce additional evidence only with prior approval of the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council, upon a showing that extraordinary circumstances exist under paragraph (b). If an appealing Party shows good cause for failure to participate in the disciplinary proceeding below, the Exchange Review Council may hear evidence and consider the disciplinary proceeding pursuant to Rule 9344(a).

(b) Leave to Introduce Additional Evidence

A Party may apply to the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council for leave to introduce additional evidence by motion filed not later than 30 days after the Office of Hearing Officers transmits to the Exchange Review Council and serves upon all Parties the index to the record, pursuant to Rule 9321. The motion shall describe each item of proposed new evidence, demonstrate that there was good cause for failing to introduce it below, demonstrate why the evidence is material to the proceeding, and be filed and served. The Party may attach the documentary evidence as an exhibit to the motion. By a motion filed in accordance with Rule 9146, a Party may request an extension of the period during which a Party may file a motion for leave to introduce additional evidence. A Party shall demonstrate that there was good cause for failing to file the motion for leave to introduce additional evidence during the period prescribed.

(c) Motion In Opposition; Motion to Introduce Rebuttal Evidence

A Party may file an opposition to a motion, as provided in Rule 9146(d), for leave to introduce new evidence, and may move for leave to introduce rebuttal evidence in response to the proposed new evidence. A Party who moves to introduce rebuttal evidence in response to the proposed new evidence of another Party shall describe each item of proposed rebuttal evidence and explain why the evidence is material to the proceeding, and shall file and serve such motion.

(d) Discretion Regarding Review of Additional Evidence

Upon consideration of any motion to introduce additional evidence and any opposition thereto, the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council may permit the evidence to be introduced into the record on review, or the Exchange Review Council may remand the disciplinary proceeding for further proceedings consistent with its ruling or for further fact finding.

(e) Requirements for Submitting Additional Documentary Evidence

A Party that is permitted to introduce additional documentary evidence before the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council pursuant to paragraph (d) shall make copies of the evidence available to the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council, and to all Parties at such time as the Subcommittee or, if applicable, the Extended Proceeding Committee, the Exchange Review Council, or Counsel to the Exchange Review Council may specify.

(f) Subcommittee or Extended Proceeding Committee Order Requiring Additional Evidence

On its own motion, the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council may order that the record be supplemented with such additional evidence as it may deem relevant. Among other things, the Subcommittee, or if applicable, the Extended Proceeding Committee, or the Exchange Review Council may order a Respondent who asserts his or her inability to pay a monetary sanction to file a sworn financial statement and to keep such statement current as ordered by the Subcommittee or, if applicable, the Extended Proceeding Committee, or the Exchange Review Council.

(g) Rules of Evidence Not Applicable

The formal rules of evidence shall not apply.

(h) Testimony

A person who is subject to the jurisdiction of the Exchange shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

9347. Filing of Papers in the Exchange Review Council Proceedings**(a) Briefs; Reply Briefs; Requirements**

Parties may file briefs in connection with proceedings governed by the Rule 9300 Series. Briefs shall be confined to the particular matters at issue. An exception to findings, conclusions, or sanctions shall be supported by citation to the relevant portions of the record, including references to specific pages relied upon, and by concise argument, including citation of such statutes, decisions, and other authorities as may be relevant. If an exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, an appendix thereto, or by citation to the record. Parties may file reply briefs. If a Party files a reply brief, such brief shall be limited to matters in reply. All briefs shall conform to the requirements of the Rule 9130 Series, and, except with advance leave of the Subcommittee or, if applicable, the Extended Proceeding Committee, the Exchange Review Council, the Review Subcommittee, or Counsel to the Exchange Review Council, exclusive of pages containing tables of contents or tables of authorities, a brief other than a reply brief shall not exceed 25 double-spaced pages, and a reply brief shall not exceed 12 double-spaced pages.

(b) Timely Filing of Briefs

Briefs shall be due upon dates established by the Subcommittee or, if applicable, the Extended Proceeding Committee, the Exchange Review Council, the Review Subcommittee, or Counsel to the Exchange Review Council in a scheduling order. Unless the Subcommittee or, if applicable, the Extended Proceeding Committee, the Exchange Review Council, the Review Subcommittee, or Counsel to the Exchange Review Council specifies otherwise, opening briefs shall be submitted not less than 21 days from the date of the scheduling order, and answering briefs shall be submitted 21 days thereafter. When reply briefs are submitted, such briefs shall be filed not later than ten days after service of the answering brief. Counsel to the Exchange Review Council may not shorten a period previously established for the filing of briefs except with the consent of the Parties. The time periods listed in this provision are only applicable to the filing of opening briefs, answering briefs, and reply briefs.

9348. Powers of the Exchange Review Council on Review

In any appeal or review proceeding pursuant to the Rule 9300 Series, the Exchange Review Council may affirm, dismiss, modify, or reverse with respect to each finding, or remand the disciplinary proceeding with instructions. The Exchange Review Council may affirm, modify, reverse, increase, or reduce any sanction (including the terms of any permanent cease and desist order), or impose any other fitting sanction.

9349. Exchange Review Council Formal Consideration; Decision

(a) Decision of the Exchange Review Council, Including Remand

In an appeal or review of a disciplinary proceeding governed by the Rule 9300 Series that is not withdrawn or dismissed prior to a decision on the merits, the Exchange Review Council, after considering all matters presented in the appeal or review and the written recommended decision of the Subcommittee or, if applicable, the Extended Proceeding Committee, may affirm, dismiss, modify or reverse the decision of the Hearing Panel or, if applicable, Extended Hearing Panel, with respect to each Respondent who has appealed or cross-appealed or is subject to a call for review. The Exchange Review Council may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. Alternatively, the Exchange Review Council or the Review Subcommittee may remand the disciplinary proceeding with instructions. The Exchange Review Council shall prepare a proposed written decision pursuant to paragraph (b).

(b) Contents of Decision

The decision shall include:

- (1) a statement describing the investigative or other origin of the disciplinary proceeding;
- (2) the specific statutory or rule provisions that were alleged to have been violated;
- (3) a statement setting forth the findings of fact with respect to any act or practice the Respondent was alleged to have committed or omitted;
- (4) the conclusions as to whether the Respondent violated any provision alleged in the complaint;
- (5) a statement in support of the disposition of the principal issues raised in the proceeding; and
- (6) a statement describing any sanction imposed, the reasons therefor, and, pursuant to Rule 9360, the date upon which such sanction shall become effective.

(c) Issuance of Decision After Expiration of Call for Review Period

The Exchange Review Council shall provide its proposed written decision to the Exchange Board. The Exchange Board may call the disciplinary proceeding for review pursuant to Rule 9351. If the Exchange Board does not call the disciplinary proceeding for review, the proposed written decision of the Exchange Review Council shall become final, and the Exchange Review Council shall serve its written decision on the Parties and provide a copy to each member organization of the Exchange with which a Respondent is associated. The decision shall constitute the final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1), unless the Exchange Review Council remands the proceeding.

9350. Discretionary Review by Board**9351. Discretionary Review by the Exchange Board****(a) Call for Review by Director**

A Director may call a disciplinary proceeding for review by the Exchange Board if the call for review is made within the period prescribed in paragraph (b); provided, however, that a decision with respect to a member or member organization that is an affiliate of the Exchange within the meaning of Rule 985 may not be called for review.

(b) 15 Day Period; Waiver

(1) A Director shall make his or her call for review not later than 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.

(2) Waiver

By a unanimous vote of the Exchange Board, the Exchange Board may shorten the period in subparagraph (1) 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 in subparagraph (1), vote to extend the period in subparagraph (1) to more than 15 days.

(c) Review at Next Meeting

If a Director calls a disciplinary proceeding for review within the period prescribed in paragraph (b), the Exchange Board shall review the disciplinary proceeding not later than the next meeting of the Exchange Board. The Exchange Board may order the Parties (excluding any Respondent who did not appeal or cross-appeal, or as to whom the issues appealed or called for review do not apply) to file briefs in connection with the review proceedings pursuant to this Rule.

(d) Decision of the Exchange Board, Including Remand

After review, the Exchange Board may affirm, modify, or reverse the proposed written decision of the Exchange Review Council. The Exchange Board may affirm, modify, reverse, increase, or reduce any sanction (including the terms of any permanent cease and desist order), or impose any other fitting sanction. Alternatively, the Exchange Board may remand the disciplinary proceeding with instructions. The Exchange Board shall prepare a written decision that includes all of the elements described in Rule 9349(b)(1) through (6).

(e) Issuance of Decision After Expiration of Call for Review Period

The Exchange Board shall issue and serve its written decision on the Parties and provide a copy to each member organization of the Exchange with which a Respondent is associated. The decision shall constitute the final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1), unless the Exchange Board remands the proceeding.

9360. Effectiveness of Sanctions

Unless otherwise provided in the decision issued under Rule 9349 or Rule 9351, a sanction (other than a bar, an expulsion, or a permanent cease and desist order) specified in a decision constituting final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1) shall become effective on a date to be determined by the Exchange staff (or the Hearing Panel, Extended Hearing Panel, or Office of Disciplinary Affairs in the case of a decision with respect to an affiliate of the Exchange within the meaning of Rule 985). A bar, an expulsion, or a permanent cease and desist order shall become effective upon service of the decision constituting final disciplinary action of the Exchange, unless otherwise specified therein. The Exchange shall serve the decision on a Respondent by courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar, an expulsion, or a permanent cease and desist order.

9370. Application to Commission for Review

(a) Appeal to Commission; Effect

A Respondent aggrieved by final disciplinary action pursuant to the Rule 9200 Series or the Rule 9300 Series may apply for review by the Commission pursuant to Section 19(d)(2) of the Act. The filing with the Commission of an application for review by the Commission shall stay the effectiveness of any sanction, other than a bar or an expulsion, imposed in a decision constituting final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1).

(b) Notification to Member Organization

The Exchange shall promptly notify any member organization with which a Respondent is associated if the Respondent files an application for review to the Commission.

9400. Expedited Client Suspension Proceeding

(a) Initiation of Proceeding

(1) *Scope of Authority.* With the prior written authorization of the Chief Regulatory Officer (“CRO”) or such other senior officers as the CRO may designate, the Phlx Regulation Department, Department of Enforcement, or the Department of Market Regulation may initiate an expedited suspension proceeding with respect to alleged violations of Rule 774 (Disruptive Quoting and Trading Activity Prohibited).

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

(3) Content of Notice. The notice shall state whether the Exchange is requesting the Respondent to be required to take action or to refrain from taking action. The notice shall be accompanied by:

(A) a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts that constitute the alleged violation; and

(B) a proposed order that contains the required elements of a suspension order (except the date and hour of the order’s issuance), which are set forth in sub-paragraph (d)(2) of this Rule).

(b) Appointment of Hearing Officers and Hearing Panel

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

(2) If at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, or if a Party files a motion to disqualify a Hearing Officer, the recusal and disqualification proceeding shall be conducted in accordance with Rules 9233(a), except that:

(A) a motion seeking disqualification of a Hearing Officer must be filed no later than 5 days after the announcement of the Hearing Panel; and

(B) the Exchange may file a brief in opposition to the Respondent’s motion no later than 5 days after service thereof.

(c) Hearing

(1) When Held. The hearing shall be held not later than 15 days after service of the notice initiating the suspension proceeding, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. If a Hearing Officer is recused or disqualified, the hearing

shall be held not later than five days after a replacement Hearing Officer is appointed.

(2) *Service of Notice of Hearing.* A notice of date, time, and place of the hearing shall be served on the Parties not later than seven days before the hearing, unless otherwise ordered by the Chairman of the Hearing Panel. Service shall be made by personal service or overnight commercial courier. The notice shall be effective upon service.

(3) *Authority of Hearing Officers.* A Hearing Officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth in Rule 9235.

(4) *Witnesses.* A person who is subject to the jurisdiction of the Exchange shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

(5) *Additional Information.* At any time during its consideration, the Hearing Panel may direct a Party to submit additional information. Any additional information submitted shall be provided to all Parties at least one day before the Hearing Panel renders its decision.

(6) *Transcript.* The hearing shall be recorded by a court reporter and a written transcript thereof shall be prepared. A transcript of the hearing shall be available to the Parties for purchase from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to all the Parties to the proceeding, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

(7) *Record and Evidence Not Admitted.* The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in sub-paragraph (a)(3) above; the transcript of the hearing; all evidence considered by the Hearing Panel; and any other document or item accepted into the record by the Hearing Panel. The Phlx Regulation Department shall be the custodian of the record. Proffered evidence that is not accepted into the record by the Hearing Panel shall be retained by the custodian of the record until the date when the Exchange's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(8) Failure to Appear at a Hearing. If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. If the Exchange or FINRA fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

(d) Issuance of Suspension Order by Hearing Panel

(1) Basis for Issuance. The Hearing Panel shall issue a written decision stating whether a suspension order shall be imposed. The Hearing Panel shall issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. A suspension order shall be imposed if the Hearing Panel finds:

(A) by a preponderance of the evidence that the alleged violation specified in the notice has occurred; and

(B) that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

(2) Content, Scope, and Form of Order. A suspension order shall:

(A) be limited to: (i) ordering a Respondent to cease and desist from violating Rule 774, and/or (ii) ordering a Respondent to cease and desist from providing access to the Exchange to a client of Respondent that is causing violations of Rule 774;

(B) set forth the alleged violation and the significant market disruption or other significant harm to investors that is likely to result without the issuance of an order;

(C) describe in reasonable detail the act or acts the Respondent is to take or refrain from taking and to suspend the Respondent unless and until such action is taken or refrained from; and

(D) include the date and hour of its issuance.

(3) Duration of Order. A suspension order shall remain effective and enforceable unless modified, set aside, limited, or revoked pursuant to paragraph (e), below.

(4) Service. The Hearing Panel's decision and any suspension order shall be served by personal service or overnight commercial courier. The suspension order shall be effective upon service.

(e) Review by Hearing Panel. At any time after the Respondent is served with a suspension order, a Party may apply to the Hearing Panel to have the order modified, set aside, limited, or revoked. The application shall set forth with specificity the facts that support the request. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request, unless otherwise extended by the Chairman of the Hearing Panel with the consent of the Parties for good cause shown. The Hearing Panel's response shall be served on the Respondent via personal service or overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of the suspension order.

(f) Application to SEC for Review. Sanctions imposed pursuant to this Rule constitute final and immediately effective disciplinary sanctions imposed by the Exchange. The right to have any action under this Rule reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review shall not stay the effectiveness of a suspension order unless the SEC otherwise orders.

9500. Other Proceedings

9510. Reserved

9520. Eligibility Proceedings

9521. Purpose and Definitions

(a) Purpose

The Rule 9520 Series sets forth procedures for a person to become or remain associated with a member organization, notwithstanding the existence of a statutory disqualification as defined in the Exchange By-Laws and for a current member, member organization or person associated with a member organization to obtain relief from the eligibility or qualification requirements of the Exchange By-Laws and the Rules of the Exchange. Such actions hereinafter are referred to as "eligibility proceedings."

(b) Definitions

(1) The term "Application" means FINRA's Form MC-400 for individuals or Form MC-400A for member organizations, filed with the Central Registration Depository/Public Disclosure.

(2) The term "disqualified member organization" means a broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or member

organization that is or becomes subject to a disqualification or is otherwise ineligible for membership under the Rules of the Exchange.

(3) The term “disqualified person” means an associated person, including a member, or person seeking to become an associated person who is or becomes subject to a disqualification or is otherwise ineligible for association under the Rules of the Exchange.

(4) The term “sponsoring member organization” means the member organization or applicant for membership pursuant to Rule 900.2 that is sponsoring the association or continued association of a disqualified person to be admitted, readmitted, or permitted to continue in association.

9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) Initiation

(1) Issuance of Notice of Disqualification or Ineligibility

If staff of the Department of Member Regulation has reason to believe that a disqualification exists or that a member, member organization or person associated with a member organization otherwise fails to meet the eligibility requirements of the Exchange, staff of the Department of Member Regulation shall issue a written notice to the member, member organization or applicant for membership under Rule 901. The notice shall specify the grounds for such disqualification or ineligibility. Staff of the Department of Member Regulation shall not issue such written notice to members, member organizations or applicants for membership under Rule 901 with respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, unless the member organization or applicant for membership under Rule 901 is required to file an application pursuant to a Regulatory Alert entitled “Eligibility Proceedings: Amendments to Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications” (the “SD Regulatory Alert”).

(2) Notice Regarding a Member Organization

A notice issued to a disqualified member organization shall state that the disqualified member organization may apply for relief by filing an application or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, within ten business days after service of the notice. If the member organization fails to file the application or, where appropriate, the written request for relief, within the 10-day period, the

membership of the member organization shall be canceled, unless the Department of Member Regulation grants an extension for good cause shown.

(3) Notice Regarding an Associated Person

A notice issued regarding a disqualified person to a member organization or applicant for membership under Rule 901 shall state that such member organization or applicant for membership may file an application on behalf of itself and such person or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, within ten business days after service of the notice. If the member organization fails to file the application or, where appropriate, the written request for relief, within the 10-day period, the registration of the disqualified person shall be revoked, unless the Department of Member Regulation grants an extension for good cause shown.

(4) Service

A notice issued under this section shall be served by facsimile or pursuant to Rules 9131 and 9134.

(b) Obligation of Member Organization to Initiate Proceeding

(1) A member organization shall file an application or, in the case of a matter set forth in Rule 9522(e)(1), a written request for relief, with the Central Registration Depository/ Public Disclosure, if the member organization determines prior to receiving a notice under paragraph (a) that:

(A) it has become a disqualified member organization;

(B) a person associated with such member organization, including a member, or whose association is proposed by an applicant for membership under Rule 901 has become a disqualified person; or

(C) the member organization or applicant for membership under Rule 901 wishes to sponsor the association of a person who is a disqualified person.

(2) For any disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, a member organization shall not file an application unless instructed to do so by the SD Regulatory Alert.

(c) Withdrawal of Application

A member organization may withdraw its application or written request for relief prior to a hearing by filing a written notice with the Central Registration Depository/Public Disclosure pursuant to Rules 9135, 9136, and 9137. A member organization may

withdraw its application after the start of a hearing but prior to the issuance of a decision by the Exchange Review Council by filing a written notice with the Exchange Review Council and the Office of General Counsel pursuant to Rules 9135, 9136, and 9137.

(d) Ex Parte Communications

The prohibitions against ex parte communications set forth in Rule 9143 shall become effective under the Rule 9520 Series when the Phlx Regulation Department staff has initiated the eligibility proceeding and the Phlx Regulation Department staff has knowledge that a member organization intends to file an application or written request for relief pursuant to the Rule 9520 Series.

(e) Member Regulation Consideration

(1) Matters that may be Approved by the Department of Member Regulation without the Filing of an Application

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, is authorized to approve a written request for relief from the eligibility requirements by a disqualified member organization or a sponsoring member organization without the filing of an application by such disqualified member organization or sponsoring member organization if a disqualified member organization or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification:

(A) a disqualified member organization or disqualified person is subject to a disqualification based on an injunction that was entered ten or more years prior to the proposed admission or continuance by order, judgment, or decree of any court of competent jurisdiction from acting as an investment adviser, underwriter, broker, dealer, municipal securities dealer, government securities broker, government securities dealer, transfer agent, foreign person performing a function substantially equivalent to any of the above, entity or person required to be registered under the Commodity Exchange Act, or any substantially equivalent foreign statute or regulation, or as an affiliated person or employee of any investment company, bank, insurance company, foreign entity substantially equivalent to any of the above, or entity or person required to be registered under the Commodity Exchange Act or any substantially equivalent foreign statute or regulation, or from engaging in or continuing any conduct or practice in connection with any such activity, or in connection with the purchase or sale of any security.

(B) a sponsoring member organization makes a request to change the supervisor of a disqualified person; or

(C) a disqualified member organization or sponsoring member organization is a member organization of both the Exchange and another self-regulatory organization; and:

(i) the other self-regulatory organization intends to file a Notice under SEC Rule 19h-1 approving the membership continuance of the disqualified member organization or, in the case of a sponsoring member organization, the proposed association or continued association of the disqualified person; and

(ii) the Department of Member Regulation concurs with that determination.

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

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

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

(B) The Department of Member Regulation finds, after reasonable inquiry, that except for the identity of the employer concerned, the terms and conditions of the proposed admission or continuance are the same in all material respects as those imposed or not disapproved in connection with a prior admission or continuance of the disqualified person pursuant to an order of the Commission under SEC Rule 19h-1 or other substantially equivalent written communication, and that there is no intervening conduct or other circumstance that would cause the employment to be inconsistent with the public interest or the protection of investors;

(C) The disqualification previously was a basis for the institution of an administrative proceeding pursuant to a provision of the federal securities laws, and was considered by the Commission in determining a sanction against such disqualified person in the proceeding; and the Commission concluded in such

proceeding that it would not restrict or limit the future securities activities of such disqualified person in the capacity now proposed, or, if it imposed any such restrictions or limitations for a specified time period, such time period has elapsed; or

(D) The disqualification consists of a court order or judgment of injunction or conviction, and such order or judgment:

(i) expressly includes a provision that, on the basis of such order or judgment, the Commission will not institute a proceeding against such person pursuant to Section 15(b) or 15B of the Act or that the future securities activities of such persons in the capacity now proposed will not be restricted or limited; or

(ii) includes such restrictions or limitations for a specified time period and such time period has elapsed;

(E) The disqualified person's functions are purely clerical and/or ministerial in nature; or

(F) The disqualification arises from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arises under Section 3(a)(39)(E) of the Exchange Act.

(3) Rights of Disqualified Member Organization, Sponsoring Member Organization, Disqualified Person, and Department of Member Regulation

(A) In the event the Department of Member Regulation does not approve a written request for relief from the eligibility requirements pursuant to subparagraph (e)(1), the disqualified member organization or sponsoring member organization may file an application, and such member organization shall have the right to proceed under Rule 9523 or 9524, as applicable. The Department of Member Regulation may require a disqualified member organization or sponsoring member organization to file an application with the Central Registration Depository/Public Disclosure, notwithstanding the provisions of subparagraph (e)(1).

(B) In the event the Department of Member Regulation does not approve an application pursuant to subparagraph (e)(2), the disqualified member organization or sponsoring member organization shall have the right to proceed under Rule 9523 or 9524, as applicable.

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

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

(1) If a disqualified member organization, sponsoring member organization, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified member organization, sponsoring member organization and/or disqualified person waive:

(A) the right to a hearing before a Hearing Panel and any right of appeal to the Exchange Review Council, the Commission, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted.

(B) any right of the disqualified member organization, sponsoring member organization, and/or disqualified person to claim bias or prejudice by the Department of Member Regulation, the Chief Regulatory Officer, the Exchange Review Council, or any member of the Exchange Review Council, in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's recommendation or the supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and

(C) any right of the disqualified member organization, sponsoring member organization, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the recommendation or supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan.

(2) If a recommendation or supervisory plan is rejected, the disqualified member organization, sponsoring member organization, and/or disqualified person shall be bound by the waivers made under subparagraph (a)(1) for conduct by persons or

bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under this rule and Rule 9524, as applicable.

(3) If the disqualified member organization, sponsoring member organization, and/or disqualified person execute the letter consenting to the supervisory plan, it shall be submitted to the Phlx Regulation Department by the Department of Member Regulation with a proposed Notice under SEC Rule 19h-1, where required. The Phlx Regulation Department shall forward the supervisory plan and proposed Notice under SEC Rule 19h-1, if any, to the Chairman of the Statutory Disqualification Committee, acting on behalf of the Exchange Review Council. The Chairman of the Statutory Disqualification Committee may accept or reject the recommendation of the Department of Member Regulation and the supervisory plan or refer them to the Exchange Review Council for acceptance or rejection by the Exchange Review Council.

(4) If the recommendation and supervisory plan is accepted by the Exchange Review Council, the Chairman of the Statutory Disqualification Committee it shall be deemed final and, where required, the proposed Notice under SEC Rule 19h-1 will be filed by the Exchange. If the recommendation and supervisory plan are rejected by the Chairman of the Statutory Disqualification Committee, the Exchange Review Council the Phlx Regulation Department may take any other appropriate action with respect to the disqualified member organization, sponsoring member organization, and/or disqualified person. If the recommendation and supervisory plan are rejected, the disqualified member organization, sponsoring member organization, and/or disqualified person shall not be prejudiced by the execution of the letter consenting to the supervisory plan under subparagraph (a) and the letter may not be introduced into evidence in any proceeding.

(b) With respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, after an application is filed, in approving an application under Rule 9522(e)(2)(F), the Department of Member Regulation is authorized to accept the membership or continued membership of a disqualified member organization or sponsoring member organization or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member organization, sponsoring member organization, and/or disqualified persons, as the case may be, consent to the imposition of the supervisory plan. The disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, shall execute a letter consenting to the imposition of the supervisory plan. The Department of Member Regulation shall prepare a proposed Notice under SEC Rule 19h-1, where required, and the Exchange shall file such Notice.

(1) If a disqualified member organization, sponsoring member organization, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified member organization, sponsoring member organization and/or disqualified person waives:

(A) the right to a hearing before a Hearing Panel and any right of appeal to the Exchange Review Council, the SEC, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted;

(B) any right of the disqualified member organization, sponsoring member organization, and/or disqualified person to claim bias or prejudice by the Department of Member Regulation or the General Counsel in connection with such person's or body's participation in discussions regarding the terms and conditions of the Department of Member Regulation's recommended supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and

(C) any right of the disqualified member organization, sponsoring member organization, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such supervisory plan.

(2) If the supervisory plan is rejected, the disqualified member organization, sponsoring member organization, and/or disqualified person shall be bound by the waivers made under paragraph (b)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under Rule 9524.

9524. Exchange Review Council Consideration

(a) Hearing Panel Consideration

(1) Appointment of Hearing Panel

When the disqualified member organization, sponsoring member organization, or applicant requests a hearing, the Exchange Review Council or the Review Subcommittee shall appoint a Hearing Panel composed of two or more members, who shall be current or former members of the Exchange Review Council or the Statutory Disqualification Committee or former Directors (provided, however, that current

members of the Exchange Review Council shall not serve on a Hearing Panel with respect to an affiliate of the Exchange within the meaning of Rule 985). The Hearing Panel shall conduct a hearing and recommend a decision on the request for relief.

(2) Notice of Hearing

The disqualified member organization or sponsoring member organization, as the case may be, and the Department of Member Regulation shall be notified via mail, facsimile, or overnight courier of the location, time, and date of the hearing not less than fourteen business days before the hearing, unless the parties agree to shorten the time period.

(3) Transmission of Documents

(A) Upon receipt of an application, the Central Registration Depository shall gather all of the information necessary to process the application, including (i) the Central Registration Depository records for the disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, and the proposed supervisor; and (ii) all of the information submitted by the disqualified member organization or sponsoring member organization in support of the application. The Central Registration Depository will prepare an index of these documents, and simultaneously provide this index and copies of the documents to the disqualified member organization or sponsoring member organization, as the case may be, the Phlx Regulation Department, and the Department of Member Regulation. Such documents shall be served on the disqualified member organization or sponsoring member organization, as the case may be, by mail, facsimile, or overnight courier as soon as practicable. The Department of Member Regulation shall serve its recommendation and its supporting documents on the Phlx Regulation Department and the disqualified member organization or sponsoring member organization, as the case may be, within ten business days of the hearing, unless the Parties agree otherwise. The disqualified member organization or sponsoring member organization, as the case may be, shall serve its documents on the Phlx Regulation Department and the Department of Member Regulation within ten business days of the hearing, unless the Parties agree otherwise. The Phlx Regulation Department shall forward all documents transmitted to it pursuant to this subparagraph (a)(3) to the Hearing Panel.

(B) Not less than ten business days before the hearing, the Department of Member Regulation, which shall act as a Party in the eligibility proceeding, and the disqualified member organization or sponsoring member organization, as the case may be, shall serve proposed exhibit and witness lists on each other and the Phlx

Regulation Department. The exhibit and witness lists shall be served by facsimile or overnight courier.

(C) At any time prior to the issuance of its recommendation, the Hearing Panel may order the Parties to supplement the record with any additional information that the Hearing Panel deems necessary.

(4) Rights of Disqualified Member Organization, Sponsoring Member Organization, Disqualified Person, and Department of Member Regulation

The disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, and, the Department of Member Regulation, shall be entitled to be heard in person, to be represented by an attorney, and to submit any relevant evidence.

(5) Extensions of Time, Postponements, and Adjournments

At any time prior to the issuance of the decision of the Hearing Panel, after obtaining consent of all the Parties, the Hearing Panel may extend or shorten any time limits prescribed by the Code for the filing of any papers and may postpone or adjourn any hearing.

(6) Recordation of Hearing

The hearing shall be recorded and a transcript prepared by a court reporter. The disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, may purchase a copy of the transcript from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to the participants in the hearing, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

(7) Record

The record shall consist of:

(A) the notice issued pursuant to Rule 9522(a), if applicable;

(B) all documents relied upon in issuing the notice under Rule 9522(a), if applicable;

(C) the application for relief filed pursuant to Rule 9522(b);

(D) any other submissions by the disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, and the Department of Member Regulation;

(E) any evidence considered at the hearing; and

(F) the transcript of the hearing and any corrections thereto.

(8) Custodian of the Record

The custodian of the record shall be the Phlx Regulation Department.

(9) Evidence Not Admitted

Evidence that is proffered but not admitted during the hearing shall not be part of the record, but shall be retained by the custodian of the record until the date when the Exchange's decision becomes final or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(10) Recommendation

On the basis of the record, the Hearing Panel shall present a recommended decision in writing on the request for relief to the Statutory Disqualification Committee. After considering the record and recommendation of the Hearing Panel, the Statutory Disqualification Committee shall present its recommended decision in writing to the Exchange Review Council. Notwithstanding the foregoing, with respect to an Exchange member or member organization that is an affiliate of the Exchange within the meaning of Rule 985, the Hearing Panel shall prepare a final decision meeting the requirements of Rule 9524(b)(2), which shall not be reviewed by the Statutory Disqualification Committee or the Exchange Review Council, and may not be called for review by the Exchange Board pursuant to Rule 9525.

(b) Decision

(1) Decision of the Exchange Review Council

After considering all matters presented in the request for relief, the Statutory Disqualification Committee's recommended decision, the public interest, and the protection of investors, the Exchange Review Council may grant or deny the request for relief, and, if relief is granted, impose conditions on the disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be. At any time prior to the issuance of its recommendation, the Exchange Review Council may order the Parties to supplement the record with any additional information that the Exchange Review Council deems necessary. Alternatively, the Exchange Review Council may remand the eligibility proceeding. The Exchange

Review Council shall prepare a proposed written decision pursuant to subparagraph (b)(2).

(2) Contents of Decision

The decision shall include:

(A) a description of the origin of the eligibility proceeding and the nature of the disqualification;

(B) a description of the prospective business or employment requested to be engaged in; and

(C) a statement in support of the disposition of the request for relief, which, if granted, includes any of the applicable elements under SEC Rule 19h-1(e) and a description of any conditions that are imposed on the disqualified member organization, sponsoring member organization, or disqualified person, as the case may be.

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

The Exchange Review Council shall provide its proposed written decision to the Exchange Board. The Exchange Board may call the eligibility proceeding for review pursuant to Rule 9525. If the Exchange Board does not call the eligibility proceeding for review, the proposed written decision of the Exchange Review Council shall become final, and the Exchange Review Council shall serve its written decision on the disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. In the case of a decision with respect to an Exchange member or member organization that is an affiliate of the Exchange within the meaning of Rule 985, the decision of the Hearing Panel shall become final without being provided to the Exchange Board, and the Hearing Panel shall serve its written decision.

The decision shall constitute final action of the Exchange, unless the Exchange Review Council remands the eligibility proceeding. A decision to deny re-entry or continued association shall be effective immediately. A decision to approve shall be effective after the Commission issues an acknowledgment letter or, in cases involving Commission ordered sanctions, an order.

9525. Discretionary Review by the Exchange Board

(a) Call for Review by Director

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

(b) 15 Day Period; Waiver

A Director shall make his or her call for review not later than 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 a unanimous vote of the Exchange Board, the Exchange Board may shorten the period to less than 15 days. By an affirmative vote of the majority of the Exchange Board then in office, the Exchange Board may, during the 15 day period, vote to extend the period to more than 15 days.

(c) Review at Next Meeting

If a Director calls an eligibility proceeding for review within the period prescribed in paragraph (b), the Exchange Board shall review the eligibility proceeding not later than the next meeting of the Exchange Board. The Exchange Board may order the filing of briefs in connection with its review proceedings pursuant to this Rule.

(d) Decision of the Exchange Board, Including Remand

After review, the Exchange Board may affirm, modify, or reverse the proposed written decision of the Exchange Review Council. Alternatively, the Exchange Board may remand the eligibility proceeding with instructions. The Exchange Board shall prepare a written decision that includes all of the elements described in Rule 9524(b)(2).

(e) Issuance of Decision

The Exchange Board shall issue and serve its written decision on the disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall constitute the final action of the Exchange, unless the Exchange Board remands the proceeding. A decision to deny re-entry or continued association shall be effective immediately. A decision to approve shall be effective after the Commission issues an acknowledgment letter or, in cases involving Commission-ordered sanctions, an order.

9526. Expedited Review

(a) Direction by Executive Committee

Notwithstanding Rules 9524 and 9525, the Exchange Board Executive Committee, upon request of the Statutory Disqualification Committee, may direct an expedited review of a recommended written decision of the Statutory Disqualification Committee if the

Exchange Board Executive Committee determines that expedited review is necessary for the protection of investors.

(b) Call for Review Period

If a recommended decision is subject to expedited review, a Director may call the eligibility proceeding for review within seven days after receipt of the recommended written decision.

(c) No Call for Review

If no Director calls the proceeding for review within the time prescribed, the decision shall become final, and the Statutory Disqualification Committee shall serve the decision on the disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. The decision shall constitute final action of the Exchange. The decision shall be effective upon approval by the Commission.

(d) Call for Review

If a Director calls the eligibility proceeding for review within the prescribed time, a review panel shall meet and conduct a review not later than 14 days after the call for review. The review panel shall be composed of the Exchange Board Executive Committee, except that the Director who calls the proceeding for review shall serve on the review panel in lieu of a member of the Executive Committee who has the same classification (Member, Industry, Non-Industry, or Public) as such Director. The review panel may affirm, modify, or reverse the recommended written decision of the Statutory Disqualification Committee or remand the eligibility proceeding with instructions. The review panel shall prepare, issue, and serve its decision pursuant to Rule 9525(d) and (e).

9527. Application to Commission for Review

The right to have any action taken pursuant to this Rule Series reviewed by the Commission is governed by Section 19 of the Act. The filing of an application for review shall not stay the effectiveness of final action by the Exchange, unless the Commission otherwise orders.

9530. Reserved

9531. Reserved

9532. Reserved

9533. Reserved

9534. Reserved**9535. Reserved****9536. Reserved****9537. Reserved****9550. Expedited Proceedings****9551. Reserved****9552. Failure to Provide Information or Keep Information Current****(a) Notice of Suspension of Member, Member Organization, Person Associated with a Member Organization or Person Subject to the Exchange's Jurisdiction if Corrective Action is Not Taken**

If a member, member organization, person associated with a member organization or person subject to the Exchange's jurisdiction fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the Exchange's By-Laws or the Rules of the Exchange, or fails to keep its membership application or supporting documents current, the Phlx Regulation Department staff may provide written notice to such member, member organization or person specifying the nature of the failure and stating that the failure to take corrective action within 21 days after service of the notice will result in suspension of membership or of association of the person with any member organization.

(b) Service of Notice of Suspension

Except as provided below, the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member, member organization or person with such notice (or upon counsel representing the member, member organization or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member, member organization or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a member or person associated with a member organization also shall be served on such member organization. Papers served on a member organization by facsimile shall be sent to the member organization's facsimile number listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d), except that, if the Phlx Regulation Department staff has actual knowledge that a member organization's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member organization by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3)

and (b)(2) of Rule 9134. Papers served on a member organization by email shall be sent to the member organization's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d) and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member or person by facsimile or email shall be sent to the member's or person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member, member organization or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notice shall state when the Exchange action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) Effective Date of Suspension

The suspension referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for Hearing

A member, member organization or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated

in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the Exchange action.

(f) Request for Termination of the Suspension

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

(g) Settlement Procedure

Uncontested offers of settlement shall be permitted under this Rule and shall conform to the requirements of Rule 9270, except that, if an uncontested offer of settlement, made under Rule 9270(e) after a hearing on the merits has begun, is accepted by the Hearing Officer, the Hearing Officer shall issue the order of acceptance, which shall constitute final Exchange action. Contested offers of settlement shall not be considered in proceedings initiated under this Rule.

(h) Defaults

A member, member organization or person who is suspended under this Rule and fails to request termination of the suspension within three months of issuance of the original notice of suspension will automatically be expelled or barred.

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

(a) Notice of Suspension, Cancellation, or Bar

If a member, member organization, person associated with a member organization or person subject to the Exchange's jurisdiction fails to pay any fees, dues, assessment or other charge required to be paid under the Exchange By-Laws or Rules, or to submit a required report or information related to such payment, the Phlx Regulation Department staff may issue a written notice to such member, member organization or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member organization.

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

Except as provided below, the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member, member organization or person with such notice (or upon counsel representing the member, member organization or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member, member organization or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a member or person associated with a member organization also shall be served on such member organization. Papers served on a member organization by facsimile shall be sent to the member organization's facsimile number listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d), except that, if the Phlx Regulation Department staff has actual knowledge that a member organization's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member organization by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member organization by email shall be sent to the member organization's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d) and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member or person by facsimile or email shall be sent to the member's or person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member, member organization or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notice shall state when the Exchange action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In

addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) Effective Date of Suspension, Cancellation or Bar

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for Hearing

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

(f) Failure to Request Hearing

If a member, member organization or person does not timely request a hearing, the suspension, cancellation or bar specified in the notice shall become effective 21 days after service of the notice and the notice shall constitute final Exchange action.

(g) Request for Termination of the Suspension

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

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

(a) Notice of Suspension or Cancellation

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

organization or person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any member organization.

(b) Service of Notice of Suspension or Cancellation

Except as provided below, the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member, member organization or person with such notice (or upon counsel representing the member, member organization or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member, member organization or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a member or person associated with a member organization also shall be served on such member organization. Papers served on a member organization by facsimile shall be sent to the member organization's facsimile number listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d), except that, if the Phlx Regulation Department staff has actual knowledge that a member organization's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member organization by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member organization by email shall be sent to the member organization's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d) and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member or person by facsimile or email shall be sent to the member's or person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member, member organization or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notice shall state when the Exchange action will take

effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) Effective Date of Suspension or Cancellation

The suspension or cancellation referenced in a notice issued and served under this Rule shall become effective 21 days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for Hearing

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

(f) Failure to Request Hearing

If a member, member organization or person does not timely request a hearing, the suspension or cancellation specified in the notice shall become effective 21 days after the service of the notice and the notice shall constitute final Exchange action.

(g) Request for Termination of the Suspension

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

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

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

(1) If a member, member organization or person associated with a member organization does not meet the eligibility or qualification standards set forth in the Exchange By-Laws or Rules, the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) may provide written notice to such member, member organization or person stating that the failure to become eligible or qualified will result in a suspension or cancellation of membership or a suspension or bar from associating with any member organization.

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

(b) Service of Notice

Except as provided below, the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member, member organization or person with such notice (or upon counsel representing the member, member organization or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member, member organization or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a member or person associated with a member organization also shall be served on such member organization. Papers served on a member organization by facsimile shall be sent to the member organization's facsimile number listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d), except that, if the Phlx Regulation Department staff has actual knowledge that a member organization's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member organization by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member organization by email shall be sent to the member organization's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d) and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member or person by facsimile or email shall be

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

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notice shall state when the Exchange action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) Effective Date of Limitation, Prohibition, Suspension, Cancellation, or Bar

The limitation, prohibition, suspension, cancellation, or bar referenced in a notice issued under this Rule shall become effective 14 days after service of the notice, except that the effective date for a notice of a limitation or prohibition on access to services offered by the Exchange or a member organization thereof with respect to services to which the member, member organization or person does not have access shall be upon service of the notice. A request for a hearing, pursuant to Rule 9559, shall stay the effectiveness of the notice, except that the effectiveness of a notice of a limitation or prohibition on access to services offered by the Exchange or a member organization thereof with respect to services to which the member, member organization or person does not have access shall not be stayed by a request for a hearing.

(e) Request for Hearing

A member, member organization or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559.

A request for a hearing shall be made within 14 days after service of the notice. A request for a hearing must set forth with specificity any and all defenses to the Exchange action.

(f) Failure to Request Hearing

If a member, member organization or person does not timely request a hearing, the limitation, prohibition, suspension, cancellation or bar specified in the notice shall become effective 14 days after service of the notice, except that the effective date for a notice of a limitation or prohibition on access to services offered by the Exchange or a member organization thereof with respect to services to which the member, member organization or person does not have access shall be upon service of the notice. The notice shall constitute final Exchange action if the member, member organization or person does not request a hearing within 14 days after service of the notice.

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

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

9556. Failure to Comply with Temporary and Permanent Cease and Desist Orders

(a) Notice of Suspension, Cancellation or Bar

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

(b) Service of Notice

The Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member, member organization or person subject to a notice issued under this Rule (or upon counsel representing the member, member organization or person, or other person authorized to represent others under Rule 9141, when counsel or other

person authorized to represent others under Rule 9141 agrees to accept service for the member, member organization or person) by facsimile, email, overnight courier or personal delivery. Papers served on a member, member organization, person, or counsel for such member, member organization or person, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member, member organization or person, (b)(1) and (2) of Rule 9134. Papers served on a member organization by facsimile shall be sent to the member organization's facsimile number listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d), except that, if the Phlx Regulation Department staff has actual knowledge that a member organization's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member organization by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member organization by email shall be sent to the member organization's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d) and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member or person by facsimile or email shall be sent to the member's or person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member, member organization or person, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. A copy of a notice under this Rule that is served on a member or person associated with a member organization also shall be served on such member organization. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(c) Contents of Notice

The notice shall explicitly identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated and shall contain a statement of facts specifying the alleged violation. The notice shall state when the Exchange action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) Effective Date of Suspension, Cancellation or Bar

The suspension, cancellation or bar referenced in a notice issued and served under this Rule shall become effective seven days after service of the notice, unless stayed by a request for a hearing pursuant to Rule 9559.

(e) Request for a Hearing

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

(f) Failure to Request Hearing

If a member, member organization or person does not timely request a hearing, the suspension, cancellation or bar specified in the notice shall become effective seven days after the service of the notice and the notice shall constitute final Exchange action.

(g) Request for Termination of the Suspension

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

(h) Subsequent Proceedings

If a member, member organization, person associated with a member organization or person subject to the Exchange's jurisdiction fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300, or 9800 Series, and has previously been served under paragraph (a) of this Rule with a notice for a failure to comply with any provision of the same temporary or permanent cease and desist order, the Phlx Regulation Department staff, after receiving written authorization from the Chief Regulatory Officer, may file a petition with the Office of Hearing Officers seeking a hearing pursuant to Rule 9559 and the imposition of any fitting sanctions for such member's, member organization's or person's failure to comply with the temporary or permanent cease and desist order.

(1) The petition shall be served in accordance with paragraph (b) of this Rule, and it shall be filed with the Office of Hearing Officers.

(2) The petition shall explicitly identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated, contain a statement of facts specifying the alleged violation, describe with particularity the sanctions that the Phlx Regulation Department staff seeks to have imposed, and note that a hearing under Rule 9559 is requested. The Phlx Regulation Department staff may seek the imposition of any fitting sanction.

(3) Upon the filing of the petition, Rule 9559 shall govern the proceeding. Respondent's full compliance with the temporary or permanent cease and desist order is not a ground for dismissing a proceeding brought pursuant to this paragraph (h).

(4) The Exchange Department that filed the petition can withdraw it without prejudice and shall be permitted to refile a petition based on allegations concerning the same facts and circumstances that are set forth in the withdrawn petition.

9557. Procedures for Regulating Activities Under Rule 703 Regarding a Member Organization Experiencing Financial or Operational Difficulties

(a) Notice of Requirements and/or Restrictions; Exchange Action

The Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) may issue a notice directing a member organization to comply with the provisions of Rule 703 or restrict its business activities, either by limiting or ceasing to conduct those activities consistent with Rule 703, if the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) has reason to believe that a condition specified in Rule 703 exists. A notice served under this Rule shall constitute Exchange action.

(b) Service of Notice

The Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member organization subject to a notice issued under this Rule (or upon counsel representing the member organization, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member organization) by facsimile, email, overnight courier or personal delivery. Papers served on a member organization, counsel for such member organization, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member organization, (b)(2) of Rule 9134. Papers served on a member organization by facsimile shall be sent to the member organization's facsimile number listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d), except that, if the Phlx Regulation Department staff has actual knowledge that a member organization's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member organization by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134.

Papers served on a member organization by email shall be sent to the member organization's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d) and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on counsel for a member organization, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(c) Contents of Notice

A notice issued under this Rule shall

- (1) state the specific grounds and include the factual basis for the Exchange action;
- (2) specify the date of the notice and the requirements and/or restrictions being imposed by the notice;
- (3) state that the requirements and/or restrictions imposed by the notice are immediately effective;
- (4) specify the conditions for complying with and, where applicable, avoiding or terminating the requirements and/or restrictions imposed by the notice;
- (5) inform the member organization that, pursuant to paragraph (f) of this Rule, the failure to comply with the requirements and/or restrictions imposed by an effective notice under this Rule shall be deemed, without further notice from the Phlx Regulation Department staff, to result in automatic and immediate suspension unless the Phlx Regulation Department staff issues a letter of withdrawal of all requirements and/or restrictions imposed by the notice pursuant to paragraph (g)(2) of this Rule;
- (6) explain that the member organization may make a request for a letter of withdrawal of the notice pursuant to paragraph (e) of this Rule;
- (7) state that, in addition to making a request for a letter of withdrawal of the notice, the member organization may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559;

(8) inform the member organization of the applicable deadline for filing a request for a hearing and state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action; and

(9) explain that, pursuant to Rule 9559(n), a Hearing Panel may approve or withdraw the requirements and/or restrictions imposed by the notice, and that if the Hearing Panel approves the requirements and/or restrictions imposed by the notice and finds that the member organization has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the member organization.

(d) Effectiveness of the Requirements and/or Restrictions

The requirements and/or restrictions imposed by a notice issued and served under this Rule are immediately effective, except that a timely request for a hearing shall stay the effective date for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), unless the Exchange's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) determines that such a stay cannot be permitted with safety to investors, creditors or other member organizations. Such a determination by the Exchange's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) cannot be appealed. An extension of the stay period is not permitted. Where a timely request for a hearing stays the action for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), the notice shall not be deemed to have taken effect during that entire period.

Any requirements and/or restrictions imposed by an effective notice shall remain in effect unless the Phlx Regulation Department staff shall remove or reduce the requirements and/or restrictions pursuant to a letter of withdrawal of the notice issued as set forth in paragraph (g)(2) of this Rule.

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

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

(1) A request for a letter of withdrawal of the notice may be made at any time after service of a notice under this Rule. The member organization making the request must demonstrate to the satisfaction of the Phlx Regulation Department staff that the requirements and/or restrictions imposed by the notice should be removed or reduced.

If such a request is denied by the Phlx Regulation Department staff, the member organization shall not be precluded from making a subsequent request or requests.

(2) A request for a hearing shall be made within two business days after service of a notice under this Rule. A request for a hearing must set forth with specificity any and all defenses to the Exchange action. A request for a hearing may seek to contest:

(A) the validity of the requirements and/or restrictions imposed by the notice (as the same may have been reduced by a letter of withdrawal pursuant to paragraph (g)(2) of this Rule, where applicable); and/or

(B) the Phlx Regulation Department staff's determination not to issue a letter of withdrawal of all requirements and/or restrictions imposed by the notice, if such was requested by the member organization.

(f) Enforcement of Notice

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

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

(1) Additional Requirements and/or Restrictions

If a member organization continues to experience financial or operational difficulty specified in Rule 703, notwithstanding an effective notice, the Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) may impose additional requirements and/or restrictions by serving an additional notice under paragraph (b) of this Rule. The additional notice shall inform the member organization that it may apply for relief from the additional requirements and/or restrictions by filing a written request for a letter of withdrawal of the notice and/or a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable to such additional notice.

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

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

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

(B) Lifting of Suspension

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

(h) For purposes of this Rule, "Phlx Regulation Department staff" shall mean:

- (1) the head of the Exchange department or office (or FINRA, acting on behalf of the Exchange) that issued the notice, or his or her written officer delegate; or
- (2) if another Exchange (or FINRA, acting on behalf of the Exchange) department or office is named as the party handling the matter on behalf of the issuing department or office, the head of the Exchange (or FINRA, acting on behalf of the Exchange) department or office that is so designated, or his or her written officer delegate.

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

(a) Notice of Initiation of Summary Proceedings

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

(1) suspends a member, member organization, person associated with a member organization or person subject to the Exchange's jurisdiction who has been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization;

(2) suspends a member organization, and its associated permit(s), who is in such financial or operating difficulty that FINRA staff determines and so notifies the Commission that the member organization cannot be permitted to continue to do business as a member organization with safety to investors, creditors, other member organizations, or the Exchange; or

(3) limits or prohibits any person with respect to access to services offered by the Exchange if paragraphs (1) or (2) of this Rule or the provisions of Section 6(d)(3) of the Act applies to such person or, in the case of a person who is not a member organization, if the Chief Regulatory Officer of the Exchange determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, member organizations, or the Exchange, and so notifies the Commission.

(b) Service of Notice

The Phlx Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member, member organization or person subject to a notice issued under this Rule (or upon counsel representing the member, member organization or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member, member organization or person) by facsimile, email, overnight courier, or personal delivery. Papers served on a member, member organization, person or counsel for such member, member organization or person, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member, member organization or person, (b)(1) and (2) of Rule 9134. Papers served on a member organization by facsimile shall be sent to the member organization's facsimile number listed in FINRA Contact System submitted to the Exchange pursuant to Rule 600(d), except that, if the Phlx Regulation Department staff has actual knowledge that a member organization's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member organization by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member organization by email

shall be sent to the member organization's email address listed in the FINRA Contact System submitted to the Exchange pursuant to Rule 600(d) and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member or person by facsimile or email shall be sent to the member's or person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. A copy of a notice under this Rule that is served on a member or person associated with a member organization also shall be served on such member organization. Papers served on counsel for a member, member organization or person, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(c) Contents of Notice

A notice issued under this Rule shall state the specific grounds and include the factual basis for the Exchange action. The notice shall state when the Exchange action will take effect and explain what the respondent must do to avoid such action. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 9559. The notice also shall inform the respondent of the applicable deadline for filing a request for a hearing and shall state that a request for a hearing must set forth with specificity any and all defenses to the Exchange action. In addition, the notice shall explain that, pursuant to Rules 8310(a) and 9559(n), a Hearing Officer or, if applicable, Hearing Panel, may approve, modify or withdraw any and all sanctions or limitations imposed by the notice, and may impose any other fitting sanction.

(d) Effective Date of Limitation, Prohibition or Suspension

The limitation, prohibition or suspension referenced in a notice issued and served under this Rule is immediately effective. The limitation, prohibition or suspension specified in the notice shall remain in effect unless, after a timely written request for a hearing and written request for a stay, the Chief Hearing Officer or Hearing Officer assigned to the matter finds good cause exists to stay the limitation, prohibition or suspension.

(e) Request for a Hearing and Stay

A member, member organization or person subject to a notice issued under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule

9559. A request for a hearing shall be made within seven days after service of the notice issued under this Rule. A request for a hearing must set forth with specificity any and all defenses to the Exchange action.

A member, member organization or person subject to a notice issued under this Rule may, concurrent with or after filing a request for a hearing, file with the Office of Hearing Officers a written request for a stay of the limitation, prohibition or suspension specified in the notice. A request for a stay must set forth with specificity any and all relevant facts and arguments supporting the request for a stay.

(f) Failure to Request Hearing

If a member, member organization or person subject to a notice issued under this Rule does not timely request a hearing within the time period specified in paragraph (e) of this Rule, the notice shall constitute final Exchange action.

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

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

9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series

(a) Applicability

The hearing procedures under this Rule shall apply to a member, member organization or person associated with a member organization, person subject to the Exchange's jurisdiction or other person who is served with a notice issued under the Rule 9550 Series and who timely requests a hearing or who is served with a petition instituting an expedited proceeding under Rule 9556(h). For purposes of this Rule, such members, member organizations or persons shall be referred to as respondents.

(b) Computation of Time

Rule 9138 shall govern the computation of time in proceedings brought under the Rule 9550 Series, except that intermediate Saturdays, Sundays and Federal holidays shall be included in the computation in proceedings brought under Rules 9556 through 9558, unless otherwise specified.

(c) Stays

(1) Unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown, a timely request for a hearing shall stay the effectiveness of a notice issued under Rules 9552 through 9556, except that: (A) the effectiveness of a notice of a limitation or prohibition on access to services offered by the Exchange or a member organization thereof under Rule 9555 with respect to services to which the member organization or person does not have access shall not be stayed by a request for a hearing; and (B) this paragraph has no applicability to a petition instituting an expedited proceeding under Rule 9556(h).

(2) A timely request for a hearing shall stay the effectiveness of a notice issued under Rule 9557 for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), unless the Exchange's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) determines that a notice under Rule 9557 shall not be stayed. Where a notice under Rule 9557 is stayed by a request for a hearing, such stay shall remain in effect only for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less) and shall not be extended.

(3) A timely request for a hearing shall not stay the effectiveness of a notice issued under Rule 9558, unless the Chief Hearing Officer or the Hearing Officer assigned to the matter orders otherwise for good cause shown.

(d) Appointment and Authority of Hearing Officer and/or Hearing Panel

(1) For proceedings initiated under Rules 9553, 9554, and 9556(h), the Chief Hearing Officer shall appoint a Hearing Officer to preside over and act as the sole adjudicator for the matter.

(2) For proceedings initiated under Rules 9552, 9555, 9556 (except Rule 9556(h)), 9557 and 9558, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Officer and two Panelists. The Hearing Officer shall serve as the chair of the Hearing Panel. For proceedings initiated under Rules 9552, 9555, 9556 (except Rule 9556(h)) and 9558, the Chief Hearing Officer shall select as Panelists persons who meet the qualifications delineated in Rules 9231 and 9232. For proceedings initiated under Rule 9557, the Chief Hearing Officer shall select as Panelists current or former members of the Exchange's Financial Responsibility Committee.

(3) Rules 9231(e), 9233, and 9234 shall govern disqualification, recusal or withdrawal of a Hearing Officer or, if applicable, Hearing Panelist.

(4) A Hearing Officer appointed pursuant to this provision shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rules 9235 and 9280.

(5) Hearings under the Rule 9550 Series shall be held by telephone conference, unless the Hearing Officer orders otherwise for good cause shown.

(6) For good cause shown, or with the consent of all of the parties to a proceeding, the Hearing Officer or, if applicable, the Hearing Panel may extend or shorten any time limits prescribed by this Rule other than those relating to Rule 9557.

(e) Consolidation or Severance of Proceedings

Rule 9214 shall govern the consolidation or severance of proceedings, except that, where one of the notices that are the subject of consolidation under this Rule requires that a hearing be held before a Hearing Panel, the hearing of the consolidated matters shall be held before a Hearing Panel. Where two consolidated matters contain different timelines under this Rule, the Chief Hearing Officer or Hearing Officer assigned to the matter has discretion to determine which timeline is appropriate under the facts and circumstances of the case. Where one of the consolidated matters includes an action brought under a Rule that does not permit a stay of the effectiveness of the notice or where the Exchange's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate), in the case of Rule 9557, or Hearing Officer, in the case of Rule 9558(d), determines that a request for a hearing shall not stay the effectiveness of the notice, the limitation, prohibition, condition, requirement, restriction, or suspension specified in the notice shall not be stayed pending resolution of the case. Where one of the consolidated matters includes an action brought under Rule 9557 that is stayed for up to ten business days, the requirement and/or restriction specified in the notice shall not be further stayed.

(f) Time of Hearing

(1) A hearing shall be held within five business days after a respondent subject to a notice issued under Rule 9557 files a written request for a hearing with the Office of Hearing Officers.

(2) A hearing shall be held within ten days after a respondent is served a petition seeking an expedited proceeding issued under Rule 9556(h).

(3) A hearing shall be held within 14 days after a respondent subject to a notice issued under Rules 9556 (except Rule 9556(h)) and 9558 files a written request for a hearing with the Office of Hearing Officers.

(4) A hearing shall be held within 30 days after a respondent subject to a notice issued under Rules 9552 through 9555 files a written request for a hearing with the Office of Hearing Officers.

(5) The timelines established by paragraphs (f)(1) through (f)(4) confer no substantive rights on the parties.

(g) Notice of Hearing

The Hearing Officer shall issue a notice stating the date, time, and place of the hearing as follows:

(1) At least two business days prior to the hearing in the case of an action brought pursuant to Rule 9557;

(2) At least six days prior to the hearing in the case of an action brought pursuant to Rule 9556(h);

(3) At least seven days prior to the hearing in the case of an action brought pursuant to Rules 9556 (except Rule 9556(h)) and 9558; and

(4) At least 21 days prior to the hearing in the case of an action brought pursuant to Rules 9552 through 9555.

(h) Transmission of Documents

(1) Not less than two business days before the hearing in an action brought under Rule 9557, not less than six days before the hearing in an action brought under Rule 9556(h), not less than seven days before the hearing in an action brought under Rules 9556 (except Rule 9556(h)) and 9558, and not less than 14 days before the hearing in an action brought under Rules 9552 through 9555, the Phlx Regulation Department staff shall provide to the respondent who requested the hearing or the respondent who has received a petition pursuant to Rule 9556(h), by facsimile, email, overnight courier or personal delivery, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B) or (C). Documents served by facsimile or email shall also be served by either overnight courier or personal delivery. A document that meets the criteria in this paragraph shall not constitute part of the record, but shall be retained until the date upon which the Exchange's final decision is served or, if applicable, upon the conclusion of any review by the Securities and Exchange Commission or the federal courts.

(2) Not less than two business days before the hearing in an action brought under Rule 9557, not less than three days before the hearing in an action brought under Rules 9556 and 9558, and not less than seven days before the hearing in an action

brought under Rules 9552 through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile, email, by overnight courier or personal delivery. Documents served by facsimile or email shall also be served by either overnight courier or personal delivery.

(i) Evidence

Formal rules of evidence shall not apply to a hearing under this Rule Series. Rules 9262 and 9263 shall govern testimony and the admissibility of evidence.

(j) Additional Information

The Hearing Officer or, if applicable, the Hearing Panel may direct the Parties to submit additional information.

(k) Record of Hearing

Rule 9265 shall govern the requirements for the record of the hearing.

(l) Record of Proceeding

Rule 9267 shall govern the record of the proceeding.

(m) Failure to Appear at a Pre-Hearing Conference or Hearing or to Comply with a Hearing Officer Order Requiring the Production of Information

Failure of any respondent to appear before the Hearing Officer or, if applicable, the Hearing Panel at any status conference, pre-hearing conference or hearing, or to comply with any order of the Hearing Officer or, if applicable, Hearing Panel requiring production of information to support any defense to the notice or petition that respondent has raised, shall be considered an abandonment of the respondent's defense and waiver of any opportunity for a hearing provided by the Rule 9550 Series. In such cases:

(1) The notice issued under the Rule 9550 Series shall be deemed to be final the Exchange action. The Hearing Officer or, if applicable, the Hearing Panel may permit the hearing to go forward as to those parties who appear and otherwise comply with this Rule.

(2) The Hearing Officer may issue a default decision against a respondent who is the subject of a petition filed pursuant to Rule 9556(h) and may deem the allegations against that respondent admitted. The contents of a default decision shall conform to the content requirements of Rule 9559(p). A respondent may, for good cause shown, file a motion to set aside a default. Upon a showing of good cause, the Hearing Officer that entered the original order shall decide the motion. If the Hearing Officer is not available, the Chief Hearing Officer shall appoint another Hearing Officer to decide the motion. If a default

decision is not called for review pursuant to Rule 9559(q), the default decision shall become the final Exchange action.

(n) Sanctions, Costs and Remands

(1) In any action brought under the Rule 9550 Series, other than an action brought under Rule 9556(h) or Rule 9557, the Hearing Officer or, if applicable, the Hearing Panel may approve, modify or withdraw any and all sanctions, requirements, restrictions or limitations imposed by the notice and, pursuant to Rule 8310(a), may also impose any other fitting sanction.

(2) In an action brought under Rule 9556(h), the Hearing Officer may impose any fitting sanction.

(3) In an action brought under Rule 9557, the Hearing Panel shall approve or withdraw the requirements and/or restrictions imposed by the notice. If the Hearing Panel approves the requirements and/or restrictions and finds that the respondent has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the respondent that shall remain in effect unless the Phlx Regulation Department staff issues a letter of withdrawal of all requirements and/or restrictions pursuant to Rule 9557(g)(2).

(4) The Hearing Officer or, if applicable, the Hearing Panel may impose costs pursuant to Rule 8330 regarding all actions brought under the Rule 9550 Series.

(5) In any action brought under the Rule 9550 Series, other than an action brought under Rule 9556(h) or Rule 9557, the Hearing Officer or, if applicable, the Hearing Panel may remand the matter to the department or office that issued the notice for further consideration of specified matters.

(o) Timing of Decision

(1) Proceedings initiated under Rules 9553 and 9554

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision and provide it to the Exchange Review Council's Review Subcommittee.

(2) Proceedings initiated under Rules 9556 and 9558

Within 21 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the Exchange Review Council's Review Subcommittee.

(3) Proceedings initiated under Rules 9552 and 9555

Within 60 days of the date of the close of the hearing, the Hearing Officer shall prepare a proposed written decision that reflects the views of the Hearing Panel, as determined by majority vote, and provide it to the Exchange Review Council's Review Subcommittee.

(4) Proceedings initiated under Rule 9557

(A) Written Order

Within two business days of the date of the close of the hearing, the Office of Hearing Officers shall issue a written order that reflects the Hearing Panel's summary determinations, as decided by majority vote, and shall serve the Hearing Panel's written order on the Parties. The Hearing Panel's written order under Rule 9557 is effective when issued. The Hearing Panel's written order will be followed by a written decision explaining the reasons for the Hearing Panel's summary determinations, as required by paragraphs (o)(4)(B) and (p) of this Rule.

(B) Written Decision

Within seven days of the issuance of the Hearing Panel's written order, the Office of Hearing Officers shall issue a written decision that complies with the requirements of paragraph (p) of this Rule and shall serve the Hearing Panel's written decision on the Parties.

(5) If not timely called for review by the Exchange Review Council's Review Subcommittee pursuant to paragraph (q) of this Rule, the Hearing Officer's or, if applicable, the Hearing Panel's written decision shall constitute final Exchange action. For decisions issued under Rules 9552 through 9556 and 9558, the Office of Hearing Officers shall promptly serve the decision of the Hearing Officer or, if applicable, the Hearing Panel on the Parties and provide a copy to each Exchange member organization with which the respondent is associated.

(6) The timelines established by paragraphs (o)(1) through (5) confer no substantive rights on the parties.

(p) Contents of Decision

The decision, which for purposes of Rule 9557 means the written decision issued under paragraph (o)(4)(B) of this Rule, shall include:

(1) a statement describing the investigative or other origin of the notice issued under the Rule 9550 Series;

(2) the specific statutory or rule provision alleged to have been violated or providing the authority for the Exchange action;

(3) a statement setting forth the findings of fact with respect to any act or practice the respondent was alleged to have committed or omitted or any condition specified in the notice;

(4) the conclusions of the Hearing Officer or, if applicable, Hearing Panel regarding the alleged violation or condition specified in the notice;

(5) a statement of the Hearing Officer or, if applicable, Hearing Panel in support of the disposition of the principal issues raised in the proceeding; and

(6) a statement describing any sanction, requirement, restriction or limitation imposed, the reasons therefore, and the date upon which such sanction, requirement, restriction or limitation shall become effective.

(g) Call for Review by the Exchange Review Council

(1) For proceedings initiated under the Rule 9550 Series (other than Rule 9557), the Exchange Review Council's Review Subcommittee may call for review a proposed decision prepared by a Hearing Officer or, if applicable, Hearing Panel within 21 days after receipt of the decision from the Office of Hearing Officers; provided, however, that a decision under the Rule 9550 Series with respect to an Exchange member or member organization that is an affiliate of the Exchange within the meaning of Rule 985 shall constitute final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1) and may not be called for review pursuant to Rule 9559. For proceedings initiated under Rule 9557, the Exchange Review Council's Review Subcommittee may call for review a written decision issued under paragraph (o)(4)(B) of this Rule by a Hearing Panel within 14 days after receipt of the written decision from the Office of Hearing Officers. Rule 9313(a) is incorporated herein by reference.

(2) If the Review Subcommittee calls the proceeding for review within the prescribed time, a Subcommittee of the Exchange Review Council shall meet and conduct a review not later than 40 days after the call for review. The Subcommittee shall be composed pursuant to Rule 9331(a)(1). The Subcommittee may elect to hold a hearing or decide the matter on the basis of the record made before the Hearing Officer or, if applicable, the Hearing Panel. Not later than 60 days after the call for review, the Subcommittee shall make its recommendation to the Exchange Review Council. Not later than 60 days after receipt of the Subcommittee's recommendation, the Exchange Review Council shall serve a final written decision on the parties via overnight courier or facsimile. The Exchange Review Council may affirm, modify or reverse the decision of the Hearing Officer or, if applicable, the Hearing Panel. The Exchange Review Council also may impose any other fitting sanction, pursuant to Rule 8310(a), and may impose costs, pursuant to 8330. In addition, the Exchange

Review Council may remand the matter to the Office of Hearing Officers for further consideration of specified matters.

(3) For good cause shown, or with the consent of all of the parties to a proceeding, the Review Subcommittee, the Exchange Review Council Subcommittee or the Exchange Review Council may extend or shorten any time limits prescribed by this Rule other than those relating to Rule 9557.

(4) The Exchange Review Council's written decision shall constitute final the Exchange action

(5) The Exchange Review Council shall promptly serve the decision on the Parties and provide a copy of the decision to each the Exchange member organization with which the respondent is associated.

(6) The timelines established by paragraphs (q)(1)-(5) confer no substantive rights on the parties.

(r) Reserved

(s) Application to Commission for Review

The right to have any action pursuant to this Rule reviewed by the Securities and Exchange Commission is governed by Section 19 of the Securities Exchange Act. The filing of an application for review by the Securities and Exchange Commission shall not stay the effectiveness of final the Exchange action, unless the Securities and Exchange Commission otherwise orders.

9600. Procedures for Exemptions

9610. Application

(a) Where to File

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

(b) Content

An application filed pursuant to this Rule shall contain the member organization's name and address, the name of a person associated with the member organization who will serve as the primary contact for the application, the Rule from which the member or member organization is seeking an exemption, and a detailed statement of the grounds for

granting the exemption. If the member organization does not want the application or the decision on the application to be publicly available in whole or in part, the member organization also shall include in its application a detailed statement, including supporting facts, showing good cause for treating the application or decision as confidential in whole or in part.

(c) Applicant

A member organization that files an application under this Rule is referred to as “Applicant” hereinafter in the Rule 9600 Series.

9620. Decision

After considering an application, the Phlx Regulation Department staff shall issue a written decision setting forth its findings and conclusions. The decision shall be served on the Applicant pursuant to Rules 9132 and 9134. After the decision is served on the Applicant, the application and decision shall be publicly available unless the Phlx Regulation Department staff determines that the Applicant has shown good cause for treating the application or decision as confidential in whole or in part.

9630. Appeal

(a) Notice

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 9620. The notice of appeal shall be filed with the Phlx Regulation Department, with a copy of the notice also provided to the appropriate the Phlx Regulation Department staff. The notice of appeal shall contain a brief statement of the findings and conclusions as to which exception is taken. Appeals of decisions issued by the Phlx Regulation Department staff pursuant to Rule 9620 shall be decided by the Exchange Review Council, except with respect to exemptive relief under Rule 615 (Waiver of Requirements), which shall be decided by the Waiver Subcommittee of the Exchange Review Council. If the Applicant does not want the decision on the appeal to be publicly available in whole or in part, the Applicant also shall include in its notice of appeal a detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The notice of appeal shall be signed by the Applicant.

(b) Expedited Review

Where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly harm the Applicant, the Exchange Review Council or the Waiver Subcommittee of the Exchange Review Council, as the case may be, shall provide expedited review.

(c) Withdrawal of Appeal

An Applicant may withdraw its notice of appeal at any time by filing a written notice of withdrawal of appeal with the Exchange Review Council.

(d) Oral Argument

(1) Subject to paragraph (2) below, following the filing of a notice of appeal, the Exchange Review Council or Review Subcommittee may order oral argument and may designate a Subcommittee to hear such oral argument. The Subcommittee may consider any new evidence if the Applicant can show good cause for not including it in its application, and the Subcommittee will recommend to the Exchange Review Council a disposition of all matters on appeal.

(2) With respect to exemptive relief requested under Rule 615, the Waiver Subcommittee of the Exchange Review Council may order oral argument and consider any new evidence if the Applicant can show good cause for not including it in its application.

(e) Decision

(1) Subject to paragraph (2) below, after considering all matters on appeal, and, as applicable, the Subcommittee's recommendation, the Exchange Review Council shall affirm, modify, or reverse the decision issued under Rule 9620. The Exchange Review Council shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of the Exchange.

(2) With respect to exemptive relief requested under Rule 615, after considering all matters on appeal, the Waiver Subcommittee of the Exchange Review Council shall affirm, modify, or reverse the decision issued under Rule 9620. The Waiver Subcommittee shall issue a written decision setting forth its findings and conclusions and serve the decision on the Applicant. The decision shall be served pursuant to Rules 9132 and 9134. The decision shall be effective upon service and shall constitute final action of the Exchange. The Waiver Subcommittee shall retain the discretion to refer the appeal to the Exchange Review Council, in which case the Exchange Review Council shall act on such appeal pursuant to its authority under this 9600 Series.

9700. Reserved**9800. Temporary Cease and Desist Orders**

9810. Initiation of Proceeding**(a) Department of Enforcement or Department of Market Regulation**

With the prior written authorization of FINRA’s Chief Executive Officer or such other senior officers as the Chief Executive Officer may designate, and the Exchange Chief Regulatory Officer, the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Exchange Act and SEC Rule 10b-5 thereunder; SEC Rules 15g-1 through 15g-9; Rule 707 (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act); Rule 782; or Rule 741 (if the alleged violation is misuse or conversion of customer assets). The Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation shall initiate the proceeding by serving a notice on a member, member organization or associated person (hereinafter “Respondent”) (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) and filing a copy thereof with the Office of Hearing Officers. The Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation shall serve the notice by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The notice shall be effective when service is complete.

(b) Contents of Notice

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

(1) a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts or omissions that constitute the alleged violation;

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

(3) a proposed order that contains the required elements of a temporary cease and desist order (except the date and hour of the order's issuance), which are set forth in Rule 9840(b).

(c) Authority to Approve Settlements

If the Parties agree to the terms of the proposed temporary cease and desist order, the Hearing Officer shall have the authority to approve and issue the order.

(d) Filing of Underlying Complaint

If the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation has not issued a complaint under Rule 9211 against the Respondent relating to the subject matter of the temporary cease and desist proceeding and alleging violations of the rule or statutory provision specified in the notice described in paragraph (b), the Phlx Regulation Department, the Department of Enforcement or the Department of Market Regulation shall serve and file such a complaint with the notice initiating the temporary cease and desist proceeding. Service of the complaint can be made in accordance with the service provisions in paragraph (a).

9820. Appointment of Hearing Officer and Hearing Panel

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

(1) previously served on the Exchange Review Council;

(2) previously served on a disciplinary subcommittee of the Exchange Review Council, including a Subcommittee, an Extended Proceeding Committee, or their predecessor subcommittees;

(3) previously served as a Director, but does not currently serve in any of these positions;

(4) served on the FINRA National Adjudicatory Council or on a disciplinary subcommittee of the FINRA National Adjudicatory Council prior to the date that the Exchange commenced operating as a national securities exchange; or

(5) is a FINRA Panelist approved by the Exchange Board at least annually, or is drawn from other sources the Board deems appropriate given the responsibilities of Panelists.

(b) If at any time a Hearing Officer or Hearing Panelist determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, or if a Party files a motion to disqualify a Hearing Officer or Hearing Panelist, the recusal and disqualification proceeding shall be conducted in accordance with Rules 9233 and 9234, except that:

(1) a motion seeking disqualification of a Hearing Officer or Hearing Panelist must be filed no later than 5 days after the later of the events described in paragraph (b) of Rules 9233 and 9234; and

(2) the Chief Hearing Officer shall appoint a replacement Panelist using the criteria set forth in paragraph (a) of this Rule.

9830. Hearing

(a) When Held

The hearing shall be held not later than 15 days after service of the notice and filing initiating the temporary cease and desist proceeding, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. If a Hearing Officer or Hearing Panelist is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer or Hearing Panelist is appointed.

(b) Service of Notice of Hearing

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

(c) Authority of Hearing Officer

The Hearing Officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rule 9235.

(d) Witnesses

A person who is subject to the jurisdiction of the Exchange shall testify under oath or affirmation. The oath or affirmation shall be administered by a court reporter or a notary public.

(e) Additional Information

Prior to the hearing, the Hearing Officer may order a Party to furnish to all other Parties and the Hearing Panel such information as deemed appropriate, including any or all of the pre-hearing submissions described in Rule 9242(a). The documentary evidence submitted by the Parties pursuant to this paragraph shall not become part of the record, unless the Hearing Officer or Hearing Panel orders some or all of such evidence included pursuant to Rule 9830(g). At any time during the Hearing Panel's consideration, the Hearing Panel may direct a Party to submit additional information. Any additional information submitted shall be provided to all Parties at least one day before the Hearing Panel renders its decision.

(f) Transcript

The hearing shall be recorded by a court reporter and a written transcript thereof shall be prepared. A transcript of the hearing shall be available to the Parties for purchase from the court reporter at prescribed rates. A witness may purchase a copy of the transcript of his or her own testimony from the court reporter at prescribed rates. Proposed corrections to the transcript may be submitted by affidavit to the Hearing Panel within a reasonable time determined by the Hearing Panel. Upon notice to all the Parties to the proceeding, the Hearing Panel may order corrections to the transcript as requested or sua sponte.

(g) Record and Evidence Not Admitted

The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in Rule 9810(b); the transcript of the hearing; all evidence considered by the Hearing Panel; and any other document or item accepted into the record by the Hearing Officer or the Hearing Panel. The Office of Hearing Officers shall be the custodian of the record. Proffered evidence that is not accepted into the record by the Hearing Panel shall be retained by the custodian of the record until the date when the Exchange's decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(h) Failure to Appear at Hearing

If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel

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

9840. Issuance of Temporary Cease and Desist Order by Hearing Panel

(a) Basis for Issuance

The Hearing Panel shall issue a written decision stating whether a temporary cease and desist order shall be imposed. The Hearing Panel shall issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. A temporary cease and desist order shall be imposed if the Hearing Panel finds:

(1) that the Phlx Regulation Department, the Department of Enforcement or Department of Market Regulation has made a showing of a likelihood of success on the merits; and

(2) that the alleged violative conduct or continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors prior to the completion of the underlying disciplinary proceeding under the Rule 9200 and 9300 Series.

(b) Content, Scope, and Form of Order

A temporary cease and desist order shall:

(1) be limited to ordering a Respondent (and any successor of a Respondent, where the Respondent is a member organization) to cease and desist from violating a specific rule or statutory provision, and, where applicable, to ordering a Respondent (and any successor of a Respondent, where the Respondent is a member organization) to cease and desist from dissipating or converting assets or causing other harm to investors;

(2) set forth the alleged violation and the significant dissipation or conversion of assets or other significant harm to investors that is likely to result without the issuance of an order;

(3) describe in reasonable detail the act or acts the Respondent (and any successor of a Respondent, where the Respondent is a member organization) shall take, refrain from taking, or both; and

(4) include the date and hour of its issuance.

(c) Duration of Order

A temporary cease and desist order shall remain effective and enforceable until the issuance of a decision under Rule 9268 or Rule 9269, or until a settlement offer is accepted pursuant to Rule 9270.

(d) Service and Dissemination Requirements

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

(e) Delivery Requirement

Where a Respondent is a member organization, Respondent shall deliver a copy of a temporary cease and desist order, within one business day of receiving it, to its associated persons.

9850. Review by Hearing Panel

At any time after the Office of Hearing Officers serves the Respondent (or counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) with a temporary cease and desist order, a Party may apply to the Hearing Panel to have the order modified, set aside, limited, or suspended. The application shall set forth with specificity the facts that support the request. The Hearing Panel that presided over the temporary cease and desist order proceeding shall retain jurisdiction to modify, set aside, limit, or suspend the temporary cease and desist order, unless at the time the application is filed a Hearing Panel has already been appointed in the underlying disciplinary proceeding commenced under Rule 9211 in which case the Hearing Panel appointed in the disciplinary proceeding has jurisdiction. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. The Hearing Panel's response shall be served on the Respondent (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the

Respondent) via personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the temporary cease and desist order by personal service or overnight commercial courier. The filing of an application under this Rule shall not stay the effectiveness of the temporary cease and desist order.

9860. Violation of Temporary Cease and Desist Orders

A Respondent who violates a temporary cease and desist order imposed under this Rule Series may have its association or membership suspended or canceled or be subject to any fitting sanction under Rule 9556. The Chief Regulatory Officer of the Exchange must authorize the initiation of any such proceeding in writing.

9870. Application to Commission for Review

Temporary cease and desist orders issued pursuant to this Rule Series constitute final and immediately effective disciplinary sanctions imposed by the Exchange. The right to have any action under this Rule Series reviewed by the Commission is governed by Section 19 of the Exchange Act. The filing of an application for review shall not stay the effectiveness of the temporary cease and desist order, unless the Commission otherwise orders.

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