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Page 1 of * 345

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2022 - * 10

Amendment No. (req. for Amendments *)

Filing by NYSE Chicago, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

<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 Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
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Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934 Section 3C(b)(2) * <input type="checkbox"/>

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

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

Proposes to adopt investigation, disciplinary, sanction, and other procedural rules

Contact Information

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

First Name *	David	Last Name *	De Gregorio
Title *	Associate General Counsel, NYSE Group Inc.		
E-mail *	David.DeGregorio@ice.com		
Telephone *	(212) 656-4166	Fax	(212) 656-8101

Signature

Pursuant to the requirements of the Securities Exchange of 1934, NYSE Chicago, Inc. has duty caused this filing to be signed on its behalf by the undersigned thereunto duty authorized.

Date	05/20/2022	(Title *)
By	Martha Redding (Name *)	Corporate Secretary

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

Martha Redding
Digitally signed by Martha Redding
Date: 2022.05.20 10:28:05 -04'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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SEC Submission for NYSE Chicago D

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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Ex. 1 SEC Submission for NYSE Chic

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 Advanced 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 being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

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

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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 Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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

Add Remove View

Ex. 5 SEC Submission for NYSE Chic

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

Partial Amendment

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

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² NYSE Chicago, Inc. (“NYSE Chicago” or the “Exchange”) proposes to adopt investigation, disciplinary, sanction, and other procedural rules modeled on the rules of its affiliates, and to make certain conforming and technical changes.

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

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

David De Gregorio
Associate General Counsel
NYSE Group, Inc.
(212) 656-4166

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

- (a) Purpose

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

Background and General Description of Proposed Rule Change

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Beginning in 2013, each of the Exchange's affiliates have adopted rules relating to investigation, discipline, sanction, and other procedural rules based on the rules of the Financial Industry Regulatory Authority ("FINRA").³ To facilitate rule harmonization among self-regulatory organizations ("SROs"), the Exchange proposes the NYSE Chicago Rule 10.8000 and 10.9000 Series based on the text of the NYSE Arca Rule 10.8000 and Rule 10.9000 Series, with certain changes, as described below.

The Exchange notes that all but five Participants⁴ are already subject to similar rules by virtue of their membership in the NYSE, NYSE American, NYSE National, NYSE Arca, FINRA and/or the NASDAQ Stock Market LLC ("NASDAQ"), whose disciplinary rules are similar to FINRA's rules. The overwhelming majority of Exchange's Participant and Participant Firms are thus already subject to rules similar to the proposed rules described herein.

Set forth below are (1) a description of the Exchange's current disciplinary rules (current Article 12, Rules 1-10, and Article 13); (2) a description of the proposed rule change and transition; (3) a more detailed description of the proposed rules with a comparison to the current rules; (4) a description of technical and

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

⁴ There are currently 66 Participants on the Exchange. The term "Participant" is defined in Article 1, Rule 1(s) to mean, among other things, any Participant Firm that holds a valid Trading Permit and that a Participant shall be considered a "member" of the Exchange for purposes of the Act. If a Participant is not a natural person, the Participant may also be referred to as a Participant Firm, but unless the context requires otherwise, the term Participant shall refer to an individual Participant and/or a Participant Firm. For the avoidance of doubt, this rule filing and the proposed disciplinary rules will use the phrase Participant and/or Participant Firm.

conforming amendments; and (5) a description of current rules that will not be carried over into the proposed rule set and the reason(s) therefor.

Description of Current NYSE Chicago Article 12

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

Article 12, Rule 1 (Investigation and Charges)

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

Article 12, Rule 1(a) governs investigations and the written report of investigative findings. Under Article 12, Rule 1(a), the staff of the Market Regulation Department has the authority to conduct investigations of any possible violation of any Exchange rule or any provision of the federal securities laws (or any rule thereunder) by any Participant, associated person⁵ thereof or any other person or organization subject to the jurisdiction of the Exchange. Except in emergency situations, Article 12, Rule 1(a) requires staff to prepare a written report of such investigation whenever seeking to institute a proceeding pursuant to Article 12, Rule 1(b)(1) to be presented to the Chief Regulatory Officer ("CRO").

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

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

⁵ "Associated Person" has the meaning set forth in Section 3(a)(21) of the Exchange Act. See Article 1, Rule 1(d). The term is sometimes capitalized in the Exchange's rules and will be capitalized herein.

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

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

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

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

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

Article 12, Rule 2 (Summary Procedure)

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

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

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

Any contested fine will be publicly reported to the same extent that Exchange disciplinary proceedings will be publicly reported. In any action taken by the Exchange pursuant to Article 12, Rule 2, the person against whom a fine is imposed shall be served (as provided in Article 12, Rule 1(c)) with a written statement signed by the CRO or his designee, setting forth the

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

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

Article 12, Rule 2(b)(1) governs collateral proceedings involving a Participant, partner, officer, registered employee or Associated Person that is suspended or expelled from any other securities exchange or any national securities association, or is suspended or barred from being associated with any member or member organization of such exchange or association, or is suspended or barred by any governmental securities agency from dealing in securities or being associated with any broker or dealer in securities. In those circumstances, the CRO may suspend or expel such person or organization as a Participant, partner, officer, registered employee or Associated Person. Pursuant to the Rule, no such suspension by the CRO may commence before or expire after the suspension imposed by such other exchange, association or agency, and no such expulsion may be imposed by the CRO unless such person or organization has been expelled or barred by such other exchange, association or agency. Finally, Article 12, Rule 2(b) does not

preclude any proceeding against any Participant, partner, officer, registered employee or Associated Person under any other Rule of the Exchange.

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

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

Any action by the Hearing Officer pursuant to Article 12, Rule 2(b) can be reviewed in accordance with the procedure specified in Article 12, Rule 6. In the event no request for review is filed within 15 days after the Respondent is notified of the determination of the Hearing Officer, such determination shall become final and not subject to appeal at the Exchange.

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

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

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

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

Under Article 12, Rule 3(b), if a Respondent makes written admission of the charges and also makes a written request for a hearing on the penalty to be imposed, the CRO shall promptly order a hearing be conducted pursuant to the procedures set forth in Article 12, Rule 5 that would be limited to such matters as are in extenuation or aggravation of the circumstances or as shall have material bearing on the penalty only. Under the Rule, the Respondent and the staff who investigated the charges shall be given an opportunity to be heard at such hearing conducted for the purpose of determining the penalty. A written notice of the result shall be served upon the Respondent in a manner provided by Rule 1(c) of this Article. Any penalty imposed under this paragraph may be reviewed pursuant to Rule 6 of this Article.

Article 12, Rule 4 (Hearing Procedure)

Article 12, Rule 4 sets forth hearing procedures.

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

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

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

Subsection (c)(2) provides that any party may request production of all or some of the documents⁶ that its adversary intends to introduce as evidence either in support of or to counter the charges. Production requests for some of the documents to be introduced as evidence must reasonably specify which documents are to be produced, and the party making the request shall do so at least 45 days prior to the hearing and be responsible for paying all reasonable costs associated with the production of such documents.

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

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

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

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

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

⁶ For purposes of Article 12, Rule 4(c), the term "documents" means a writing, drawing, graph, report, table, chart, photograph, video or audio recording, or any other data compilation, including data stored by computer, from which information can be obtained.

at the proceedings be made.

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

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

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

Article 12, Rule 4(g) governs a Respondent's right to counsel. Under Article 12, Rule 4(g), Respondent shall have the right to be represented by legal or other counsel at the Respondent's own expense except in the case of summary procedure under Article 12, Rule 2(a), Rule 3 or Rule 4(a), and under the Minor Rules Violation Plan ("MRVP") of Article 12, Rule 8.⁷ The rule also provides that preparation of the charges and the presentation of evidence in support of charges is the responsibility of the Market Regulation Department and that

⁷ Article 12, Rule 4(g) mistakenly refers to the MRVP as being in Article 12, Rule 9 which, as noted below, is marked "Reserved." See note 12, *infra*.

Exchange counsel shall be counsel to the Hearing Officer. Pursuant to Article 12, Rule 4(g), Exchange counsel must not be an employee in the Market Regulation Department and must not have directly participated in any examination, investigation or decision associated with the initiation or conduct of the particular proceeding.

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

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

Article 12, Rule 5 (Review)

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

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

dissolved automatically.

Under Article 12, Rule 5(a), a Respondent has 15 days from the date of service of notice of a penalty imposed under Article 12, Rule 2(b), Rule 4(b) or Rule 5 to demand a review of the penalty imposed. The Exchange in turn has 15 days from the date of service of notice of an Order under Article 12, Rule 2(b), Rule 4(b)⁸ or Rule 5 containing a decision with a finding that the Respondent did not commit any of the violations as alleged in the charging document or imposing a penalty that Exchange staff deems inadequate to demand a review thereof.

Demand for review shall be made in writing and filed with the Secretary, with copies to the opposing party. In the event no request for review is filed within 15 days after the parties are notified of the Hearing Officer's determination, such determination becomes final and conclusive.

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

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

Article 12, Rule 5(b) provides a process for review by the Board of matters subject to Judiciary Committee review under Rule 5(a). Article 12, Rule 5(b) provides that, notwithstanding Article 12, Rule 5 (a), if the Judiciary Committee determines that a matter presented to it for review involves an issue of sufficient importance, it may request that the Board, rather than the Judiciary Committee,

⁸ Article 12, Rule 5(a) mistakenly refers to an Order under Article 12, Rule 4(b). As discussed, Article 12, Rule 4(b) governs answers to charges. The Hearing Officer's decision is governed by subsection (f).

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

Article 12, Rule 6 (Effective Date of Judgment)

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

Article 12, Rule 7 (Disciplinary Jurisdiction)

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

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

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

Associated Person within one year of receipt by the Exchange of written notice of the termination of such person's status as a Participant or person associated with a Participant.

Rule 8 (Minor Rule Violations)

Article 12, Rule 8 sets forth the Exchange's MRVP.⁹ Under Article 12, Rule 8, in lieu of commencing a "disciplinary proceeding" as that term is used in Article 12 of the Exchange's rules, the Exchange may, subject to the requirements set forth in this Rule, impose a censure or fine, not to exceed \$5,000,¹⁰ on any Participant, Associated Person, or registered or non-registered employee of a Participant, for any violation of a rule of the Exchange, which violation the Exchange shall have determined is minor in nature.¹¹ For failures to comply with the Consolidated

⁹ The Exchange adopted its current MRVP in 1996. See Securities Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (June 6, 1996) (SR-CHX-95-25) (Order). The original procedure authorizing the Exchange, in lieu of commencing disciplinary proceeding, to impose a fine, not to exceed \$2,500, on any member, member organization, associated person or registered or nonregistered employee of a member or member organization for any violation of an Exchange rule which the Exchange determines to be minor in nature was contained in Article 12, Rule 9, now Article 12, Rule 8. The recommended dollar amounts for the first, second, third and subsequent violations, as calculated on a twelve-month rolling basis, of a rule designated as a minor rule violation was contained in a separate Recommended Fine Schedule in the Fee Schedule. See id., 61 FR at 28918-19 & n. 10.

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

¹⁰ Proposed Rule 10.9217 would retain the Exchange's maximum \$5,000 fine for minor rule violations under current Article 12, Rule 8.

¹¹ As set forth in Article 12, Rule 8(f), the Exchange is not required to impose a censure or fine with respect to the violation of any rule or policy included in any

Audit Trail Compliance Rule requirements of the Rule 6.6800 Series, the Exchange may impose a minor rule violation fine of up to \$2,500. For more serious violations, other disciplinary action may be sought.

Any censure or fine imposed pursuant to Article 12, Rule 8 and not contested shall not be publicly reported, except as may be required by Rule 19d-1 under the Act, and as may be required by any other regulatory authority. Any censure or fine that is contested may be publicly reported to the same extent that Exchange disciplinary proceedings may be publicly reported. Any fine imposed pursuant to Article 12, Rule 8 that (1) does not exceed \$2,500 and (2) is not contested, shall be reported by the Exchange to the Securities and Exchange Commission on a periodic, rather than a current, basis, except as may otherwise be required by Act Rule 19d-1 and by any other regulatory authority. Under Article 12, Rule 8(b), the Chief Enforcement Counsel or CRO have the authority to impose a fine pursuant to the rule.

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

Under Article 12, Rule 8(e), any person censured or fined pursuant to the rule may contest such censure or fine by filing with the Secretary a written response meeting the requirements of an Answer as provided in Article 12, Rule 4(b) no later than the date by which such determination must be contested. The Secretary may deny the answer if such answer is untimely or the answer fails to meet the standards of Article 12, Rule 4(b). If the Secretary denies the answer without leave to amend and refile, the sanction imposed by the Exchange pursuant to

such listing and the Exchange shall be free, whenever it determines that any violation is not minor in nature, to proceed under other provisions of Article 12 rather than under Article 12, Rule 8.

Article 12, Rule 8(b) shall become final and the censure shall be imposed and/or fine become due and payable. Unless denied by the Secretary, an answer filed by Respondent is deemed accepted, at which point the matter shall become a “Disciplinary Proceeding” subject to the provisions of Article 12 applicable to disciplinary proceedings.

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

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

Rule 10 (Pending Proceedings)¹²

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

Article 13 (Suspension - Reinstatement)

Article 13 addresses suspensions, and reinstatements.

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

¹² Article 12, Rule 9 is marked “Reserved.”

Participants. Such suspension shall continue until the Participant's Trading Permit is reinstated by the Board.

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

- failed to perform his or its contracts or is insolvent or is in such financial or operational condition or otherwise conducting his or its business in such a manner that he or it cannot be permitted to continue in business with safety to his or its customers or creditors or to the Exchange, including but not limited to, the reasonable belief that the Participant is violating and will continue to violate any provision of the Rules of the Exchange, the federal securities laws (or rules promulgated thereunder) or any condition or restriction imposed pursuant to the provisions of Article 7, Rule 3(d) or Article 7, Rule 8(a) (Article 13, Rule 2(a)(1)(A)); or
- failed to perform or is failing to perform any material responsibility imposed on the Participant as a result of its registration as an Institutional Broker or Market Maker (or an associated person thereof who is registered as an Institutional Broker Representative or Market Maker Authorized Trader, respectively) and, as a result, cannot be permitted to continue in business with safety to its customers or creditors or to the Exchange ((Article 13, Rule 2(a)(1)(B)); or
- been and is expelled or suspended from any self-regulatory organization or barred or suspended from being associated with a member of any self-regulatory organization (Article 13, Rule 2(a)(1)(C)),

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

Unless the CRO determines after further inquiry that lifting the suspension, revocation, limitation or prohibition without further proceedings is appropriate, such suspension, limitation, revocation or prohibition shall continue until the Participant Firm's Trading Permit, such Participant's registration or the access of the associated person is reinstated or terminated pursuant to the provisions of Article 13, Rule 3 or unless otherwise determined pursuant to Article 13, Rule

2(b).

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

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

Article 13, Rule 2(b) governs appeals of CRO action under Article 13, Rule 2(a). Subsection (b) provides that, in the event the CRO takes any action pursuant to Article 13, Rule 2(a), any person named in such action shall have the right to appeal. Appeals pursuant to Article 13, Rule 2(b) shall be made by filing a written notice of appeal with the secretary of the Exchange within five days after notification of the action. The notice shall state with particularity the action complained of, the appellant's reasons for taking exception to the decision and the relief sought. Appeals filed under Article 13, Rule 2(b) are considered and decided by a panel appointed by the Board, composed of three Board members, at least two of whom shall be public members of the Board. No member of such panel shall have any direct or indirect interest in the matter presented before them which might preclude such member from rendering an objective and impartial determination. All appeals heard pursuant to Article 13, Rule 2(b) are expedited to the maximum extent possible and, in any event, shall be heard within ten days. Appellants are notified of the composition of the panel and the time, place and date when the panel will meet. Written materials in support of the appeal or requests to make an oral presentation shall be filed with the panel prior to the date when the panel will meet. The panel will grant requests for oral presentation. After consideration of the appeal, the panel shall, by vote of a majority of its members, affirm, reverse, or modify the action upon which the appeal was made. All decisions by the panel are final.

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

Commentary .01 to Article 13, Rule 2 provide that any Exchange Officer designated by the CRO may suspend the trading privileges of a Participant on the Exchange's facilities pursuant to the provisions of Article 13, Rule 2 if a Qualified Clearing Agency refuses to act to clear and settle the trades of that Participant. The CRO must approve any such suspensions within two (2) days of the action.

If the CRO does not approve the action taken, the suspension shall be immediately lifted as of the time of his or her decision or after the expiration of two days, whichever is earlier.

Article 13, Rule 3 governs failure to obtain reinstatement and provides that if a Participant suspended under the provisions of Article 13, Rule 1 or Article 13, Rule 2(a) fails to obtain reinstatement within one year from the time of his or its suspension, or within such further time as the Board may grant, or fails to obtain reinstatement as hereinafter provided, his or its Trading Permit shall be terminated. Any person suspended under Article 13 may, at any time, be reinstated by the Board upon their own motion.

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

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

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

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

Under Article 13, Rule 4(d), in the event the applicant does not receive two-thirds vote, he or it shall have the right to a hearing before the Executive Committee, conducted in accordance with procedures set forth in a notice of such hearing to be given to the applicant. Following the hearing, the Executive Committee shall again vote upon the applicant, a two-thirds vote of the members of the Executive Committee present at the time of voting being required for reinstatement. The applicant may petition the Board for review of any adverse determination made by the Executive Committee following a hearing, a two-thirds vote of the members of the Board present at the time of voting being required for reinstatement. The Board shall not reverse, modify or remand for further consideration any determination made by the Executive Committee if the factual

conclusions in such determination are supported by substantial evidence and such determination is not arbitrary, capricious or an abuse of discretion.

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

Proposed Rule Change

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

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

- describe its own transition process in Article 12, Rule 10 and in proposed Rules 10.8001, 10.8130(d), and 10.9001 as well as for Article 13, which governs suspension and reinstatement;
- use the terms “Participant” and “Participant Firm,” together or separately, as applicable, rather than “ETP Holder,” “OTP Holder” and “OTP Firm,” consistent with the Exchange’s other rules;
- define “covered person” in proposed Rule 10.9120 to mean an Associated Person¹³ and any other person subject to the jurisdiction of the Exchange. The NYSE Arca rule is similar except for the reference to Approved Persons, a registration category that has no direct analogue on the Exchange;
- not utilize Floor-Based Panelists referenced in NYSE Arca Rules 9120(q), 9212(a)(2)(B), 9221(a)(3), 9231(b)(2) and (c)(2), and 9232(c) because the Exchange does not have a trading floor;
- retain the text of the Exchange’s currently applicable list of minor rule violations in proposed Rule 10.9217, move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed

¹³

See Article 1, Rule 1(d). See also id. at (d) & note 5, supra.

Rule 10.9217 and make certain corrections and additions;¹⁴

- adopt substantially the same appellate and call for review processes as its affiliate NYSE Arca except that the Exchange will not be adopting appeals panels as provided for in NYSE Arca Rule 3.3 (Board Committees) and NYSE Arca Rule 10.9310(b). NYSE Arca retained appeals panels from its legacy disciplinary rules. The Exchange does not have a similar current process; and
- make certain other technical and conforming changes as described below and herein.

The Exchange also proposes to adopt the following rules in order to harmonize its rules with those of its affiliates, as described in detail below:¹⁵

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

Finally, the Exchange proposes certain changes to Article 7, Rule 12 governing non-payment of any debt for Trading Permit fees, fines, transaction fees, or other sums owing the Exchange or its subsidiaries, to reflect that failure to pay any fine,

¹⁴ The Exchange has filed a separate notice and comment filing to adopt proposed Rules 9216(b) and 9217 and to move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and make certain amendments and corrections. See SR-NYSECHX-2022-08. These rules relating to minor rule violations would not be operative until approval of the Exchange’s companion rule filing.

¹⁵ The Exchange has filed a separate filing to adopt a new Rule 11.2210 governing communications with the public that would incorporate FINRA Rule 2210 by reference and rename and amend Article 8, Rule 13 governing advertising, promotion and telemarketing. See SR-NYSECHX-2022-09. The Exchange will also file a request with the Commission for an exemption under Section 36 of the Act from the rule filing requirements of Section 19(b) of the Act with respect to the incorporation by reference of proposed Rule 11.2210 and to the extent Rule 11.2210 is effected solely by virtue of a change to cross-referenced FINRA rule. To the extent any rules in this proposed filing refer to Rule 11.2210, such rules would not be effective with respect to Rule 11.2210 until such separate filing is operative.

sanction or cost levied in connection with a disciplinary action would be governed by proposed Rule 10.8320.

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

Transition

Once the proposed rule change is effective, the Exchange intends to announce by Information Memorandum with at least 30 days advance notice the effective date of the new rules.¹⁶ To further facilitate an orderly transition from the current rules to the new rules, the Exchange proposes that matters already initiated under the current rules would be completed under such rules. The proposed transition is substantially the same as the NYSE Arca transition to its Rule 10.8000 and 10.9000 Series.

Specifically, the Exchange proposes that current Article 12, whose coverage overlaps the proposed Rule 10.8000 and Rule 10.9000 Series, would continue to apply to an investigation or proceeding instituted under Article 12, Rule 1 prior to the effective date of the new rules and would continue to apply until such proceeding was final. Article 12 would also continue to apply to any Participant, Participant Firm or person associated with a Participant or Participant Firm over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry pursuant to Article 12, Rule 7(b) prior to the effective date of the new rules. In all other cases, the proposed Rule 10.8000 and Rule 10.9000 Series, as described below, would apply.

Until the effective date, the Exchange could suspend from trading on the Exchange any Participant or Participant Firm that fails to pay any debt for Trading Permit fees, fines, transaction fees, or other sums owing the Exchange or its subsidiaries under current Article 7, Rule 12, which would remain in effect until payment was made. Thereafter, the Exchange would proceed against an

¹⁶ The proposed Information Memorandum would be substantially the same as that published for NYSE Arca. See NYSE Arca Equities RB-19-060 NYSE Arca Options RB-19-02 (April 26, 2019).

individual or entity subject to its jurisdiction that failed to pay a fine, monetary sanction, or cost levied in connection with a disciplinary action under proposed Rule 10.8320.

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

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

Jurisdiction

The Exchange proposes a new Rule 2.0 titled “Disciplinary Jurisdiction” based on current Article 12, Rule 7, which describes the Exchange’s current disciplinary jurisdiction.¹⁷ Proposed Rule 2.0(a) would be substantially the same as current Article 12, Rule 7(a) except that the Exchange would:

- add “Participant Firm” to the first sentence of the proposed rule to explicitly include such firms and persons associated with Participant Firms within the scope of the Exchange’s jurisdiction;
- include the phrase “or any other person or organization subject to the jurisdiction of the Exchange” in that same first sentence of the proposed rule consistent with current Article 12, Rule 1 and in order to explicitly include such persons or organizations within the scope of the Exchange’s jurisdiction;
- omit the reference to “constitutional provisions” from the list of potential violations as moot since the Exchange no longer has a Constitution;
- conform the potential sanctions with NYSE Arca’s Rule 2.0(a), that exchange’s comparable jurisdiction rule;
- replace the reference to “these Rules” with “the Rule 10.8000 and

¹⁷ The new Rule 2.0 titled “Rule 2.0. Disciplinary Jurisdiction” would appear below “Rule 2 Trading Permits.”

10.9000 Series” to add clarity and transparency;

- add the following sentence from NYSE Arca Rule 2.0 in order to harmonize the Exchange’s rules with that of its affiliates and clarify the scope of the Exchange’s disciplinary jurisdiction: “A Participant or Participant Firm may be charged with any violation committed by its employees or other person associated with such Participant or Participant Firm, as though such violation were its own.”

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

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

As proposed, Rule 2.0 would set forth the scope of the Exchange’s disciplinary jurisdiction under the Rule 10.8000 and 10.9000 Series. As discussed below, proposed Rule 10.8130 would address the Exchange’s retention of jurisdiction, and would enable the Exchange to generally retain jurisdiction to file a complaint against a Participant, Participant Firm or a covered person for two years after such status was terminated. Current Article 12 would continue to apply to any Participant, Participant Firm or covered person over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry under Article 12, Rule 7(b) prior to the effective date.

To continue the current coverage of the Exchange’s disciplinary rules, the proposed rule change would use the terms “Participant,” “Participant Firm” and “covered person,” which would be defined in proposed in Rule 10.9120 to mean

an Associated Person¹⁸ and any other person subject to the jurisdiction of the Exchange, to describe the persons to which the proposed Rule 10.8000 and 10.9000 Series apply. The NYSE Arca rule is similar except for the reference to Approved Persons, a registration category that has no direct analogue on the Exchange.

Proposed Rule 10.8000 Series

The Proposed Rule 10.8000 Series would address Investigations and Sanctions.

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

The text of NYSE Arca Rules 10.8110 through 10.8330 would be adopted as Rules 10.8110 through 10.8330 with proposed changes to reflect the Exchange's membership and to update the cross-references in proposed Rule 10.8130(b)(1) to the rules governing termination of registration (Article 6, Rule 2; Article 16, Rule 1; and Article 17, Rule 1). Proposed Rule 10.8100 (General Provisions) would include proposed Rules 10.8110 through 10.8130.¹⁹

Proposed Rule 10.8110 (Availability of Rules for Customers) would require Participants and Participant Firms to make available a current copy of the Exchange's rules for examination by customers upon request. Although there is no comparable requirement in the current Rules, the Exchange's rules are currently available on the Exchange's website.²⁰

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

Proposed Rule 10.8130 (Retention of Jurisdiction) would set forth retention of jurisdiction provisions that are substantially the same as NYSE Arca Rule 10.8130, except for (1) references to reflect the Exchange's membership, (2) the cross-references in paragraph (b)(1) and (d), and (3) clarifying in paragraph (d) for purposes of the transition Article 12 would continue to apply to a Participant, Participant Firm or covered person over whom the Exchange asserted jurisdiction

¹⁸ See Article 1, Rule 1(s). See also *id.* at (d) & note 5, *supra*.

¹⁹ NYSE Arca Rules 10.8212, 10.8213, and 10.8312 are marked "Reserved" in the NYSE Arca's rulebook. As such, to maintain consistency with NYSE Arca's rule numbering, the Exchange has designated proposed Rules 10.8212, 10.8213, and 10.8312 as "Reserved."

²⁰ The rules are available at <https://nysechicago.wolterskluwer.cloud/rules>.

by providing written notice of the commencement of an inquiry pursuant to Article 12, Rule 7(b) prior to the effective date of the new disciplinary rules.

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

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

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

Under current Article 6, Rules 9(b), no Participant, or partner, officer, director or other person associated with a Participant or other person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange pursuant to Article 6, Rule 9(c). The requirements of current Article 6, Rule 9(b) shall apply regardless of whether the Exchange has itself initiated a formal investigation or disciplinary proceeding.

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

Finally, proposed Rule 10.8210(a) would provide that, in performing the functions of investigation, complaint, examination, or proceeding authorized by Exchange rules, the CRO and Regulatory Staff would function independently of the commercial interests of the Exchange and the commercial interests of Participants and Participant Firms. The proposed rule would further provide that no member of the Board or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding, to proposed Rule 10.8210(a). The proposed language is based on NYSE Arca Rule 10.8210(a) with no substantive changes. The Exchange does not have a comparable rule and believes that adopting the proposed rule is appropriate because it will harmonize the Exchange's rule with NYSE Arca's rule in the important area of regulatory independence.²¹

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

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

Proposed Rule 10.8210(d) would provide that a notice under this Rule would be deemed received by the Participant, Participant Firm or covered person (including a currently or formerly registered person) to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the

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

Participant or Participant Firm, or the last known residential address of the covered person as reflected in the Central Registration Depository (“CRD”). With respect to a person who is currently associated with a Participant or Participant Firm in an unregistered capacity, a notice under this Rule would be deemed received by the person by mailing or otherwise transmitting the notice to the last known business address of the Participant or Participant Firm as reflected in CRD. With respect to a person subject to the Exchange’s jurisdiction who was formerly associated with a Participant or Participant Firm in an unregistered capacity, a notice under the proposed Rule would be deemed received by the person upon personal service, as set forth in Rule 10.9134(a)(1).

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

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

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

Proposed Rule 10.8210(f) would permit a witness to inspect the official transcript

of the witness's own testimony, and permit a person who has submitted documentary evidence or testimony in an Exchange investigation to obtain a copy of the person's documentary evidence or the transcript of the person's testimony under certain circumstances.

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

Commentary .01 to proposed Rule 10.8210 would require Participants, Participant Firms or covered persons to provide Exchange staff and adjudicators with requested books, records and accounts. In specifying the books, records and accounts "of such Participant or covered person," proposed paragraph (a) of the rule refers to books, records and accounts that the broker-dealer or its covered persons makes or keeps relating to its operation as a broker-dealer or relating to the person's association with the Participant or Participant Firm. This includes but is not limited to records relating to an Exchange investigation of outside business activities, private securities transactions or possible violations of just and equitable principles of trade, as well as other Exchange rules and the federal securities laws. It does not ordinarily include books and records that are in the possession, custody or control of a Participant, Participant Firm or covered person, but whose bona fide ownership is held by an independent third party and the records are unrelated to the business of the Participant, Participant Firm or covered person. The rule would require, however, that a Participant, Participant Firm or covered person must make available its books, records or accounts when these books, records or accounts are in the possession of another person or entity, such as a professional service provider, but the a Participant, Participant Firm or covered person controls or has a right to demand them. The Exchange's current rules do not contain comparable provisions. The Exchange believes that the additional specificity would provide better notice to persons subject to its jurisdiction.

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

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

Proposed Rule 10.8310 (Sanctions for Violation of the Rules) would set forth the

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

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

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

Proposed Rule 10.8311(b) would provide that, notwithstanding proposed paragraph (a), a Participant or Participant Firm may pay to a person that is subject to a sanction or disqualification described in Rule 10.8311(a), any remuneration pursuant to an insurance or medical plan, indemnity agreement relating to legal fees, or as required by an arbitration award or court judgment. Proposed Commentary 01 of the Rule clarified that, notwithstanding the Rule, a Participant or Participant Firm may pay or credit to a person that is the subject of a sanction or disqualification, salary, commission, profit or any other remuneration that the Participant or Participant Firm can evidence accrued to the person prior to the

effective date of such sanction or disqualification; provided, however, the Participant or Participant Firm may not pay any salary, commission, profit or any other remuneration that accrued to the person that relates to or results from the activity giving rise to the sanction or disqualification, and any such payment or credit must comply with applicable federal securities laws.

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

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

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

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

Proposed Rule 10.8320(b) and (c) would permit the Exchange, after seven days' notice in writing, to summarily suspend or expel from membership a Participant or Participant Firm or revoke the registration of a covered person for failure to pay a fine or other monetary sanction imposed pursuant to proposed Rule 10.8310 or a cost imposed pursuant to proposed Rule 10.8330 when such fine, monetary sanction, or cost becomes finally due and payable. As noted above, under current Article 7, Rule 12, a Participant or Participant Firm can be suspended for failing to pay a fine within 60 days, after written notice, until payment is made. If payment is not made within six months after such suspension, the Participant's status as a Participant may be terminated by the CEO on at least 10 days' written notice mailed to the Participant or Participant Firm at the address last registered with the Exchange. As NYSE Arca explained in connection with its Rule 10.8320, FINRA's rules do not set forth a notice period but, as a matter of practice, FINRA typically provides a respondent at least 30 days to pay a fine after the conclusion of a proceeding. As NYSE Arca reasoned, a 30-day period, along with the seven days' notice provided under Rule 10.8320, provides respondents with an adequate amount of time to pay a fine and avoid any further sanction by the Exchange.²² The Exchange proposes to follow the same

²² See NYSE Arca Notice, 84 FR at 16360. NYSE and NYSE American put forth similar arguments. See Securities Exchange Act Release Nos. 68678 (January 16, 2013), 78 FR 5213, 5222 (January 24, 2013) (SR-NYSE-2013-02) (Notice); 2016 Notice, 81 FR at 11321.

reasoning for its proposed Rule 10.8320.

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

Proposed Rule 10.8330 (Costs of Proceedings) would provide that a disciplined Participant, Participant Firm or covered person may be assessed the costs of a proceeding, which are determined by the Adjudicator. The Exchange believes that Adjudicators should have the discretion to assess costs as they deem appropriate. The Exchange does not have a comparable rule.²³

Proposed Rule 10.9000 Series

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

Proposed Rules 10.9001 through 10.9120

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

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

²³ Rule 13.4 requires a Participant or Associated Person who does not prevail in a lawsuit or other legal proceeding against the Exchange or any of its Directors, officers, committee members, employees or agents, and related to the business of the Exchange, to pay the Exchange all reasonable expenses, including attorneys' fees, incurred in the defense of such proceeding, but only where such expenses exceed \$50,000. This provision is by its terms inapplicable to, among other things, disciplinary proceedings.

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

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

Proposed Rules 10.9130 through 10.9138

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

Proposed Rule 10.9131 (Service of Complaint) would set forth the requirements for serving a complaint or document initiating a proceeding. Proposed Rule 10.9132 (Service of Orders, Notices, and Decisions by Adjudicator) would cover the service of orders, notices, and decisions by an Adjudicator. Proposed Rule 10.9133 (Service of Papers Other Than Complaints, Orders, Notices, or Decisions) would govern the service of papers other than complaints, orders, notices, or decisions. Proposed Rule 10.9134 (Methods of, Procedures for Service) would describe the methods of service and the procedures for service. Proposed Rule 10.9135 (Filing of Papers with Adjudicator: Procedure) would set forth the procedure for filing papers with an Adjudicator. Proposed Rule 10.9136 (Filing of Papers: Form) would govern the form of papers filed in connection with any proceeding under the proposed Rule 10.9200 and 10.9300 Series. Proposed Rule 10.9137 (Filing of Papers: Signature Requirement and Effect) would state the requirements for and the effect of a signature in connection with the filing of papers. Finally, proposed Rule 10.9138 (Computation of Time) would establish the computation of time.

With respect to service of process, under proposed Rule 10.9134, papers served on a natural person could be served at the natural person's residential address, as reflected in CRD, if applicable. When a Party or other person responsible for serving such person had actual knowledge that the natural person's CRD address

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

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

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

Proposed Rules 10.9140 through 10.9148

Proposed Rule 10.9140 (Proceedings) would contain various rules relating to the conduct of disciplinary proceedings.

Proposed Rule 10.9141 (Appearance and Practice; Notice of Appearance) would govern appearances in a proceeding, notices of appearance, and representation.

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

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

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

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

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

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

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

consent; or minor rule violation letter.

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

Proposed Rule 10.9145 (Rules of Evidence; Official Notice) would provide that formal rules of evidence would not apply in any proceeding brought under the proposed Rule 10.9000 Series. The proposed rule would also provide that in a proceeding governed by the Rule 10.9000 Series, an Adjudicator may take official notice of such matters as might be judicially noticed by a court, or of other matters within the specialized knowledge of the Exchange as an expert body, and that before an Adjudicator proposes to take official notice of a matter, it shall permit a Party the opportunity to oppose or otherwise comment upon the proposal to take official notice. Current Article 12, Rule 4(d) also provides that formal rules of evidence do not apply. The Exchange's rules do not currently contain a comparable provision to proposed Rule 10.9145(b) governing official notice.

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

Proposed Rule 10.9147 (Rulings On Procedural Matters) would provide that Adjudicators may rule on procedural matters. The Exchange does not have a comparable rule. Current Article 12, Rule 4 provides that a Hearing Officer is appointed for the purpose of conducting a hearing and describes the conduct of a hearing but does not contain an explicit statement regarding the Hearing Officer's full authority to rule on a procedural motion and any other procedural or administrative matter arising during the course of a proceeding.

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

is not subject to interlocutory review.

Proposed Rules 10.9150 through 10.9222

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

Proposed Rule 10.9160 (Recusal or Disqualification)

Proposed Rule 10.9160 would provide that no person may act as an Adjudicator if he or she has a conflict of interest or bias, or circumstances exist where his or her fairness could reasonably be questioned. In such case, the person must recuse himself or herself, or may be disqualified. The proposed rule would cover the recusal or disqualification of an Adjudicator, the Chair of the Board, or a Director. Disqualification of a Director or the Chair of the Board would be governed by proposed Rule 10.9160(a). Disqualification of a Panelist would be governed by Rule 10.9234 while disqualification of a Hearing Officer would be governed by Rule 10.9233.²⁴ The Exchange currently does not have a strictly comparable rule. Article 12, Rule 4(h) requires a Hearing Officer to function impartially and independently of the staff members who prepared and prosecuted the charges and provides for a process for a respondent to make a motion for disqualification of the Hearing Officer based upon bias or conflict of interest. Unlike proposed Rule 10.9160, the Exchange's current rule does not explicitly require recusal in the event of a conflict of interest or bias, or other circumstance where a Hearing Officer's fairness might reasonably be questioned. The Exchange's current Article 12, Rule 4(h) is also limited to Hearing Officers and there is no comparable recusal or disqualification procedure described in Article 12, Rule 5, governing reviews of penalties and decisions. The Exchange believes that the broader text of the proposed rule, applying the same prohibition against bias and a procedure for disqualification at all levels of review, would help to increase the fairness of and consistency in its proceedings.

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

Proposed Rules 10.9200 through 10.9217

Proposed Rule 10.9200 (Disciplinary Proceedings) would cover disciplinary proceedings. Proposed Rule 10.9211 (Authorization of Complaint) would permit Enforcement to request the authorization from the CRO to issue a complaint against any Participant, Participant Firm and covered persons of a Participant or Participant Firm, thereby commencing a disciplinary proceeding. Under Article

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See proposed Rules 10.9160(e) & (f).

12, Rule 1(b)(1), if in the CRO's judgment it appears from the written investigative report that any Participant, Participant Firm or Associated Person is violating or has violated any provision of the Bylaws, Exchange rules or of the federal securities laws or the regulations thereunder, the CRO directs staff to prepare and present written charges against the Respondent.

Proposed Rule 10.9212 (Complaint Issuance – Requirements, Service, Amendment, Withdrawal, and Docketing) would set forth the requirements of the complaint, amendments to the complaint, withdrawal of the complaint, and service of the complaint. The proposed rule also requires the Office of Hearing Officers to promptly record each complaint filed with it in the Exchange's disciplinary proceeding docket, and record in the disciplinary proceeding docket each event, filing, and change in the status of a disciplinary proceeding. Current Article 12, Rule 1(b) does not contain a comparable detail. Further, under the proposed rule, the form of the complaint would be more prescribed than under current Article 12, Rule 1(b). For example, current Article 12, Rule 1(b) does not provide for withdrawal of a complaint.

Proposed Rule 10.9213 (Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel) would provide for the appointment of a Hearing Officer and Panelists by the Chief Hearing Officer. As defined in proposed Rule 10.9120(r), "Hearing Officer" means a FINRA employee who is an attorney and who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 10.9200 Series regarding disciplinary proceedings, the Rule 10.9550 Series regarding expedited proceedings, and the Rule 10.9800 Series regarding temporary cease and desist proceedings brought against Participants, Participant Firms and covered persons. Under current Article 12, Rule 4(a), the CEO appoints a hearing officer to hear the matter. Although Article 12, Rule 4(e) describes the vetting process for Hearing Officers under the current rules, they are appointed by the CEO that includes an assessment of professional competence and reputation, experience in the securities industry, familiarity with the subject matter involved, and the absence of bias and any actual or perceived conflict of interest, among other things, there is no requirement that the Hearing Officer be an attorney. The Exchange's current process also does not provide for the appointment of panelists to adjudicate a disciplinary matter. The Exchange believes that the participation of professional Hearing Officers, which is a long-standing practice of other SROs, would add legal and administrative expertise to the disciplinary process, and would enhance the dispassionate application of the rules, promote fairness in the disciplinary process, and help ensure that complex or contentious cases are managed effectively.²⁵ The use of Panelists would help to ensure that market expertise and

²⁵

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

judgment would continue to be brought to bear on the disciplinary process.²⁶

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

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

Minor Rule Fines and Process

As noted above, the Exchange has filed a separate notice and comment filing to adopt proposed Rules 9216(b) and 9217 and move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217.²⁷ The rules relating to minor rule violations described herein would not be operative until approval of the Exchange's companion rule filing.

Proposed Rule 10.9216(a)

Subsection (a) of proposed Rule 10.9216 (Acceptance, Waiver, and Consent; Procedure for Imposition of Fines for Minor Violation(s) of Rules) would establish the acceptance, waiver, and consent ("AWC") procedures by which a Respondent, prior to the issuance of a complaint, could execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such Respondent's right to a hearing, appeal, and certain other procedures.²⁸

The CRO would be authorized to accept or reject an AWC. If the AWC were accepted by the CRO, it would be deemed final and constitute the complaint,

²⁶ See id. & discussion of proposed Rule 10.9232, infra.

²⁷ See SR-NYSECHX-2022-08.

²⁸ Proposed Rule 10.9270 would address settlement procedures after the issuance of a complaint.

answer and decision in the matter 10 days after the AWC is sent to each Exchange Director and each member of the CFR, unless review by the Board is requested pursuant to proposed Rule 10.9310(a)(1)(B)(i).²⁹ If the AWC were rejected by the CRO, the Exchange would be permitted to take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter were rejected, the Participant, Participant Firm or covered person would not be prejudiced by the execution of the AWC and such document could not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding. Under proposed Rule 10.9310(a)(1)(B)(ii) discussed below, any Party may require a review by the Exchange Board of any rejection by the CRO of an AWC letter under Rule 10.9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within 25 days after notification pursuant to Rule 10.9216(a)(3) or Rule 10.9270(h).

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

Proposed Rule 10.9216(b)

As set forth in the companion notice and comment filing to adopt proposed Rules 9216(b) and 9217,³⁰ subsection (b) of proposed Rule 10.9216 (Acceptance, Waiver, and Consent; Procedure for Imposition of Fines for Minor Violation(s) of

²⁹ In 2020, NYSE Arca shortened the time period before an AWC under NYSE Arca Rule 10.9216 and an uncontested offer of settlement under NYSE Arca Rule 10.9270(f) become final as well as the corresponding time period to request review of these settlements under NYSE Arca Rule 10.9310 from 25 days to 10 days. See Securities Exchange Act Release No. 90678 (December 15, 2020), 85 FR 83136 (December 21, 2020) (SR- SR-NYSEARCA-2020-111) (Notice). The Exchange's proposes to omit certain transition language added to the NYSE Arca Rules 10.9216(a)(4), 10.9270(f)(3), and 10.9310(a)(1)(B)(i) relating to the applicability of the legacy 25 day time period in its proposed version of these rules.

³⁰ See SR-NYSECHX-2022-08.

Rules) would set forth the procedure for the imposition of fine for minor rule violations under the Exchange's new disciplinary rules based on NYSE Arca Rule 10.9216(b).

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

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

Proposed Rule 10.9216(b)(2)(A)(ii) would provide that if a Participant, Participant Firm or covered person submits an executed minor rule violation letter, by the submission such Participant, Participant Firm or covered person also waives any right to claim that a person violated the ex parte prohibitions of proposed Rule 10.9143 or the separation of functions prohibitions of proposed Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation letter or other consideration of the minor rule violation letter, including acceptance or rejection of such minor rule violation letter.³¹

³¹ Rule 10.9143 (Ex Parte Communications) would prohibit certain ex parte communications. Proposed 10.9144 (Separation of Functions) would establish separation of functions and provide for waivers.

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

Proposed Rule 10.9216(b)(3) would provide that if the Participant, Participant Firm or covered person executes the minor rule violation letter, it would be submitted to the CRO. The CRO, on behalf of the SRO Board, may accept or reject such letter.

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

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

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

Proposed Rule 10.9217

As set forth in the companion notice and comment filing to adopt proposed Rules 9216(b) and 9217,³² the Exchange also proposes to adopt Rule 10.9217 based on NYSE Arca Rule 10.9217, which would be titled “Violations Appropriate for Disposition Under Rule 10.9216(b)”.

Proposed Rule 10.9217(a) would provide that any Participant, Participant Firm or covered person may be subject to a fine, not to exceed \$5,000,³³ under Rule 10.9216(b) with respect to any rules listed below and that the fine amounts and fine levels set forth below would apply to the fines imposed.

Proposed Rule 10.9217(b) would provide that Regulatory Staff designated by the

³² See SR-NYSECHX-2022-08.

³³ See note 9, *supra*.

Exchange would have the authority to impose a fine pursuant to the proposed Rule.

Proposed Rule 10.9217(c) would provide that any person or organization found in violation of a minor rule would not be required to report such violation on SEC Form BD or Form U-4 if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Subsection (c) would further provide that any fine imposed in excess of \$2,500 would be subject to current rather than quarterly reporting to the Commission pursuant to Rule 19d-1 under the Act.

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

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

Proposed Rule 10.9217(e) would be titled “Exchange Rules and Policies subject to a Minor Rule Violation” and would set forth the list of rules under which a Participant, Participant Firm or covered person may be subject to a fine under a minor rule violation letter as described in proposed Rule 10.9216(b). The Exchange would retain the list of rules currently set forth in Article 12, Rule 8(h) under the existing headings for “Reporting and Record Retention Violations” and “Minor Trading Rule Violations” with the following additions and changes.

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

Article 6, Rule 2 currently sets forth certain employee registration, approval and other exchange requirements. Specifically, Article 6, Rule 2(a) governs registration of representatives, as defined in Article 6, Rule 14(b)(1), with the Exchange and is currently eligible for a minor rule fine under Article 12, Rule 8(h). Article 6, Rule 2(b) provides for the registration of principals, as defined in Article 6, Rule 14(a)(1). The Exchange proposes that the registration requirements of principals set forth in Article 6, Rule 2(b) be eligible for a minor rule fine. The proposed change would be consistent with the practice on the Exchange’s affiliates whose comparable rule requiring the registration of principals is eligible for a minor rule fine.³⁴

34

See, e.g., NYSE National Rules 2.2(c) (Obligations of ETP Holders and the

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

Article 6, Rule 5(a) (Adherence to Law) provides that no Participant shall engage in conduct in violation of the Act, as amended, rules or regulations thereunder, the Bylaws or the Rules of the Exchange, or any written interpretation thereof and that every Participant is responsible for reasonably supervising its associated persons to prevent such violations. The requirement to reasonably supervise individuals to ensure compliance with applicable laws, rules and regulations, is currently eligible for minor rule fines in the rules of the Exchange's affiliate NYSE Arca.³⁵

Article 6, Rule 5(b) (Designation of persons with supervisory authority) provides that each Participant Firm must designate a principal executive officer, general partner or managing partner to hold overall authority and responsibility for the firm's internal supervision and compliance with securities laws and regulations. This designated supervisor may formally delegate his or her supervisory duties and authority to other persons within the firm. The Rule further provides that Participants must maintain, for a period of not less than six years (the first two years in an easily accessible place), records of the names of all persons who are designated as supervisory personnel and the dates for which those designations are effective. In the absence of such designation by a Participant Firm, the Firm's General Partner(s), President, Chief Executive Officer or other principal executive officer shall be deemed to be responsible for a Firm's internal supervision and compliance function. In addition, each Participant Firm shall designate and specifically identify to the Exchange on Schedule A of Form BD one or more principals to serve as a Chief Compliance Officer. The requirement in Article 6, Rule 5(b) to designate and specifically identify persons with supervisory responsibility is currently eligible for minor rule fines in the rules of the Exchange's affiliate NYSE Arca.³⁶ The Exchange accordingly proposes to permit minor rule fines for violations of Article 6, Rule 5(b).

As noted, Article 12, Rule 8(h)(1)(N) of the Exchange's current minor rule plan makes failure to establish, maintain and enforce written supervisory procedures under Article 6, Rule 5(b) eligible for a minor rule fine. However, as described

Exchange) and 10.9217(f). The entirety of NYSE National Rule 2.2 is eligible for minor rule treatment; registration of principals under NYSE Nationals' rules is governed by subsection (c).

³⁵ See NYSE Arca Rule 11.18(a) (Supervision) and 10.9217(g)(8).

³⁶ See NYSE Arca Rule 11.18(b)(2) & (4) (Supervision) and 10.9217(g)(8).

above Article 6, Rule 5(b) relates to the designation of persons with supervisory authority and not written supervisory procedures, which is governed by Article 6, Rule 5(c). In 2011, Article 12, Rule 8 was amended to include, among other things, new reporting and recordkeeping provisions, which included “written supervisory procedures (Article 6, Rule 5(b)).”³⁷ At the time, Article 6, Rule 5(b) was titled “Written supervisory procedures” and contained the text of current subsection (c). In 2013, the Exchange filed to amend Article 6, Rule 5. As part of that filing, subsection (a), which was titled “Designation of persons with supervisory authority,” became new subsection (b), and old subsection (b), which was titled “Written supervisory procedures,” became current subsection (c).³⁸ The Exchange did not, however, update Article 12, Rule 8 to reflect that Article 6, Rule 5(b) had become Article 6, Rule 5(c). The Exchange proposes to make that correction in the text of proposed Rule 10.9217(e)(15). The Exchange notes that the requirement to establish, maintain and enforce written procedures is also currently eligible for minor rule fines in the rules of the Exchange’s affiliate NYSE Arca.³⁹

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

- The Exchange would add a new sub-heading titled “Reporting and Record Retention Violations”⁴⁰ that would set forth the corresponding fines for first, second and third and subsequent violations for the rules set forth under the heading “Reporting and Record Retention Violations” in proposed Rule 10.9217(e).
- The first 12 entries as well as entries 16 through 23 would be reproduced without change from the current Recommended Fine Schedule in the Fee

³⁷ See Securities Exchange Act Release No. 64370 (April 29, 2011), 76 FR 25727, 25727 (May 5, 2011) (SR-CHX-2011-07) (Notice); Securities Exchange Act Release 64686 (June 16, 2011), 76 FR 36596 (June 22, 2011) (SR-CHX-2011-07) (Order). See generally note 9, *supra*.

³⁸ See Securities Exchange Act Release No. 70597 (October 2, 2013), 78 FR 62728, 62732 (October 22, 2013) (SR-CHX-2013-14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change).

³⁹ See NYSE Arca Rule 11.18(c) (Supervision) and 10.9217(g)(8).

⁴⁰ Immediately before the new sub-heading, the Exchange would include the following text based on NYSE Arca Rule 10.9217: “These fines are intended to apply to minor violations. For more serious violations, other disciplinary action may be sought.”

Schedule.

- Item 13 would be “Registration and Approval of Participant Personnel (Article 6, Rule 2(a) & (b))”. The proposed first, second and third level fines for violations of Article 6, Rule 2(b) of \$250 for the first violation, \$750 for the second violation and \$1,500 for the third and subsequent violations would be the same as those in the Exchange’s current Recommended Fine Schedule in the Fee Schedule for violations of Article 6, Rule 2(a).
- Items 14 and 15 -- “Failure to Comply with Supervision Requirements (Article 6, Rule 5(a) & (b))” and “Written Supervisory Procedures (Article 6, Rule 5(c)),” respectively -- would be added to proposed Rule 10.9271(f) consistent with the changes to proposed Rule 10.9217(e)(14) and (15) described above. The proposed first, second and third level fines for violations of Article 6, Rule 5(a) and (b) in proposed Rule 10.9217(e)(14) and Article 6, Rule 5(c) in proposed Rule 10.9217(e)(15) would be \$500 for the first violation, \$1,000 for the second violation and \$2,500 for the third and subsequent violations. These fine levels would be the same as the current fines in the Recommended Fine Schedule in the Fee Schedule for violations of Article 6, Rule 5(b).
- Finally, item 24 would be “Consolidated Audit Compliance Rule (Rule 6.6800 Series).” The corresponding fine “Up to \$2,500.00” would be transposed from current Article 12, Rule 8 to new footnote ** following “Rule 6.6800 Series.”⁴¹ The Exchange would also add the current text from Article 12, Rule 8(a) providing that “For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6.6800 Series, the Exchange may impose a minor rule violation fine of up to \$2,500. For more serious violations, other disciplinary action may be sought” to new footnote **.
- The Exchange would add a new second sub-heading titled “Minor Trading Rule Violations” that would set forth the corresponding fines for first, second and third and subsequent violations for the 11 rules set forth under the heading “Minor Trading Rule Violations” in proposed Rule 10.9217(e), with the following changes and corrections:

⁴¹ In 2020, the Exchange added the Consolidated Audit Trail (“CAT”) industry member compliance rules to the list of minor rule violations in Article 12, Rule 8 and the corresponding fine up to \$2,500. At the time, the Exchange inadvertently did not amend the Recommended Fine Schedule in the Fee Schedule. See Securities Exchange Act Release No. 89410 (July 28, 2020), 85 FR 46741 (August 3, 2020) (SR-CHX-2020-21).

- The entry for “Failure to clear the Matching System (Article 20, Rule 7)” and corresponding fines would not be included. This rule was deleted from Article 12, Rule 8 8(h)(2)(F) in 2019 as part of the transition of trading on the Exchange to the Pillar trading platform but the Exchange inadvertently failed to update the Recommended Fine Schedule in the Fee Schedule.⁴²
- The Exchange would include “Short Sales (Rule 7.16)” as item 10. Rule 7.16 was added to Article 12, Rule 8 in 2019 as part of the transition of trading on the Exchange to the Pillar trading platform but the Exchange inadvertently failed to update the Recommended Fine Schedule in the Fee Schedule.⁴³ The proposed first, second and third level fines for violations of Rule 7.16 of \$500 for the first violation, \$1,000 for the second violation and \$2,500 for the third and subsequent violations are the same as those in NYSE Arca Rule 10.9217(i)(1)1. for violations of NYSE Arca Rule 7.16-E.⁴⁴
- Finally, the Exchange would include “Failure to comply with Authorized Trader requirements (Rule 7.30)” as item 11. Rule 7.30 was also added to Article 12, Rule 8 as part of the transition to Pillar in 2019 but the Exchange inadvertently failed to update the Recommended Fine Schedule in the Fee Schedule.⁴⁵ The proposed first, second and third level fines for violations of Rule 7.30 of \$1,000 for the first violation, \$2,500 for the second violation and \$3,500 for the third and subsequent violations are the same as those in NYSE Arca Rule 10.9217(i)(1)5. for violations of NYSE Arca Rule 7.30-E.⁴⁶

As noted, proposed subsection (a) of proposed Rule 10.9217 is substantially the same as NYSE Arca Rule 10.9217(a) except for changes reflecting the Exchange’s membership. The Exchange proposes that a fine thereunder would not exceed \$5,000 (the amount reflected in current Article 12, Rule 8).⁴⁷

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

⁴² See Securities Exchange Act Release No. 87264 (October 9, 2019), 84 FR 55345, 55349 (October 16, 2019) (SR-CHX-2019-08).

⁴³ See *id.*

⁴⁴ See NYSE Arca Rule 7.16-E (Short Sales) & 10.9217(i)(1)1.

⁴⁵ See Securities Exchange Act Release No. 87264 (October 9, 2019), 84 FR 55345, 55349 (October 16, 2019) (SR-CHX-2019-08).

⁴⁶ See NYSE Arca Rule 7.30-E (Authorized Traders) & 10.9217(i)(1)5.

⁴⁷ See note 9, *supra*.

membership.

Unlike current Article 12, Rule 8(e) described above, proposed Rule 10.9216(b) and Rule 10.9217 would not permit a Respondent to contest a minor rule violation letter. Rather, as proposed, if the Respondent rejects the minor rule violation letter, then a complaint must be filed under proposed Rule 10.9211, and the minor rule violation letter may not be introduced into evidence.⁴⁸ The Exchange believes the proposed rule is appropriate because it will harmonize the Exchange's minor rule violation process with its affiliates' rules.

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

Proposed Rule 10.9220 would set forth the following rules.

Proposed Rules 10.9221 (Request for Hearing) and 10.9222 (Extensions of Time, Postponements, and Adjournments) would describe the process for a Respondent to request a hearing; the notice of a hearing; timing considerations; and the authority of a Hearing Officer, Hearing Panel or Extended Hearing Panel to order a hearing. Proposed Rule 10.9221 provides that a Hearing Officer generally must provide at least 28 days' notice of the hearing. Current Article 12, Rule 4 governing hearing procedures does not provide for a respondent to request a hearing. Rather, Article 12, Rule 4(d) provides that within 30 days of the filing of a respondent's answer, the Hearing Officer will schedule the time and place at which the Hearing shall be held. Similarly, current Article 12, Rule 4 also does not provide for extensions of time, postponements, and adjournments like proposed Rule 10.9222.

Proposed Rules 10.9230 through 10.9235

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

48

See proposed Rule 10.9216(b)(4).

proposed Rule 10.9232.⁴⁹ The proposed procedure would differ from the current procedure under Article 12, Rule 4(e) where the Exchange CEO appoints a Hearing Officer to conduct a hearing but the rule does not provide for the appointment of panelist.

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

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

Proposed Rule 10.9231(e) provides for the appointment of a replacement Hearing Officer. As proposed, in the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. To ensure fairness to the parties and expedite completion of the proceeding when a replacement Hearing Officer is appointed after the hearing has commenced, the proposed Rule provides that a replacement Hearing Officer would have the discretion to (1) allow the Hearing Panelists to resolve the issues in the proceeding and issue a decision without the participation of the replacement Hearing Officer in the decision. The replacement Hearing Officer may advise the

⁴⁹ NYSE Arca Rule 10.9231(b)(1) incorrectly states that the Hearing Officer would appoint the Panelists pursuant to the criteria of Rule 10.9232. The rules adopted by the Exchange's other affiliates contain the same error. See NYSE Rule 9231(b)(1); NYSE American Rule 9231(b)(1); NYSE National Rule 10.9231(b)(1). The Exchange understands that its affiliates will submit separate rule filing to conform their version of proposed Rule 10.9231(b)(1).

Hearing Panelists regarding legal issues, and shall exercise the powers of the Hearing Officer under Rule 10.9235(a), including preparing and signing the decision on behalf of the Hearing Panel, in accordance with Rule 10.9268; or (2) certify familiarity with the record and participate in the resolution of the issues in the case and in the issuance of the decision. In exercising this power, the replacement Hearing Officer may recall any witness before the Hearing Panel.

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

Proposed Rule 10.9232 (Criteria for Selection of Panelists and Replacement Panelists) would set forth the criteria for the selection of Panelists and Replacement Panelists. Proposed Rule 10.9232 would be substantially the same as NYSE Arca Rule 10.9232. As is the case under the NYSE Arca Rule, Panelists would be required to be persons of integrity and judgment and, other than the Hearing Officer, would be a member of the Exchange hearing board. Moreover, at least one Panelist would be engaged in securities activities differing from that of the Respondent or, if retired, was so engaged in differing activities at the time of retirement. Proposed Rule 10.9232 would also provide that the Exchange Board would from time to time appoint a hearing board to be composed of such number of permit holders of the Exchange that are not members of the Exchange Board and registered employees and nonregistered employees of Participants and Participant Firms. In order to have the largest number of potential Panelists available, the proposed Rule would further provide that former Participants and registered and non-registered employees of Participants and Participant Firms who have retired from the securities industry may be appointed to the hearing board. The Exchange believes that there are well-qualified persons, in particular retirees, who would be valuable members of the hearing board. The members of the hearing board would also be appointed annually and would serve at the pleasure of the Exchange Board. As reflected in Article 12, Rule 4, Exchange hearings are currently conducted by a Hearing Officer appointed by the CEO acting alone.

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

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

Under proposed Rule 10.9233(a), if at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Hearing Officer would notify the Chief Hearing Officer and the Chief Hearing Officer would issue and serve on the Parties a notice stating that the Hearing Officer has withdrawn from the matter. In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer would appoint a replacement Hearing Officer. In such a case, the replacement Hearing Officer would proceed according to proposed Rule 10.9231(e).

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

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

Proposed Rule 10.9234 sets forth similar procedures for the recusal of panelists on a Hearing Panel and Extended Hearing Panel. Under proposed Rule 10.9234(a), if at any time a Panelist of a Hearing Panel or an Extended Hearing Panel determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Panelist must notify the Hearing Officer and the Hearing Officer would issue and serve on the Parties a notice stating that the Panelist has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer may, in the exercise of discretion, determine whether to appoint a replacement Panelist. In the event that both Panelists withdraw, are incapacitated, or otherwise are unable to continue service after being appointed, the proposed Rule permits the Chief Hearing Officer to appoint two replacement Panelists.

Proposed Rule 10.9234(b) provides that a Party may file a motion to disqualify a

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

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

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

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

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

Current Article 12, Rule 4(h) does not address recusal of a Hearing Officer but does permit a party to move for disqualification of the Hearing Officer within 15 days of the appointment of the Hearing Officer based upon bias or conflict of interest. The proposed Rule is broader and permits recusal as well as motions for disqualification. Moreover, the proposed Rule permits motions for disqualification not later than 15 days after the later of (1) when the Party learned of the facts believed to constitute the disqualification, or (2) when the Party was notified of the assignment of the Hearing Officer or the appointment of the Panelist, respectively. The Exchange's current rule permits motions to disqualify based upon bias or conflict of interest within 15 days of the appointment of the Hearing Officer.

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

Proposed Rules 10.9240 through 10.9242

Proposed Rule 10.9240 would set forth the following rules.

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

Proposed Rules 10.9250 through 10.9253

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

Proposed Rule 10.9251 (Inspection and Copying of Documents in Possession of Staff) would require Enforcement to make available to a Respondent any documents prepared or obtained in connection with the investigation that led to the proceedings, except that certain privileged or other internal documents, such as examination or inspection reports or documents that would reveal an examination, investigation, or enforcement technique or confidential source, or

documents that are prohibited from disclosure under federal law, are not required to be made available. A Hearing Officer may require that a withheld document list be prepared. Proposed Rule 10.9251 also sets forth procedures for inspection and copying of produced documents. In addition, if a Document required to be made available to a Respondent pursuant to the proposed Rule was not made available by Enforcement, no rehearing or amended decision of a proceeding already heard or decided would be required unless the Respondent establishes that the failure to make the Document available was not harmless error. The Hearing Officer, or, upon review under proposed Rule 10.9310, the Exchange Board, would determine whether the failure to make the document available was not harmless error, applying applicable Exchange, FINRA, SEC, and federal judicial precedent. The proposed Rule would not establish any preference for Exchange versus other precedent in this respect; rather the Adjudicators could determine in their discretion what precedent to apply. The Exchange's current rules do not include a comparable provision.

Under proposed Rule 10.9252 (Requests for Information), a Respondent could request that the Exchange invoke proposed Rule 10.8210 to compel the production of Documents or testimony at the hearing if the Respondent can show that certain standards are met, e.g., that the information sought is relevant, material, and non-cumulative. Under proposed Rule 10.9253 (Production of Witness Statements), a Respondent could file a motion to obtain certain witness statements. Current Article 12, Rule 4(c)(2) permits any party to request production of all or some of the documents that its adversary intends to introduce as evidence either in support of or to counter the charges but does not specify that such production can be compelled. Rather, under Article 12, Rule 4(c)(2), a party responding to a request to produce all or some of the documents that are intended to be introduced as evidence at the hearing will be precluded from introducing at the hearing any documents that were not produced in response to the request, unless there is good cause shown for failing to produce the document(s) 30 days prior to the hearing and the failure to permit the introduction of such evidence would result in undue hardship to the party requesting to introduce such document.

Proposed Rules 10.9260 through 10.9269

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

Proposed Rule 10.9261 (Evidence and Procedure in Hearing) would generally require the Parties to submit copies of documentary evidence and the names of the witnesses each Party intends to present at the hearing no later than 10 days before the hearing. Current Article 12, Rule 4(c) (1) requires the parties to exchange a list of witnesses that they each plan to call to testify at the hearing no less than 30 days prior to the hearing. The proposed Rule would also provide that if a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the

Party's representative. The Exchange's current rule does not include such an explicit provision. Finally, under the proposed rule, a Party, for good cause shown, may seek to submit any additional evidence at the hearing as the Hearing Officer, in his or her discretion, determines may be relevant and necessary for a complete record. The Exchange's current rules do not contain a comparable provision. Under Article 12, Rule 4(d), the Market Regulation Department and the Respondent can introduce additional witnesses and evidence solely in rebuttal to the respondent's evidence.⁵⁰

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

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

Proposed Rule 10.9264 (Motion for Summary Disposition) would allow Parties to file a motion for summary disposition under certain circumstances and would describe the procedures for filing and ruling on such motion. Under current Article 12, Rule 4, the Hearing Officer regulates the hearing, but the Rule does not specifically provide for motions for summary disposition.

Proposed Rule 10.9265 (Record of Hearing) would require that the hearing be

⁵⁰ In 2020, NYSE Arca filed to harmonize Rules 10.9261 and 10.9830 with certain changes by FINRA that temporarily granted the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID-19 pandemic. See Securities Exchange Act Release No. 90088 (October 5, 2020), 85 FR 64186 (October 9, 2020) (SR-NYSEArca-2020-85). The expiration of the temporary amendments to NYSE Arca Rules 10.9261 and 10.9830 have been extended to July 31, 2022. See Securities Exchange Act Release No. 94663 (April 11, 2022), 87 FR 22587 (April 15, 2022) (SR-NYSEArca-2022-18). NYSE, NYSE American and NYSE National made similar filings. The amended NYSE Arca rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof. See 87 FR at 22588, n.5 The Exchange does not propose to incorporate these temporary amendments to NYSE Arca Rule 10.9261 and 10.9830 into the proposed rule text and will evaluate the need for such temporary relief once the current rule filing is operative.

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

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

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

Proposed Rule 10.9268 (Decision of Hearing Panel or Extended Hearing Panel) would set forth the timing and the contents of a decision of the Hearing Panel or Extended Hearing Panel and the procedures for a dissenting opinion, service of the decision, and any requests for review. Under proposed Rule 10.9268, the decision would be issued within 60 days after the final date allowed for filing proposed findings of fact, conclusions of law, and post-hearing briefs, or by a date established at the discretion of the Chief Hearing Officer. Under current Article 12, Rule 4(f), a decision must be issued within 90 days after the conclusion of the hearing. The Exchange believes that the shorter period of time is appropriate to allow the Hearing Panel or Extended Hearing Panel adequate time to reach its decision and agree on the text of the decision and would not prejudice any Party.⁵¹

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

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

⁵¹ Under the proposed rule, a dissenting opinion must be served within 65 days after such final date. The Exchange does not have a comparable current rule.

final disciplinary action of the Exchange for purposes of Act Rule 19d-1(c)(1).

Finally, proposed Rule 10.9269 (Default Decisions) would establish the process for the issuance and review of default decisions by a Hearing Officer when a Respondent fails to timely answer a complaint or fails to appear at a pre-hearing conference or hearing where due notice has been provided. A Party may, for good cause shown, file a motion to set aside a default decision. Under Article 12, Rule 4(b), if a Respondent fails to file an answer within the required timeframe, the allegations of the charging document are deemed admitted and the Hearing Officer will hold a hearing to determine the appropriate sanctions. Under Article 12, Rule 5(a), a party can request review by the Judiciary Committee of such default decision. Proposed Rule 10.9269 would provide a robust process for the issuance and content of default decisions.

Proposed Rule 10.9270 (Settlement Procedure)

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

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

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

Proposed Rule 10.9270(c) would provide that an offer of settlement shall be in writing and signed by the person making the offer, and, if the person is represented by counsel or a representative, signed also by the counsel or representative. Under the proposed Rule, the offer of settlement should contain in reasonable detail the required content of the proposal, which would include, among other things, a statement consenting to findings of fact and violations, a description of the proposed sanction and the effective date of any sanction(s) imposed, or a statement that the effective date of the sanction(s) will be a date to be determined by Regulatory Staff. Current Article 12, Rule 1(d) is not as

detailed but specifies that the settlement agreement must admit jurisdiction and contain a proposed penalty that must be reasonable and consistent with the seriousness of the alleged violations.

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

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

Proposed Rule 10.9270(f) and (h) would address uncontested settlement offers. Under the proposed rule, if a hearing on the merits had not begun, the CRO could accept the settlement offer; if a hearing on the merits had begun, the Hearing Panel or Extended Hearing Panel could accept the settlement offer.⁵² If they did not, the offer would be deemed withdrawn and the matter would proceed under the proposed Rule 10.9200 Series and the settlement offer would not be part of the record. Under current Article 12, Rule 1(d), where an offer of settlement is rejected by the CRO, the offer of settlement shall be deemed withdrawn and it will not be given consideration in the determination of the issues involved in the disciplinary proceeding.

As described below, if the offer of settlement were accepted by the CRO, Hearing Panel or Extended Hearing Panel, it would become final 10 days after being sent, together with an order of acceptance, to each Director and each member of the CFR, unless review by the Exchange Board is required pursuant to proposed Rule

⁵² The CRO, Hearing Panel, or Extended Hearing Panel, as applicable, would consider Exchange precedent or such other precedent as it deemed appropriate in determining whether to accept the settlement offer.

10.9310(a)(1)(A) or (B). The Exchange anticipates that the required acceptance by the CRO, Hearing Panel, or Extended Hearing Panel would help ensure objectivity and consistency among offers of settlement that are issued. The proposed rule change would also allow an offer of settlement to be called for review by the Exchange Board. The Exchange believes that this review mechanism provides an additional, appropriate check and balance to the proposed settlement process.

Proposed Rule 10.9270(g) would provide that the proceeding under the proposed rule would conclude as of the date the order of acceptance is final, and the order of acceptance would constitute final disciplinary action of the Exchange. The sanction would take effect as set forth in the order.

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

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

Proposed Rule 10.9280 (Contemptuous Conduct)

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

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

Proposed Rule 10.9290 (Expedited Disciplinary Proceedings)

Under proposed Rule 10.9290, for any disciplinary proceeding, the subject matter of which also is subject to a temporary cease and desist proceeding initiated pursuant to proposed Rule 10.9810 or a temporary cease and desist order, hearings would be required to be held and decisions rendered at the earliest possible time. The proposed Rule is identical to NYSE Arca Rule 10.9290. The Exchange does not currently have a similar rule.

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

Proposed Rules 10.9300 through 10.9310

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

Proposed Rule 10.9310 (Review by Exchange Board of Directors) would provide for one review at the Board of Directors level, and discontinue the current practice under Article 12, Rule 5 whereby a decision by the Judiciary Committee is the final decision of the Exchange under subsection (a) except where the Board in its discretion determines to review a Judiciary Committee decision, as provided for in subsection (b). Under proposed Rule 10.9310(b), upon review, and with the advice of the CFR, the Board may, by the affirmative vote of a majority of the Board then in office, sustain any determination or penalty imposed, (including the terms of any permanent cease and desist order), or both, modify or reverse any such determination, and increase, decrease or eliminate any such penalty, or impose any penalty permitted under the Exchange's rules, as it deems appropriate. Unless the Board otherwise specifically directs, the determination and penalty, if any, of the Board after review shall be final and conclusive subject to the provisions for review of the Act. The Exchange believes that the proposed appellate review process would be fair and efficient and harmonize the Exchange's appellate process with the process of the Exchange's affiliates who have adopted similar disciplinary rules.

Under proposed Rule 10.9310(a)(1)(A), any Party, any Director, and any member of the CFR could require a review by the Exchange Board of any determination or penalty, or both, imposed by a Hearing Panel or Extended Hearing Panel under the proposed Rule 10.9200 Series, except that none of the aforementioned persons

could request a review by the Exchange Board of a decision concerning an affiliate of the Exchange as that term is defined in Rule 12b-2 under the Act. Under current Article 12, Rule 5, there is no similar call for review process; only a Respondent or the Exchange may request review and that review is conducted by the Judiciary Committee, subject to the exceptions in Article 12, Rule 5(b).

Moreover, under proposed Rule 10.9310(a)(1)(A), a request for review would be made by filing with the Secretary a written request stating the basis and reasons for such review, within 25 days after notice of the determination and/or penalty was served upon the Respondent. However, any request for review of an offer of settlement determined to be uncontested after a hearing on the merits has begun under proposed Rule 10.9270(f) that has been accepted by a Hearing Panel or Extended Hearing Panel would be governed by Rule 10.9310(a)(1)(B)(i). The Secretary of the Exchange would give notice of any such request for review to the Parties.

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

Under proposed Rule 10.9310(a)(1)(B)(ii), any Party could require a review by the Exchange Board of any rejection by the CRO of a letter of acceptance, waiver, and consent under Rule 10.9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), except that no Party may request Board review of a rejection of an AWC or an offer of settlement concerning an Exchange affiliate as defined in Rule 12b-2 under the Act. As proposed, a request for review shall be made by filing with the Secretary a written request stating the basis and reasons for such review within 25 days after notification pursuant to proposed Rule 10.9216(a)(3) or Rule 10.9270(h) that a letter of acceptance, waiver, and consent, or an uncontested offer of settlement or an order of acceptance is not accepted by the CRO. The Secretary would provide notice of any such request for review to the Parties.

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

contested determinations.

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

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

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

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

10.9310(b) accordingly omits a comparable provision.

Under proposed Rule 10.9310(c), notwithstanding the foregoing, if either Party upon review applied to the Exchange Board for leave to adduce additional evidence, and showed to the satisfaction of the Exchange Board that the additional evidence was material and that there were reasonable grounds for failure to adduce it before the Hearing Panel or Extended Hearing Panel, the Exchange Board could remand the case for further proceedings, in whatever manner and on whatever conditions the Exchange Board considered appropriate. Article 12, Rule 5 does not contain a remand provision.

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

Proposed Rules 10.9500 through 10.9527

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

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

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

Proposed Rule 10.9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) would govern the initiation of an eligibility proceeding by the Exchange and the obligation for a Participant or Participant Firm to file an application or, for matters set forth in proposed Rule 10.9522(e)(1), a written request for relief if the Participant or Participant Firm determines prior to receiving a notice under Rule 10.9522(a) that (1) it has become a disqualified Participant or Participant Firm; (2) a person associated with such Participant or Participant Firm or whose association is proposed by an applicant for membership under Exchange rules has become a disqualified person; or (3) the Participant or Participant Firm or applicant for membership under Exchange rules wishes to

sponsor the association of a covered person who is a disqualified person. The proposed rule also contains provisions governing withdrawal of an application or written request for relief as well as the application of the prohibitions against ex parte communications set forth in Rule 10.9143 to the Rule 10.9520 Series.

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

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

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

If a recommendation or supervisory plan is rejected, the Disqualified Person

would be bound by the waivers made under proposed paragraph (a)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and would have the right to proceed under the proposed rule and proposed Rule 10.9524, as applicable. Under subsection (a), if a Disqualified Person executes a letter consenting to the supervisory plan, such letter would be submitted to the CRO by Member Regulation with a proposed Notice under Act Rule 19h-1, where required. The CRO may accept or reject Member Regulation's recommendation and the supervisory plan. If accepted, the recommendation and supervisory plan would be deemed final and, where required, the proposed Notice under Rule 19h-1 of the Act would be filed by the Exchange. If rejected by the CRO, the Exchange would be able to take any other appropriate action with respect to the Disqualified Person. The Disqualified Person would not be prejudiced by the execution of the letter consenting to the supervisory plan, and the letter could not be introduced into evidence in any proceeding.

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

By submitting an executed letter consenting to a supervisory plan, a Disqualified Person would waive the right of appeal to the Board, the Commission, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted; any right to claim bias or prejudice by Member Regulation or the CRO in connection with such person's or body's participation in discussions regarding the terms and conditions of Member Regulation's recommended supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and any right to claim that a person violated the ex parte prohibitions of proposed Rule 10.9143 or the separation of functions prohibitions of proposed Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such supervisory plan. If the supervisory plan is rejected, the Disqualified Person would be bound by the waivers made under proposed paragraph (b)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and would have the right to proceed under proposed Rule 10.9524 (Exchange Board

Consideration), which would allow a request for review by the applicant to the Exchange Board. Proposed Rule 10.9527 would provide that a filing of an application for review would not stay the effectiveness of final action by the Exchange unless the Commission otherwise ordered. To maintain consistency with NYSE Arca's rule numbering, proposed Rules 10.9525 and 10.9526 would be designated "Reserved."

Proposed Rules 10.9550 through 10.9559

Proposed Rules 10.9550 through 10.9559 would govern expedited proceedings.

Under proposed Rule 10.9551 (Failure to Comply with Public Communication Standards Pursuant to FINRA Rule 2210 as Incorporated by Reference in Rule 11.2210), Regulatory Staff could issue a written notice requiring a Participant or Participant Firm to file communications with FINRA's Advertising Regulation Department at least 10 days prior to use if the staff determined that the Participant or Participant Firm had departed from the standards of proposed Rule 11.2210 (Communications with the Public).⁵³ The notice would state the specific grounds and include the factual basis for the action as well as the effective date. The Participant or Participant Firm could file a written request for a hearing with the Office of Hearing Officers pursuant to proposed Rule 10.9559. A Participant or Participant Firm would be required to set forth with specificity any and all defenses to the action in its request for a hearing. Pursuant to proposed Rules 10.8310(a) and 10.9559(n), a Hearing Officer or, if applicable, Hearing Panel, could approve, modify or withdraw any and all sanctions or limitations imposed by the staff's notice, and impose any other fitting sanction. A Participant or Participant Firm subject to a pre-use filing requirement also could file a written request for modification or termination of the requirement. FINRA Rule 2210 proposed to be incorporated by reference in proposed Rule 11.2210 references the procedures in FINRA Rules 9551 and 9559, which are substantially the same as proposed Rules 10.9551 and 10.9559.

Under proposed Rule 10.9552 (Failure to Provide Information or Keep Information Current) would establish procedures in the event that a Participant, Participant Firm or covered person failed to provide any information, report, material, data, or testimony requested or required to be filed under the Exchange's rules, or failed to keep its membership application or supporting documents current. In the event of the foregoing, under proposed Rule 10.9552, the Participant, Participant Firm or covered person could be suspended if corrective

⁵³ The Exchange has filed a separate filing to adopt a new Rule 11.2210 governing communications with the public that would incorporate FINRA Rule 2210 by reference and rename and amend Article 8, Rule 13 governing advertising, promotion and telemarketing. See note 16, *supra*. Accordingly, proposed Rule 10.9551 would not be operative until approval of the Exchange's companion rule filing.

action were not taken within 21 days after service of notice. A Participant, Participant Firm or covered person served with a notice could request a hearing within the 21-day period. A Participant, Participant Firm or covered person subject to a suspension could file a written request for termination of the suspension on the ground of full compliance. A Participant, Participant Firm or covered person suspended under the proposed rule that failed to request termination of the suspension within three months of issuance of the original notice of suspension would automatically be expelled or barred.⁵⁴ Proposed Rule 10.9552 is substantially the same as its NYSE Arca counterpart except for references reflecting the Exchange's membership. Under the Exchange's current rules, there is no procedure that relates to failure to keep a membership application or supporting documents current. Under current Article 6, Rule 9(a), a Participant or partner, officer, director or other person associated with a Participant or other person or entity subject to the jurisdiction of the Exchange that fails to submit requested documents or information to the Exchange is subject to formal disciplinary action. The Exchange's current rules do not authorize an expedited proceeding against persons who fail to submit documents or information.

Proposed Rule 10.9554 (Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution)⁵⁵ would contain similar procedures and consequences as proposed Rule 10.9552 relating to a failure to comply with an arbitration award or related settlement or an Exchange order of restitution or Exchange settlement agreement providing for restitution. Under proposed Rule 10.9554, if a Participant, Participant Firm or covered person fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under the Exchange's rules, or an Exchange order of restitution or Exchange settlement agreement providing for restitution, Regulatory Staff could provide written notice to such Participant, Participant Firm or covered person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any Participant or Participant Firm. Proposed Rule 10.9554 is substantially the same as NYSE Arca Rule 10.9554 except for references reflecting the Exchange's membership. The

⁵⁴ The Exchange believes that the provision for automatic expulsion or bar after three months is consistent with Section 6 of the Act because the Respondent would have ample notice and opportunity to be heard under proposed Rule 10.9552, the proposed rule is substantially the same as NYSE Arca's and FINRA's counterpart rules, and the Commission has upheld at least one bar under a prior version of FINRA's rule. *See, e.g.,* Dennis A. Pearson, Jr., Securities Exchange Act Rel. Nos. 54913 (December 11, 2006) (dismissing application for review by associated person barred under NASD Rule 9552(h)) and 55597A (April 6, 2007) (denying motion for reconsideration).

⁵⁵ Proposed Rule 10.9553 would be designated "Reserved" to maintain consistency with NYSE Arca's rule numbering.

Exchange lacks a comparable rule setting forth a uniform notice period and specific procedures to be followed in the event of suspension or cancellation. Current Article 14, Rule 1(e) simply provides that any Participant, or covered person who fails to honor an arbitration award can be subject to disciplinary proceedings in accordance with Article 12. To add clarity to the Exchange's rules, the Exchange would delete the phrase "in accordance with Article 12" following "disciplinary proceedings" in Article 14, Rule 1(e).

Proposed Rule 10.9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services) would govern the failure to meet the eligibility or qualification standards or prerequisites for access to services offered by the Exchange. Under proposed Rule 10.9555, if a Participant, Participant Firm or covered person did not meet the eligibility or qualification standards set forth in the Exchange's rules, Exchange staff could provide written notice to such Participant, Participant Firm or covered person that the failure to become eligible or qualified will result in a suspension or cancellation of membership or a suspension or bar from associating with any Participant or Participant Firm. Similarly, if a Participant, Participant Firm or covered person did not meet the prerequisites for access to services offered by the Exchange or a Participant or Participant Firm thereof or could not be permitted to continue to have access to services offered by the Exchange or a Participant or Participant Firm thereof with safety to investors, creditors, Participant, Participant Firms or the Exchange, Exchange staff could provide written notice to such Participant, Participant Firm or covered person limiting or prohibiting access to services offered by the Exchange or a Participant or Participant Firm thereof. The limitation, prohibition, suspension, cancellation, or bar referenced in the notice would become effective 14 days after service of the notice except that the effective date for a notice of a limitation or prohibition on access to services offered by the Exchange or a Participant, or Participant Firm thereof with respect to services to which the Participant, Participant Firm or covered person does not have access would be upon service of the notice.

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

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

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

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

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

The notice issued under the proposed Rule would be immediately effective; a Participant, Participant Firm or covered person would have seven days to request a hearing. As noted, emergency proceedings are currently authorized under Article 13, Rule 2(a)(1), under which the Exchange has authority to, in part, (i) suspend a Participant or Participant Firm or Associated Person that is expelled or suspended by another SRO or an Associated Person that is barred or suspended

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

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

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

Proposed Rule 10.9560(a)(1) provides that, with the prior written authorization of the CRO or such other senior officers as the CRO may designate, Enforcement may initiate an expedited suspension proceeding with respect to alleged violations of Rule 11.21 (Disruptive Quoting and Trading Activity Prohibited).⁵⁶ Proposed Rule 10.9560(a) would also set forth the requirements for notice and service ((a)(2)), and the content of such notice ((a)(3)) pursuant to the Rule.

Proposed Rule 10.9560(b) would govern the appointment of a Hearing Panel as well as potential disqualification or recusal of Hearing Officers or Panelists. The proposed provision is consistent with proposed Rule 10.9231(b) and (c), which govern the appointment of a Hearing Panel or Extended Hearing Panel to conduct disciplinary proceedings, and proposed Rules 10.9233 (Hearing Panel or

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

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

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

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

Finally, as proposed, if Enforcement fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed. Under proposed Rule 10.9560(d)(1), the Hearing Panel would be required to issue a written decision stating whether a suspension order would be imposed. The Hearing Panel would be required to issue the decision not later than 10 days after receipt of the hearing transcript, unless otherwise extended by the Hearing Officer with the consent of the Parties for good cause shown. The proposed Rule would state that a suspension order shall be imposed if the Hearing Panel finds by a preponderance of the evidence that the alleged violation specified in the notice

has occurred and that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

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

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

For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Hearing Panel can modify the order to lift the suspension portion of the order while keeping in place the cease and desist portion of the order. With its broad modification powers, the Hearing Panel also maintains the discretion to impose conditions upon the removal of a suspension – for example, the Hearing Panel could modify an order to lift the suspension portion of the order in the event a Respondent complies with the cease and desist portion of the order but additionally order that the suspension will be re-imposed if Respondent violates the cease and desist provisions of the modified order in the future. The Hearing Panel generally would be required to respond to the request in writing within 10 days after receipt of the request. An application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order.

Proposed Rule 10.9560(f) would describe the call for review process by the Exchange Board. Specifically, the proposed Rule would provide that if there is no pending application to the Hearing Panel to have a suspension order modified,

set aside, limited, or revoked, the Board, in accordance with proposed Rule 10.9310 (Review by Exchange Board), may call for review the Hearing Panel decision on whether to issue a suspension order. Further, the proposed Rule would provide that a call for review by the Exchange Board shall not stay the effectiveness of a suspension order.

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

Proposed Rule 10.9600 Series (Procedures for Exemptions)

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

Under proposed Rule 10.9610 (Application), a Participant or Participant Firm could seek exemptive relief as permitted under proposed Rule 10.8211 (Automated Submission of Trading Data Requested by the Exchange) or proposed Rule 11.2210 (Communications with the Public)⁵⁷ by filing a written application with the appropriate department or staff of the Exchange and provide a copy of the application to the CRO.⁵⁸

Under proposed Rule 10.9620 (Decision), after considering the application, the Exchange staff would be required to issue a written decision setting forth its findings and conclusions. The decision would be served on the Applicant⁵⁹ pursuant to proposed Rules 10.9132 and 10.9134. After the decision is served on

⁵⁷ As previously noted, the Exchange has filed a separate filing to adopt a new Rule 11.2210 governing communications with the public that would incorporate FINRA Rule 2210 by reference and rename and amend Article 8, Rule 13 governing advertising, promotion and telemarketing. See note 16, supra. Accordingly, proposed Rule 10.9610 would not be operative with respect to proposed Rule 11.2210 until approval of the Exchange's companion rule filing.

⁵⁸ Exchange rules providing for exemptive relief would be the two proposed rules governing communications with the public and the submission of automated trading data. The Exchange does not have a rule analogous to NYSE Arca Rule 2.5. Except for references to Exchange rules specifying exemptions and references to reflect the Exchange's membership, the proposed rule is otherwise substantially the same as NYSE Arca Rule 10.9610.

⁵⁹ Under proposed Rule 10.9610(c), a Participant or Participant Firm that files an application under Rule 10.9610 would be referred to as an "Applicant" thereafter in the proposed Rule 10.9600 Series.

the Applicant, the application and decision may be publicly available. Under proposed Rule 10.9630 (Appeal), an Applicant that wished to appeal the decision would be required to file a written notice of appeal with the Exchange's CRO within 15 days after service of the decision.

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

Proposed Rule 10.9700 Series

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

Proposed Rule 10.9800 Series (Temporary Cease and Desist Orders)

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

Under proposed Rule 10.9810 (Initiation of Proceeding), with the prior written authorization of the Exchange's CRO or such other senior officers as the CRO may designate, Enforcement may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Act and Rule 10b-5 thereunder; Exchange Act Rules 15g-1 through 15g-9; Article 9, Rule 2 (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act); and Article 9, Rules 9, 10 11 and 12, which prohibit a variety of manipulative activity, by serving a notice (as described in proposed Rule 10.9810(b)) on a Participant, Participant Firm or covered person or upon counsel or other person authorized to represent others under Rule 10.9141, and filing a copy thereof with the Office of Hearing Officers. The notice issued under the proposed Rule would be effective when service is complete. Proposed Rule 10.9810(c) would provide that if the parties agree to the terms of the proposed temporary cease and desist order, the Hearing Officer shall have the authority to approve and issue the order. Finally, proposed Rule 10.9810(d) would provide that if Enforcement has not issued a complaint under Rule 10.9211 relating to the subject matter of the temporary cease and desist proceeding and alleging violations of the rule or statutory provision specified in the notice described in proposed paragraph (b), Enforcement shall serve and file such a complaint with the notice initiating the temporary cease and desist proceeding. Service of the complaint can be made in

accordance with the service provisions in proposed Rule 10.9810(a). The proposed rule is substantially the same as its NYSE Arca counterpart except for references reflecting the Exchange's membership and the underlying rule references.⁶⁰ The Exchange does not have a comparable rule.

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

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

Under proposed Rule 10.9840 (Issuance of Temporary Cease and Desist Order by Hearing Panel), the Hearing Panel would be authorized to issue a written decision stating whether a temporary cease and desist order would be imposed. The Hearing Panel would be required to issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown.

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

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

Proposed Rule 11.21 (Disruptive Quoting and Trading Activity Prohibited)

⁶⁰ NYSE Arca Rule 10.9810 references Section 10(b) of the Act and Rule 10b-5 thereunder and Exchange Act Rules 15g-1 through 15g-9. Article 9, Rule 2 is the Exchange's equivalent to NYSE Arca Rules 9.2010-E and 9.2020-E.

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

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

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

The Exchange believes that the proposed descriptions of disruptive quoting and trading activity articulated in the rule are consistent with the activities that have been identified and described in the client access cases described in the NYSE American notice and with the rules of other SROs.⁶¹

Proposed Article 2, Rule 4 (CFR)

The Exchange proposes to create a CFR as a sub-committee of the ROC.⁶² As proposed, the CFR would replace the Judiciary Committee as the Exchange's appellate body reviewing disciplinary decisions on behalf of the Board. The

⁶¹ See, e.g., BZX Rule 12.15; NASDAQ General 9, Section 53. See also Securities Exchange Release No. 80804 (May 30, 2017), 82 FR 25887, 25888-25890 (June 5, 2017) (SR-NYSEMKT-2017-25) (Notice of filing discussing matters involving Biremis Corp. and Hold Brothers On-Line Investment Services, Inc.).

⁶² The composition and responsibilities of the ROC are described in the Second Amended and Restated CHX Bylaws ("Exchange Bylaws"), available here https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_Chicago_Second_Amended_and_Restated_Bylaws.pdf. The ROC consists of at least three members, each of whom shall be a Public Director of the Exchange.

Judiciary Committee would retain the responsibility for reviewing disciplinary decisions under the legacy disciplinary rules. To effectuate this change, “initiated pursuant to Article 12, Rule 1” would be added to the first sentence of Article 2, Rule 3 governing the Judiciary Committee.

As proposed, upon the effective date of the proposed disciplinary rules, the CFR would be responsible for reviewing disciplinary decisions and acting in an advisory capacity to the Board with respect to disciplinary matters. The current Judiciary Committee is limited to reviewing disciplinary decisions and does not act in an advisory capacity to the Board. The Exchange proposes that the CFR, like the current NYSE Arca CFR, would also advise the Board with respect to disciplinary matters. Unlike the NYSE Arca CFR, the Exchange does not propose that the CFR would review determinations to limit or prohibit the continued listing of an issuer’s securities on the Exchange or act in an advisory capacity to the Board with respect to the listing and delisting of securities because the Exchange is not a listing market.⁶³ Further, the Exchange does not propose to permit the CFR to appoint a CFR Appeals Panel as on NYSE Arca.⁶⁴ As noted above, NYSE Arca retained appeals panels from its legacy disciplinary rules and the Exchange does not a similar current process.

Similar to NYSE Arca, the Exchange’s proposed CFR would be composed of Non-Affiliated Director(s) and the Public Directors of the Exchange. As per the Exchange Bylaws, “Non-Affiliated Directors” are individuals nominated by the trading permit holders who are permitted to trade on the Exchange’s facilities for the trading of equities that are securities as covered by the Act.⁶⁵ “Public Directors” are persons from the public and will not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates.⁶⁶ The Exchange believes that member participation on the proposed CFR would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including the disciplinary process, consistent with Section 6(b)(3) of the Act.⁶⁷

By establishing the CFR, the Exchange would make its appellate process consistent with that of NYSE Arca and its other affiliates, all of which have established a CFR as a subcommittee of the respective affiliate’s ROC.⁶⁸ Like its

⁶³ See NYSE Arca Rule 3.3(a)(2)(A).

⁶⁴ See, e.g., NYSE Arca Rule 3.3(a)(2)(B).

⁶⁵ See Exchange Bylaws, Art. II, Sec. 2(a).

⁶⁶ See id.

⁶⁷ 15 U.S.C. 78f(b)(3).

⁶⁸ See, e.g., NYSE Arca Rule 3.3(a)(2)(A). See generally Thirteenth Amended and Restated Operating Agreement of the NYSE, Section 2.03(h)(iii); Twelfth

affiliates, proposed Article 2, Rule 4 would provide that, subject to the proposed Rule 10.9000 Series, decisions of the proposed CFR would be subject to Board review. As proposed, the decision of the Board would constitute the final action of the Exchange, unless such Board remands the proceedings.

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

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁶⁹ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷⁰ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule furthers the objectives of Section 6(b)(7) of the Act,⁷¹ in particular, in that it provides fair procedures for the disciplining of members⁷² and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(3) of the Act,⁷³ in particular, in that it supports the fair representation of members in the administration of the Exchange's affairs.

The proposed changes will provide greater harmonization among SROs resulting in less burdensome and more efficient regulatory compliance for common members of the Exchange, the Exchange's affiliates, and FINRA. As previously noted, the proposed rule text is substantially the same as the NYSE Arca disciplinary rules, which were in turn modeled on the FINRA rules. The proposed rule change will enhance the Exchange's ability to have a direct and

Amended and Restated Operating Agreement of NYSE American, Section 2.03(h)(iii); and Sixth Amended and Re-States Bylaws of NYSE National, Section 5.8.

⁶⁹ 15 U.S.C. 78f(b).

⁷⁰ 15 U.S.C. 78f(b)(5).

⁷¹ 15 U.S.C. 78f(b)(7).

⁷² The Exchange's equivalent to the term "member" in this context is "Participant" and "Participant Firm."

⁷³ 15 U.S.C. 78f(b)(3).

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

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

Similarly, the Exchange believes that adopting its affiliates' appellate procedures would be fair and efficient and create consistency with its affiliates' practices. The proposed rule change would provide individual directors with the opportunity to call a case for review. Currently, in addition to the parties, only the Board may order review of a decision. Adopting the appellate rules of the Exchange's affiliates would also apply a uniform period to all requests for review of a disciplinary determination or penalty.

Subject to a separate notice and comment filing, the Exchange would retain its list of minor rule violations with certain technical and conforming amendments, while adopting its affiliates' and FINRA's process for imposing minor rule violation fines.⁷⁴ In addition, as set forth in the Exchange's companion filing and herein, the Exchange believes that adding certain rules to its list of eligible minor rule violations based on the rules of its affiliate will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation.

Specifically, the proposed additions are designed to prevent fraudulent and

⁷⁴ See NYSE Arca Rule 10.9216(b), NYSE Rule 9216(b), & NYSE American Rule 9216(b). See also generally FINRA Rule 9216(b). See generally SR-NYSECHX-2022-08.

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

The Exchange also believes that adding rules based on the rules of its affiliate to its list of eligible minor rule violations would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of substantially similar rules that are eligible for minor rule treatment on the Exchange's affiliate, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct. As noted above, Article 6, Rule 2(b), 5(a) and 5(b) are substantially similar to NYSE National and NYSE Arca rules of similar purpose, which are each separately eligible for a minor rule fine under the respective market's version of proposed Rule 10.9217.⁷⁵

Further, the Exchange believes that the proposed additions to its list of rules eligible for minor rule fines based on the rules of its affiliate are consistent with Section 6(b)(6) of the Act,⁷⁶ which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations pursuant to the Exchange's rules and would increase the amounts of fines in order for the Exchange to better deter violative activity and to harmonize its rules with that of its affiliates.

The Exchange believes that moving the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and removing it from the Fee Schedule would add clarity and transparency to the Exchange's rules by reflecting the recommended fines for minor rule violations in the same place in the Exchange's rules. Similarly, updating the Recommended Fine Schedule to delete obsolete rules and add recommended fines for rules that were added to the list of minor rules but inadvertently omitted from the Recommended Fine Schedule would also add clarity and transparency to the Exchange's rules. The Exchange believes that adding such clarifying language would also be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby

⁷⁵ See text accompanying notes 34-36, *supra*.

⁷⁶ 15 U.S.C. 78f(b)(6).

reducing potential confusion.

Further, the Exchange believes that adding recommended fines for Rule 7.16 and Rule 7.30 that were inadvertently omitted from the current Recommended Fine Schedule based on the fines for the same rules set forth in the rules of its affiliate would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of substantially similar rules that are eligible for minor rule treatment on the Exchange's affiliate, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct. As noted above, the proposed first, second and third level fines for violations of Rule 7.16 are the same as those in NYSE Arca Rule 10.9217(i)(1)1. for violations of NYSE Arca Rule 7.16-E, and the proposed first, second and third level fines for violations of Rule 7.30 are the same as those in NYSE Arca Rule 10.9217(i)(1)5. for violations of NYSE Arca Rule 7.30-E.⁷⁷

The Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members consistent with Sections 6(b)(7) and 6(d) of the Act.⁷⁸ Proposed Rules 10.9216(b) and 10.9217 would not preclude a Participant, Participant Firm or covered person from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

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

The Exchange believes adopting a new Article 2, Rule 4 to establish a CFR as a sub-committee of the ROC, complies with Section 6(b)(7) of the Act,⁷⁹ which requires that the rules of a national securities exchange provide a fair procedure for the disciplining of members and persons associated with members. The members of the Exchange's ROC are all Public Directors of the Exchange Board, thereby ensuring that the ROC is comprised of independent members. In addition, the Exchange believes that participation on the proposed CFR by Non-Affiliated Directors would be sufficient to provide for the fair representation of members in the administration of the affairs of the Exchange, including rulemaking and the disciplinary process, consistent with Section 6(b)(3) of the Act.⁸⁰ In addition, the Exchange believes that having the CFR serve in the

⁷⁷ See text accompanying notes 43-46, *supra*.

⁷⁸ 15 U.S.C. 78f(b)(7) & 78f(d).

⁷⁹ 15 U.S.C. 78f(b)(7).

⁸⁰ 15 U.S.C. 78f(b)(3).

advisory capacity is consistent with and facilitates a governance and regulatory structure that furthers the objectives of Section 6(b)(5) of the Act.⁸¹

The Exchange believes that proposed Rule 11.21 (Disruptive Quoting and Trading Activity Prohibited), which is modeled on NYSE American Rule 5220 – Equities, NYSE Rule 5220, and NYSE Arca Rule 11.21, which in turn are modeled on Commentary .03 to FINRA Rule 5210, would remove impediments to and perfect the mechanism of a free and open market and a national market system by harmonizing the Exchange’s rules with those of other SROs, including its affiliated exchanges.

In addition, the Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest by providing the Exchange with authority to prohibit specified disruptive quoting and trading activity on the Exchange. More specifically, the Exchange believes that the proposed rule is consistent with the public interest and the protection of investors and otherwise furthers the purposes of the Act because the proposal strengthens the Exchange’s ability to carry out its oversight and enforcement responsibilities as an SRO in cases where awaiting the conclusion of a full disciplinary proceeding is unsuitable in view of the potential harm to other member organization and their customers. The Exchange notes that if this type of conduct is allowed to continue on the Exchange, the Exchange’s reputation could be harmed because it may appear to the public that the Exchange is not acting to address the behavior. The proposed expedited process would enable the Exchange to address the behavior with greater speed. For the same reasons, the Exchange believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,⁸² which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of the Commission and Exchange rules.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues, but is rather designed to (i) provide greater harmonization among Exchange, NYSE Arca, NYSE, NYSE American, and FINRA rules of similar purpose for investigations and disciplinary matters; and (ii) enhance the quality of the Exchange’s regulatory program, from detection of violations through disciplinary actions, resulting in less burdensome and more efficient regulatory compliance and facilitating performance of regulatory functions. In addition, the proposed rule change will provide the Exchange with necessary

⁸¹ 15 U.S.C. 78f(b)(5).

⁸² 15 U.S.C. 78f(b)(1) & (b)(6).

means to enforce against violations of manipulative quoting and trading activity in an expedited manner, while providing Participants, Participant Firms and covered person with the necessary due process. The Exchange believes that it is important for all exchanges to be able to take similar action to enforce its rules against manipulative conduct thereby leaving no exchange prey to such conduct.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

6. Extension of Time Period for Commission Action

Not applicable.

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

The Exchange believes that the proposal qualifies for immediate effectiveness upon filing as a “non-controversial” rule change in accordance with Section 19(b)(3)(A) of the Act⁸³ and Rule 19b-4(f)(6) thereunder.⁸⁴

The Exchange asserts that the proposed rule change (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with 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, or such shorter time as the Commission may designate.

The Exchange believes that this filing is non-controversial because it raises no new or novel issues because the Exchange proposes adopting disciplinary rules already in place at its affiliates and FINRA with changes to reflect the Exchange's membership and rulebook. The proposed rule change will continue, without change, the current coverage of the Exchange's disciplinary rules. The purpose of the proposed rule change is to conform the Exchange's disciplinary rules to the NYSE Arca Rule 8000 and 9000 Series, which in turn were based on the NYSE American and NYSE Rule 8000 and 9000 Series and the FINRA Rule 8000 and 9000 Series. The NYSE and FINRA Rule 8000 and 9000 Series were both

⁸³ 15 U.S.C. 78s(b)(3)(A).

⁸⁴ 17 CFR 240.19b-4(f)(6).

approved by the Commission.⁸⁵ The Exchange proposes to adopt the rule changes in substantially the form that they were adopted by NYSE Arca. Similarly, the Exchange believes that adopting a new jurisdiction rule based on the Exchange's current jurisdiction rule Article 12, Rule 7 that incorporates substantially similar provisions based on NYSE Arca's jurisdiction Rule 2.0 would also further harmonize the Exchange's disciplinary rules with its affiliates.

More specifically, the Exchange's proposed adoption of the NYSE Arca disciplinary rules will not add any new requirements for the vast majority of existing exchange Participants and Participant Firms. Rather, the proposed Rule 10.8000 Series and 10.9000 Series are substantially the same as the NYSE Arca Rule 8000 and 9000 Series. As noted above, all but five of the Exchange's Participants and Participant Firms are already subject to these disciplinary rules by virtue of their NYSE Arca, NYSE American, NYSE, FINRA and/or NASDAQ memberships. Moreover, the differences between the proposed rules and the NYSE Arca Rule 8000 and 9000 Series relate to the Exchange's retention of its current list of minor rule violations and accompanying fine levels in proposed Rules 9216(b) and 9217, which are the subject of a separate notice and comment filing and will not be operative until that filing is approved. However, Exchange Participants and Participant Firms are already subject to the minor rule violations provisions and accompanying fine levels. To the extent the Exchange has proposed additional changes that differ from the NYSE Arca version of the proposed rules, such changes are technical and conforming in nature to reflect the Exchange's membership and do not change the substance of the proposed Exchange Rules. Finally, the Exchange also believes that its proposed transition plan would provide for a fair and less burdensome changeover to the proposed disciplinary rules. By providing a transition period for the Exchange's permit holders to assess and manage the proposed changes, the proposed rule change would clearly demarcate which matters would proceed under the new rules and which would be completed under the legacy rules.

85

See, e.g., note 3, supra.

Moreover, with respect to the adoption of a rule prohibiting disruptive quoting and trading activity that is substantially the same as the rule adopted by NYSE Arca, the Exchange believes that its proposal does not significantly affect the protection of investors or the public interest because it is necessary for the protection of investors to adopt an expedited process to address such trading activity rather than allowing it to occur for several years. Also, the Exchange anticipates using the authority proposed in this filing only in clear and egregious cases when necessary to protect investors, other Participants, Participant Firms and Associated Persons, and the Exchange, and even in such cases, the Respondent will be afforded due process in connection with the suspension proceedings. The Exchange does not believe that this proposal imposes any significant burden on competition because each self-regulatory organization should be empowered to regulate trading occurring on their market consistent with the Act and without regard to competitive issues.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.⁸⁶ 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 the NYSE Arca Rule 10.8000-10.9000 Series, the NYSE American Rule 8000-9000 Series, the NYSE Rule 8000-9000 Series, the NYSE National Rule 10.8000-10.9000 Series, and the FINRA Rule 8000-9000 Series. Proposed Rules 11.21 is based on NYSE Arca Rule 11.21. Proposed Article 2, Rule 4 is based on NYSE Arca Rule 3.3(a)(2)(A).

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 – Form of Notice of Proposed Rule Change for Federal Register.

⁸⁶ 17 CFR 240.19b-4(f)(6).

Exhibit 5 – Text of Proposed Rule Change.

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

[Date]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt Investigation, Disciplinary, Sanction, and Other Procedural Rules

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on May 20, 2022, the NYSE Chicago, Inc. (“NYSE Chicago” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt investigation, disciplinary, sanction, and other procedural rules modeled on the rules of its affiliates, and to make certain conforming and technical changes. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

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

Background and General Description of Proposed Rule Change

Beginning in 2013, each of the Exchange’s affiliates have adopted rules relating to investigation, discipline, sanction, and other procedural rules based on the rules of the Financial Industry Regulatory Authority (“FINRA”).⁴ To facilitate rule harmonization

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

among self-regulatory organizations (“SROs”), the Exchange proposes the NYSE Chicago Rule 10.8000 and 10.9000 Series based on the text of the NYSE Arca Rule 10.8000 and Rule 10.9000 Series, with certain changes, as described below.

The Exchange notes that all but five Participants⁵ are already subject to similar rules by virtue of their membership in the NYSE, NYSE American, NYSE National, NYSE Arca, FINRA and/or the NASDAQ Stock Market LLC (“NASDAQ”), whose disciplinary rules are similar to FINRA’s rules. The overwhelming majority of Exchange’s Participant and Participant Firms are thus already subject to rules similar to the proposed rules described herein.

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

NYSENat-2018-02). In 2019, NYSE Arca, Inc. (“NYSE Arca”) adopted the NYSE Arca Rule 10.8000 and 10.9000 Series based on the NYSE American Rule 8000 and Rule 9000 Series. See Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR-NYSEArca-2019-15) (“NYSE Arca Notice”).

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

Description of Current NYSE Chicago Article 12

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

Article 12, Rule 1 (Investigation and Charges)

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

Article 12, Rule 1(a) governs investigations and the written report of investigative findings. Under Article 12, Rule 1(a), the staff of the Market Regulation Department has the authority to conduct investigations of any possible violation of any Exchange rule or any provision of the federal securities laws (or any rule thereunder) by any Participant, associated person⁶ thereof or any other person or organization subject to the jurisdiction of the Exchange. Except in emergency situations, Article 12, Rule 1(a) requires staff to prepare a written report of such investigation whenever seeking to institute a proceeding pursuant to Article 12, Rule 1(b)(1) to be presented to the Chief Regulatory Officer ("CRO").

Article 12, Rule 1(b)(1)-(2) govern written charges. Under Article 12, Rule 1(b)(1), if in the CRO's judgment it appears from the written investigative report that any Participant, Associated Person thereof or any other person or organization subject to the Exchange's jurisdiction (the "Respondent") is violating or has violated any provision of the Bylaws, Exchange rules or of the federal securities laws or the regulations thereunder,

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

the CRO shall direct staff to prepare and present written charges against the Respondent, except as otherwise provided in the Exchange's rules. The written charges must identify each Respondent and specifically state each Exchange rule or provision of the federal securities laws (or any rule thereunder) alleged to have been violated. Charges must be served upon a Respondent and filed with the Secretary of the Exchange (the "Secretary").

Article 12, Rule 1(b)(2) provides that, in addition to the process set out in paragraph (1) above, the Board of Directors (the "Board") and the Executive Committee each have the authority to direct the CRO to authorize the institution of a disciplinary proceeding when, on information and belief, either the Board or the Committee is of the opinion that any Participant, Associated Person thereof or any other person or organization subject to the jurisdiction of the Exchange is violating or has violated any provision of the Bylaws or rules of the Exchange or of the federal securities laws or the regulations thereunder.

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

The settlement procedure is set forth in Article 12, Rule 1(d). A Respondent can settle a proceeding instituted pursuant to Article 12, Rule 1, at any time by entering into a settlement agreement with the Exchange without admitting or denying the charges, except as to jurisdiction, which must be admitted. Under the rule, settlement agreements

must include a waiver by the Respondent of all rights of appeal to the Executive Committee, the Board, Securities and Exchange Commission (the “Commission”), and United States Court of Appeals or to otherwise challenge or contest the validity of the decision if the offer of settlement is accepted. The rule also requires settlement agreements to contain a proposed penalty to be imposed which must be reasonable under the circumstances and consistent with the seriousness of the alleged violations.

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

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

furnished by him or her or his or her agents to the Exchange.

Article 12, Rule 2 (Summary Procedure)

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

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

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

Any contested fine will be publicly reported to the same extent that Exchange disciplinary proceedings will be publicly reported. In any action taken by the Exchange pursuant to Article 12, Rule 2, the person against whom a fine is imposed shall be served (as provided in Article 12, Rule 1(c)) with a written statement signed by the CRO or his designee, setting forth the

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

Any person against whom a minor fine is imposed under the Rule may contest the

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

Article 12, Rule 2(b)(1) governs collateral proceedings involving a Participant, partner, officer, registered employee or Associated Person that is suspended or expelled from any other securities exchange or any national securities association, or is suspended or barred from being associated with any member or member organization of such exchange or association, or is suspended or barred by any governmental securities agency from dealing in securities or being associated with any broker or dealer in securities. In those circumstances, the CRO may suspend or expel such person or organization as a Participant, partner, officer, registered employee or Associated Person. Pursuant to the Rule, no such suspension by the CRO may commence before or expire after the suspension imposed by such other exchange, association or agency, and no such expulsion may be imposed by the CRO unless such person or organization has been expelled or barred by such other exchange, association or agency. Finally, Article 12, Rule 2(b) does not preclude any proceeding against any Participant, partner, officer, registered employee or Associated Person under any other Rule of the Exchange.

Under Article 12, Rule 2(b)(2), the procedure required by Article 12, Rule 1 is inapplicable to contested proceedings under Article 12, Rule 2(b). A Respondent in a collateral proceeding, however, must be given not less than ten days' notice in writing that the Chief Executive Officer ("CEO") will appoint a Hearing Officer pursuant to the

provisions of Article 12, Rule 5 to conduct a hearing to determine whether or not to suspend or expel the Respondent as provided in Article 12, Rule 2(b).

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

Any action by the Hearing Officer pursuant to Article 12, Rule 2(b) can be reviewed in accordance with the procedure specified in Article 12, Rule 6. In the event no request for review is filed within 15 days after the Respondent is notified of the determination of the Hearing Officer, such determination shall become final and not subject to appeal at the Exchange.

Under Article 12, Rule 2(b)(3), a Participant, partner, officer, registered employee or Associated Person may consent to the penalty or suspension or expulsion from the Exchange solely by reason of the imposition of the suspension, expulsion or bar by such other exchange, association or agency, and without either the separate determination of

the Hearing Officer as provided above in Article 12, Rule 2(b)(2) or the procedure provided by Article 12, Rule 1. The required consent takes effect immediately and must be in writing, signed by the Respondent, and delivered to the Exchange not later than two business days after the Exchange gives the Respondent with written notice of a proceeding under Article 12, Rule 2(b).

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

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

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

Under Article 12, Rule 3(b), if a Respondent makes written admission of the charges and also makes a written request for a hearing on the penalty to be imposed, the CRO shall promptly order a hearing be conducted pursuant to the procedures set forth in Article 12, Rule 5 that would be limited to such matters as are in extenuation or aggravation of the circumstances or as shall have material bearing on the penalty only. Under the Rule, the Respondent and the staff who investigated the charges shall be given an opportunity to be heard at such hearing conducted for the purpose of determining the penalty. A written notice of the result shall be served upon the Respondent in a manner provided by Rule 1(c) of this Article. Any penalty imposed under this paragraph may be reviewed pursuant to Rule 6 of this Article.

Article 12, Rule 4 (Hearing Procedure)

Article 12, Rule 4 sets forth hearing procedures.

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

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

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

Subsection (c)(2) provides that any party may request production of all or some of the documents⁷ that its adversary intends to introduce as evidence either in support of or

⁷ For purposes of Article 12, Rule 4(c), the term “documents” means a writing,

to counter the charges. Production requests for some of the documents to be introduced as evidence must reasonably specify which documents are to be produced, and the party making the request shall do so at least 45 days prior to the hearing and be responsible for paying all reasonable costs associated with the production of such documents.

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

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

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

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

drawing, graph, report, table, chart, photograph, video or audio recording, or any other data compilation, including data stored by computer, from which information can be obtained.

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

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

perceived conflict of interest, and any other relevant factors.

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

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

Article 12, Rule 4(g) governs a Respondent's right to counsel. Under Article 12, Rule 4(g), Respondent shall have the right to be represented by legal or other counsel at the Respondent's own expense except in the case of summary procedure under Article 12, Rule 2(a), Rule 3 or Rule 4(a), and under the Minor Rules Violation Plan ("MRVP") of Article 12, Rule 8.⁸ The rule also provides that preparation of the charges and the

⁸ Article 12, Rule 4(g) mistakenly refers to the MRVP as being in Article 12, Rule

presentation of evidence in support of charges is the responsibility of the Market Regulation Department and that Exchange counsel shall be counsel to the Hearing Officer. Pursuant to Article 12, Rule 4(g), Exchange counsel must not be an employee in the Market Regulation Department and must not have directly participated in any examination, investigation or decision associated with the initiation or conduct of the particular proceeding.

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

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

9 which, as noted below, is marked "Reserved." See note 12, infra.

remove himself or herself and request the CEO to reassign the hearing to another Hearing Officer. If the Hearing Officer determines that the Respondent's grounds for disqualification are insufficient, the Hearing Office must deny the Respondent's motion for disqualification by setting forth the reasons for the denial in writing. The Hearing Officer will thereupon proceed with the hearing. Ruling by the Hearing Officer on motions to disqualify are not subject to interlocutory review.

Article 12, Rule 5 (Review)

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

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

Under Article 12, Rule 5(a), a Respondent has 15 days from the date of service of notice of a penalty imposed under Article 12, Rule 2(b), Rule 4(b) or Rule 5 to demand a review of the penalty imposed. The Exchange in turn has 15 days from the date of

service of notice of an Order under Article 12, Rule 2(b), Rule 4(b)⁹ or Rule 5 containing a decision with a finding that the Respondent did not commit any of the violations as alleged in the charging document or imposing a penalty that Exchange staff deems inadequate to demand a review thereof.

Demand for review shall be made in writing and filed with the Secretary, with copies to the opposing party. In the event no request for review is filed within 15 days after the parties are notified of the Hearing Officer's determination, such determination becomes final and conclusive.

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

Under Article 12, Rule 5(a), both the Respondent and the Exchange staff have the right to file memoranda (not to exceed 25 pages, inclusive of attachments). The appellant must file its memorandum with the Secretary within 45 days of service of the notice of

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

appeal, or within such other time as directed by the Executive Committee. The appellee must file its memorandum within 30 days of the filing of the appellant's memorandum, or within such other time as directed by the Executive Committee. In its sole discretion, the Judiciary Committee may hear oral argument by the parties. The decision of the Judiciary Committee must be in writing and address the principal arguments forwarded by the appellant and appellee. The decision of the Judiciary Committee will be the final decision of the Exchange, except as provided in Article 12, Rule 5(b), described below.

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

Article 12, Rule 6 (Effective Date of Judgment)

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

Article 12, Rule 7 (Disciplinary Jurisdiction)

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

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

Subsection (b) of Article 12, Rule 7 provides that any Participant or person associated with a Participant shall continue to be subject to the disciplinary jurisdiction of the Exchange following such person's termination of their Trading Permit or association

with a Participant with respect to any matter that occurred prior to such termination; provided that written notice of the commencement of an inquiry into such matters is given by the Exchange to such former Participant or Associated Person within one year of receipt by the Exchange of written notice of the termination of such person's status as a Participant or person associated with a Participant.

Rule 8 (Minor Rule Violations)

Article 12, Rule 8 sets forth the Exchange's MRVP.¹⁰ Under Article 12, Rule 8, in lieu of commencing a "disciplinary proceeding" as that term is used in Article 12 of the Exchange's rules, the Exchange may, subject to the requirements set forth in this

¹⁰ The Exchange adopted its current MRVP in 1996. See Securities Exchange Act Release No. 37255 (May 30, 1996), 61 FR 28918 (June 6, 1996) (SR-CHX-95-25) (Order). The original procedure authorizing the Exchange, in lieu of commencing disciplinary proceeding, to impose a fine, not to exceed \$2,500, on any member, member organization, associated person or registered or nonregistered employee of a member or member organization for any violation of an Exchange rule which the Exchange determines to be minor in nature was contained in Article 12, Rule 9, now Article 12, Rule 8. The recommended dollar amounts for the first, second, third and subsequent violations, as calculated on a twelve-month rolling basis, of a rule designated as a minor rule violation was contained in a separate Recommended Fine Schedule in the Fee Schedule. See id., 61 FR at 28918-19 & n. 10.

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

Rule, impose a censure or fine, not to exceed \$5,000,¹¹ on any Participant, Associated Person, or registered or non-registered employee of a Participant, for any violation of a rule of the Exchange, which violation the Exchange shall have determined is minor in nature.¹² For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6.6800 Series, the Exchange may impose a minor rule violation fine of up to \$2,500. For more serious violations, other disciplinary action may be sought.

Any censure or fine imposed pursuant to Article 12, Rule 8 and not contested shall not be publicly reported, except as may be required by Rule 19d-1 under the Act, and as may be required by any other regulatory authority. Any censure or fine that is contested may be publicly reported to the same extent that Exchange disciplinary proceedings may be publicly reported. Any fine imposed pursuant to Article 12, Rule 8 that (1) does not exceed \$2,500 and (2) is not contested, shall be reported by the Exchange to the Securities and Exchange Commission on a periodic, rather than a current, basis, except as may otherwise be required by

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

Under Article 12, Rule 8(c), in any action taken by the Exchange pursuant to the rule, the person against whom a censure or fine is imposed shall be served as provided in

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

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

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

Under Article 12, Rule 8(e), any person censured or fined pursuant to the rule may contest such censure or fine by filing with the Secretary a written response meeting the requirements of an Answer as provided in Article 12, Rule 4(b) no later than the date by which such determination must be contested. The Secretary may deny the answer if such answer is untimely or the answer fails to meet the standards of Article 12, Rule 4(b). If the Secretary denies the answer without leave to amend and refile, the sanction imposed by the Exchange pursuant to Article 12, Rule 8(b) shall become final and the censure shall be imposed and/or fine become due and payable. Unless denied by the

Secretary, an answer filed by Respondent is deemed accepted, at which point the matter shall become a “Disciplinary Proceeding” subject to the provisions of Article 12 applicable to disciplinary proceedings.

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

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

Rule 10 (Pending Proceedings)¹³

Article 12, Rule 10 provides that the Exchange will report to the Central Registration Depository (“CRD”) the initiation of, and all significant changes in the

¹³ Article 12, Rule 9 is marked “Reserved.”

status of, a formal disciplinary proceeding. For purposes of this rule, significant changes in the status of a pending formal disciplinary proceeding include, but are not limited to, issuance of a decision by the Hearing Officer the filing of an appeal to and/or the issuance of a decision by a Judiciary Committee or the Exchange's Board.

Article 13 (Suspension - Reinstatement)

Article 13 addresses suspensions, and reinstatements.

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

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

- failed to perform his or its contracts or is insolvent or is in such financial or operational condition or otherwise conducting his or its business in such a manner that he or it cannot be permitted to continue in business with safety to his or its customers or creditors or to the Exchange, including but not limited to, the reasonable belief that the Participant is violating and will continue to violate any provision of the Rules of the Exchange, the

federal securities laws (or rules promulgated thereunder) or any condition or restriction imposed pursuant to the provisions of Article 7, Rule 3(d) or Article 7, Rule 8(a) (Article 13, Rule 2(a)(1)(A)); or

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

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

Unless the CRO determines after further inquiry that lifting the suspension, revocation, limitation or prohibition without further proceedings is appropriate, such suspension, limitation, revocation or prohibition shall continue until the Participant

Firm's Trading Permit, such Participant's registration or the access of the associated person is reinstated or terminated pursuant to the provisions of Article 13, Rule 3 or unless otherwise determined pursuant to Article 13, Rule 2(b).

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

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

Article 13, Rule 2(b) governs appeals of CRO action under Article 13, Rule 2(a). Subsection (b) provides that, in the event the CRO takes any action pursuant to Article 13, Rule 2(a), any person named in such action shall have the right to appeal. Appeals pursuant to Article 13, Rule 2(b) shall be made by filing a written notice of appeal with the secretary of the Exchange within five days after notification of the action. The notice shall state with particularity the action complained of, the appellant's reasons for taking exception to the decision and the relief sought. Appeals filed under Article 13, Rule 2(b) are considered and decided by a panel appointed by the Board, composed of three Board members, at least two of whom shall be public members of the Board. No member of

such panel shall have any direct or indirect interest in the matter presented before them which might preclude such member from rendering an objective and impartial determination. All appeals heard pursuant to Article 13, Rule 2(b) are expedited to the maximum extent possible and, in any event, shall be heard within ten days. Appellants are notified of the composition of the panel and the time, place and date when the panel will meet. Written materials in support of the appeal or requests to make an oral presentation shall be filed with the panel prior to the date when the panel will meet. The panel will grant requests for oral presentation. After consideration of the appeal, the panel shall, by vote of a majority of its members, affirm, reverse, or modify the action upon which the appeal was made. All decisions by the panel are final.

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

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

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

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

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

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

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

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

Under Article 13, Rule 4(d), in the event the applicant does not receive two-thirds vote, he or it shall have the right to a hearing before the Executive Committee, conducted in accordance with procedures set forth in a notice of such hearing to be given to the

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

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

Proposed Rule Change

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

Unless otherwise specified below, the individual rules in the proposed Rule 10.8000 Series and Rule 10.9000 Series are based on the individual rules of the

counterpart NYSE Arca Rule 10.8000 and 10.9000 Series without any differences, except that the Exchange would:

- describe its own transition process in Article 12, Rule 10 and in proposed Rules 10.8001, 10.8130(d), and 10.9001 as well as for Article 13, which governs suspension and reinstatement;
- use the terms “Participant” and “Participant Firm,” together or separately, as applicable, rather than “ETP Holder,” “OTP Holder” and “OTP Firm,” consistent with the Exchange’s other rules;
- define “covered person” in proposed Rule 10.9120 to mean an Associated Person¹⁴ and any other person subject to the jurisdiction of the Exchange. The NYSE Arca rule is similar except for the reference to Approved Persons, a registration category that has no direct analogue on the Exchange;
- not utilize Floor-Based Panelists referenced in NYSE Arca Rules 9120(q), 9212(a)(2)(B), 9221(a)(3), 9231(b)(2) and (c)(2), and 9232(c) because the Exchange does not have a trading floor;
- retain the text of the Exchange’s currently applicable list of minor rule violations in proposed Rule 10.9217, move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and make certain corrections and additions;¹⁵

¹⁴ See Article 1, Rule 1(d). See also *id.* at (d) & note 7, *supra*.

¹⁵ The Exchange has filed a separate notice and comment filing to adopt proposed Rules 9216(b) and 9217 and to move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and make certain amendments and corrections. See SR-NYSECHX-2022-08. These rules relating

- adopt substantially the same appellate and call for review processes as its affiliate NYSE Arca except that the Exchange will not be adopting appeals panels as provided for in NYSE Arca Rule 3.3 (Board Committees) and NYSE Arca Rule 10.9310(b). NYSE Arca retained appeals panels from its legacy disciplinary rules. The Exchange does not have a similar current process; and
- make certain other technical and conforming changes as described below and herein.

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

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

to minor rule violations would not be operative until approval of the Exchange’s companion rule filing.

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

appellate body reviewing disciplinary decisions on behalf of the Board under the proposed disciplinary rules.

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

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

Transition

Once the proposed rule change is effective, the Exchange intends to announce by Information Memorandum with at least 30 days advance notice the effective date of the new rules.¹⁷ To further facilitate an orderly transition from the current rules to the new

¹⁷ The proposed Information Memorandum would be substantially the same as that

rules, the Exchange proposes that matters already initiated under the current rules would be completed under such rules. The proposed transition is substantially the same as the NYSE Arca transition to its Rule 10.8000 and 10.9000 Series.

Specifically, the Exchange proposes that current Article 12, whose coverage overlaps the proposed Rule 10.8000 and Rule 10.9000 Series, would continue to apply to an investigation or proceeding instituted under Article 12, Rule 1 prior to the effective date of the new rules and would continue to apply until such proceeding was final. Article 12 would also continue to apply to any Participant, Participant Firm or person associated with a Participant or Participant Firm over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry pursuant to Article 12, Rule 7(b) prior to the effective date of the new rules. In all other cases, the proposed Rule 10.8000 and Rule 10.9000 Series, as described below, would apply.

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

As described above, Article 13, Rule 1 governs automatic suspensions by the CEO of the Exchange of Participants for failure to perform its contracts or being

published for NYSE Arca. See NYSE Arca Equities RB-19-060 NYSE Arca Options RB-19-02 (April 26, 2019).

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

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

Jurisdiction

The Exchange proposes a new Rule 2.0 titled “Disciplinary Jurisdiction” based on current Article 12, Rule 7, which describes the Exchange’s current disciplinary jurisdiction.¹⁸ Proposed Rule 2.0(a) would be substantially the same as current Article 12, Rule 7(a) except that the Exchange would:

- add “Participant Firm” to the first sentence of the proposed rule to explicitly include such firms and persons associated with Participant Firms within the scope of the Exchange’s jurisdiction;
- include the phrase “or any other person or organization subject to the jurisdiction of the Exchange” in that same first sentence of the proposed rule consistent with current Article 12, Rule 1 and in order to explicitly

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

include such persons or organizations within the scope of the Exchange's jurisdiction;

- omit the reference to “constitutional provisions” from the list of potential violations as moot since the Exchange no longer has a Constitution;
- conform the potential sanctions with NYSE Arca's Rule 2.0(a), that exchange's comparable jurisdiction rule;
- replace the reference to “these Rules” with “the Rule 10.8000 and 10.9000 Series” to add clarity and transparency;
- add the following sentence from NYSE Arca Rule 2.0 in order to harmonize the Exchange's rules with that of its affiliates and clarify the scope of the Exchange's disciplinary jurisdiction: “A Participant or Participant Firm may be charged with any violation committed by its employees or other person associated with such Participant or Participant Firm, as though such violation were its own.”

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

Proposed Rule 2.0(c) would be based on NYSE Arca Rule 2.0(c). The proposed rule would provide that the Board may authorize any officer, on behalf of the Exchange, subject to the approval of the Board, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the

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

As proposed, Rule 2.0 would set forth the scope of the Exchange's disciplinary jurisdiction under the Rule 10.8000 and 10.9000 Series. As discussed below, proposed Rule 10.8130 would address the Exchange's retention of jurisdiction, and would enable the Exchange to generally retain jurisdiction to file a complaint against a Participant, Participant Firm or a covered person for two years after such status was terminated. Current Article 12 would continue to apply to any Participant, Participant Firm or covered person over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry under Article 12, Rule 7(b) prior to the effective date.

To continue the current coverage of the Exchange's disciplinary rules, the proposed rule change would use the terms "Participant," "Participant Firm" and "covered person," which would be defined in proposed in Rule 10.9120 to mean an Associated

Person¹⁹ and any other person subject to the jurisdiction of the Exchange, to describe the persons to which the proposed Rule 10.8000 and 10.9000 Series apply. The NYSE Arca rule is similar except for the reference to Approved Persons, a registration category that has no direct analogue on the Exchange.

Proposed Rule 10.8000 Series

The Proposed Rule 10.8000 Series would address Investigations and Sanctions.

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

The text of NYSE Arca Rules 10.8110 through 10.8330 would be adopted as Rules 10.8110 through 10.8330 with proposed changes to reflect the Exchange's membership and to update the cross-references in proposed Rule 10.8130(b)(1) to the rules governing termination of registration (Article 6, Rule 2; Article 16, Rule 1; and Article 17, Rule 1). Proposed Rule 10.8100 (General Provisions) would include proposed Rules 10.8110 through 10.8130.²⁰

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

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

²⁰ NYSE Arca Rules 10.8212, 10.8213, and 10.8312 are marked "Reserved" in the NYSE Arca's rulebook. As such, to maintain consistency with NYSE Arca's rule numbering, the Exchange has designated proposed Rules 10.8212, 10.8213, and 10.8312 as "Reserved."

Exchange's website.²¹

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

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

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

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

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

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

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

if the Exchange requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange pursuant to Article 6, Rule 9(c). The requirements of current Article 6, Rule 9(b) shall apply regardless of whether the Exchange has itself initiated a formal investigation or disciplinary proceeding.

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

Finally, proposed Rule 10.8210(a) would provide that, in performing the functions of investigation, complaint, examination, or proceeding authorized by Exchange rules, the CRO and Regulatory Staff would function independently of the commercial interests of the Exchange and the commercial interests of Participants and Participant Firms. The proposed rule would further provide that no member of the Board or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding, to proposed Rule 10.8210(a). The proposed language is based on NYSE Arca Rule 10.8210(a) with no

substantive changes. The Exchange does not have a comparable rule and believes that adopting the proposed rule is appropriate because it will harmonize the Exchange's rule with NYSE Arca's rule in the important area of regulatory independence.²²

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

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

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

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

transmitting the notice to the last known business address of the Participant or Participant Firm as reflected in CRD. With respect to a person subject to the Exchange's jurisdiction who was formerly associated with a Participant or Participant Firm in an unregistered capacity, a notice under the proposed Rule would be deemed received by the person upon personal service, as set forth in Rule 10.9134(a)(1).

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

Current Article 12, Rule 1(c) governs service of charges, orders, notices or any instrument on Respondents and provides that these may be served upon a Participant, Associated Person thereof or any other person or organization subject to the jurisdiction of the Exchange (defined as the "Respondent") either personally or by leaving same at his

or its place of business during office hours or by deposit in the United States post office, postage prepaid via registered or certified mail with return receipt requested, addressed to the Respondent at the last business address given by the Respondent to the Exchange. The changes to proposed Rule 10.8210(d) would harmonize service of process across affiliated exchanges.

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

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

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

Commentary .01 to proposed Rule 10.8210 would require Participants, Participant Firms or covered persons to provide Exchange staff and adjudicators with requested books, records and accounts. In specifying the books, records and accounts "'of such Participant or covered person,'" proposed paragraph (a) of the rule refers to books, records and accounts that the broker-dealer or its covered persons makes or keeps relating

to its operation as a broker-dealer or relating to the person's association with the Participant or Participant Firm. This includes but is not limited to records relating to an Exchange investigation of outside business activities, private securities transactions or possible violations of just and equitable principles of trade, as well as other Exchange rules and the federal securities laws. It does not ordinarily include books and records that are in the possession, custody or control of a Participant, Participant Firm or covered person, but whose bona fide ownership is held by an independent third party and the records are unrelated to the business of the Participant, Participant Firm or covered person. The rule would require, however, that a Participant, Participant Firm or covered person must make available its books, records or accounts when these books, records or accounts are in the possession of another person or entity, such as a professional service provider, but the a Participant, Participant Firm or covered person controls or has a right to demand them. The Exchange's current rules do not contain comparable provisions. The Exchange believes that the additional specificity would provide better notice to persons subject to its jurisdiction.

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

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

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

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

Proposed Rule 10.8311 (Effect of a Suspension, Revocation, Cancellation, Bar or Other Disqualification) would provide in subsection (a) that if a person is subject to a suspension, revocation, or cancellation of registration, bar from association with a Participant or Participant Firm or other disqualification, a Participant or Participant Firm shall not allow such person to be associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity. The proposed rule further provides that a Participant or Participant Firm shall

not pay or credit to any person subject to a sanction or disqualification, during the period of the sanction or disqualification or any period thereafter, any salary, commission, profit, or any other remuneration that the person might accrue during the period of the sanction or disqualification. However, a Participant or Participant Firm may make payments or credits to a person subject to a sanction that are consistent with the scope of activities permitted under the sanction where the sanction solely limits a covered person from conducting specified activities (such as a suspension from acting in a principal capacity) or a disqualified person has been approved (or is otherwise permitted pursuant to Exchange rules and the federal securities laws) to associate with a Participant or Participant Firm.

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

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

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

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

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

Proposed Rule 10.8320(b) and (c) would permit the Exchange, after seven days' notice in writing, to summarily suspend or expel from membership a Participant or Participant Firm or revoke the registration of a covered person for failure to pay a fine or other monetary sanction imposed pursuant to proposed Rule 10.8310 or a cost imposed pursuant to proposed Rule 10.8330 when such fine, monetary sanction, or cost becomes finally due and payable. As noted above, under current Article 7, Rule 12, a Participant or Participant Firm can be suspended for failing to pay a fine within 60 days, after written notice, until payment is made. If payment is not made within six months after such suspension, the Participant's status as a Participant may be terminated by the CEO on at least 10 days' written notice mailed to the Participant or Participant Firm at the address last registered with the Exchange. As NYSE Arca explained in connection with its Rule

10.8320, FINRA's rules do not set forth a notice period but, as a matter of practice, FINRA typically provides a respondent at least 30 days to pay a fine after the conclusion of a proceeding. As NYSE Arca reasoned, a 30-day period, along with the seven days' notice provided under Rule 10.8320, provides respondents with an adequate amount of time to pay a fine and avoid any further sanction by the Exchange.²³ The Exchange proposes to follow the same reasoning for its proposed Rule 10.8320.

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

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

Proposed Rule 10.9000 Series

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

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

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

Proposed Rules 10.9001 through 10.9120

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

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

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

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

Proposed Rules 10.9130 through 10.9138

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

Proposed Rule 10.9131 (Service of Complaint) would set forth the requirements for serving a complaint or document initiating a proceeding. Proposed Rule 10.9132 (Service of Orders, Notices, and Decisions by Adjudicator) would cover the service of orders, notices, and decisions by an Adjudicator. Proposed Rule 10.9133 (Service of Papers Other Than Complaints, Orders, Notices, or Decisions) would govern the service of papers other than complaints, orders, notices, or decisions. Proposed Rule 10.9134 (Methods of, Procedures for Service) would describe the methods of service and the procedures for service. Proposed Rule 10.9135 (Filing of Papers with Adjudicator: Procedure) would set forth the procedure for filing papers with an Adjudicator. Proposed Rule 10.9136 (Filing of Papers: Form) would govern the form of papers filed in connection with any proceeding under the proposed Rule 10.9200 and 10.9300 Series. Proposed Rule 10.9137 (Filing of Papers: Signature Requirement and Effect) would state

the requirements for and the effect of a signature in connection with the filing of papers. Finally, proposed Rule 10.9138 (Computation of Time) would establish the computation of time.

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

Similarly, under proposed Rule 10.9134, papers served on an entity would be required to be made by service on an officer, a partner of a partnership, a managing or general agent, a contact employee as set forth on Form BD, or any other agent authorized by appointment or by law to accept service. Such papers would be required to be served

at the entity's business address as reflected in CRD, if applicable; provided, however, that when the Party or other person responsible for serving such entity had actual knowledge that an entity's CRD address was out of date, duplicate copies would be required to be served at the entity's last known address. If an entity were represented by counsel or a representative, papers served on such entity, excluding a complaint or document initiating a proceeding, would be required to be served on such counsel or representative.

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

Proposed Rules 10.9140 through 10.9148

Proposed Rule 10.9140 (Proceedings) would contain various rules relating to the conduct of disciplinary proceedings.

Proposed Rule 10.9141 (Appearance and Practice; Notice of Appearance) would govern appearances in a proceeding, notices of appearance, and representation. Proposed Rule 10.9141 would permit a Respondent to represent himself or herself, or be represented by an attorney at law admitted to practice before the highest court of any

state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States. The proposed rule also permits a partnership to be represented by a partner and a corporation, trust, or association to be represented by an officer of such entity. Proposed Rule 10.9141 requires an attorney or representative to file a notice of appearance. Current Article 12, Rule 4(g) is more general; it permits a Respondent to be represented by counsel but do not require a notice of appearance.

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

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

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

Under proposed Rule 10.9143(c), upon receipt of a prohibited communication made or knowingly caused to be made by any Party, any counsel or representative to a Party, or any Interested Staff, the Exchange or an Adjudicator may order the Party responsible for the communication, or the Party who may benefit from the ex parte

communication made, to show cause why the Party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by reason of such ex parte communication. All participants in a proceeding could respond to any allegations or contentions contained in a prohibited ex parte communication placed in the record, and such responses would be placed in the record.

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

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

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

Proposed Rule 10.9145 (Rules of Evidence; Official Notice) would provide that formal rules of evidence would not apply in any proceeding brought under the proposed Rule 10.9000 Series. The proposed rule would also provide that in a proceeding governed by the Rule 10.9000 Series, an Adjudicator may take official notice of such matters as might be judicially noticed by a court, or of other matters within the specialized knowledge of the Exchange as an expert body, and that before an Adjudicator

proposes to take official notice of a matter, it shall permit a Party the opportunity to oppose or otherwise comment upon the proposal to take official notice. Current Article 12, Rule 4(d) also provides that formal rules of evidence do not apply. The Exchange's rules do not currently contain a comparable provision to proposed Rule 10.9145(b) governing official notice.

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

Proposed Rule 10.9147 (Rulings On Procedural Matters) would provide that Adjudicators may rule on procedural matters. The Exchange does not have a comparable rule. Current Article 12, Rule 4 provides that a Hearing Officer is appointed for the purpose of conducting a hearing and describes the conduct of a hearing but does not

contain an explicit statement regarding the Hearing Officer's full authority to rule on a procedural motion and any other procedural or administrative matter arising during the course of a proceeding.

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

Proposed Rules 10.9150 through 10.9222

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

Proposed Rule 10.9160 (Recusal or Disqualification)

Proposed Rule 10.9160 would provide that no person may act as an Adjudicator if he or she has a conflict of interest or bias, or circumstances exist where his or her fairness could reasonably be questioned. In such case, the person must recuse himself or herself, or may be disqualified. The proposed rule would cover the recusal or disqualification of an Adjudicator, the Chair of the Board, or a Director. Disqualification of a Director or the Chair of the Board would be governed by proposed Rule 10.9160(a). Disqualification of a Panelist would be governed by Rule 10.9234 while disqualification of a Hearing Officer would be governed by Rule 10.9233.²⁵ The Exchange currently does not have a strictly comparable rule. Article 12, Rule 4(h) requires a Hearing Officer to function

²⁵ See proposed Rules 10.9160(e) & (f).

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

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

Proposed Rules 10.9200 through 10.9217

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

Proposed Rule 10.9212 (Complaint Issuance – Requirements, Service, Amendment, Withdrawal, and Docketing) would set forth the requirements of the complaint, amendments to the complaint, withdrawal of the complaint, and service of the complaint. The proposed rule also requires the Office of Hearing Officers to promptly record each complaint filed with it in the Exchange's disciplinary proceeding docket, and record in the disciplinary proceeding docket each event, filing, and change in the status of a disciplinary proceeding. Current Article 12, Rule 1(b) does not contain a comparable detail. Further, under the proposed rule, the form of the complaint would be more prescribed than under current Article 12, Rule 1(b). For example, current Article 12, Rule 1(b) does not provide for withdrawal of a complaint.

Proposed Rule 10.9213 (Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel) would provide for the appointment of a Hearing Officer and Panelists by the Chief Hearing Officer. As defined in proposed Rule 10.9120(r), “Hearing Officer” means a FINRA employee who is an attorney and who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 10.9200 Series regarding disciplinary proceedings, the Rule 10.9550 Series regarding expedited proceedings, and the Rule 10.9800 Series regarding temporary cease and desist proceedings brought against Participants, Participant Firms and covered persons. Under current Article 12, Rule 4(a), the CEO appoints a hearing officer to hear the matter. Although Article 12, Rule 4(e) describes the vetting process for Hearing Officers under the current rules, they are appointed by the CEO that includes an assessment of professional competence and reputation, experience in the securities industry, familiarity

with the subject matter involved, and the absence of bias and any actual or perceived conflict of interest, among other things, there is no requirement that the Hearing Officer be an attorney. The Exchange's current process also does not provide for the appointment of panelists to adjudicate a disciplinary matter. The Exchange believes that the participation of professional Hearing Officers, which is a long-standing practice of other SROs, would add legal and administrative expertise to the disciplinary process, and would enhance the dispassionate application of the rules, promote fairness in the disciplinary process, and help ensure that complex or contentious cases are managed effectively.²⁶ The use of Panelists would help to ensure that market expertise and judgment would continue to be brought to bear on the disciplinary process.²⁷

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

Proposed Rule 10.9215 (Answer to Complaint) would set forth requirements for answering a complaint, including form, service, notice, content, affirmative defenses, motions for a more definite statement, amendments and extensions of time to answer amended complaints, default, and timing. A written answer to charges under current Article 12, Rule 4(b) is due 30 days after service of the Compliant, while under the proposed rule it would be due 25 days after service. The proposed rule also allows for an extension of time for good cause shown, while the current rule provides that the time to

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

²⁷ See id. & discussion of proposed Rule 10.9232, infra.

answer can be extended by such further time as the Hearing Officer may grant. Both the current and proposed rules treat charges as admitted if no answer is filed, but the proposed rule would require that the Respondent receive a second notice concerning the consequences of failing to answer.

Minor Rule Fines and Process

As noted above, the Exchange has filed a separate notice and comment filing to adopt proposed Rules 9216(b) and 9217 and move the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217.²⁸ The rules relating to minor rule violations described herein would not be operative until approval of the Exchange's companion rule filing.

Proposed Rule 10.9216(a)

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

The CRO would be authorized to accept or reject an AWC. If the AWC were accepted by the CRO, it would be deemed final and constitute the complaint, answer and decision in the matter 10 days after the AWC is sent to each Exchange Director and each member of the CFR, unless review by the Board is requested pursuant to proposed Rule

²⁸ See SR-NYSECHX-2022-08.

²⁹ Proposed Rule 10.9270 would address settlement procedures after the issuance of a complaint.

10.9310(a)(1)(B)(i).³⁰ If the AWC were rejected by the CRO, the Exchange would be permitted to take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter were rejected, the Participant, Participant Firm or covered person would not be prejudiced by the execution of the AWC and such document could not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding. Under proposed Rule 10.9310(a)(1)(B)(ii) discussed below, any Party may require a review by the Exchange Board of any rejection by the CRO of an AWC letter under Rule 10.9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within 25 days after notification pursuant to Rule 10.9216(a)(3) or Rule 10.9270(h).

The Exchange notes that the AWC process is substantially similar to the Exchange's current process for settlements prior to a hearing on the merits under Article 12, Rule 1(d). The Exchange believes that the proposed process provides appropriate controls to assure consistency and protect against aberrant settlements. Specifically, the CRO would be reviewing all proposed AWCs. The Exchange believes that when both

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

Parties to a proceeding agree to a settlement, a review by the CRO would be sufficient and it is not necessary to bring such matters to an Adjudicator. The Exchange believes that the CRO can provide objectivity and an appropriate check and balance to the settlement process, particularly in light of the call for review process set forth in proposed Rule 10.9310.

Proposed Rule 10.9216(b)

As set forth in the companion notice and comment filing to adopt proposed Rules 9216(b) and 9217,³¹ subsection (b) of proposed Rule 10.9216 (Acceptance, Waiver, and Consent; Procedure for Imposition of Fines for Minor Violation(s) of Rules) would set forth the procedure for the imposition of fine for minor rule violations under the Exchange's new disciplinary rules based on NYSE Arca Rule 10.9216(b).

Proposed Rule 10.9216(b)(1) would provide that, notwithstanding proposed Rule 10.9211, the Exchange may, subject to the requirements set forth in paragraphs (b)(2) through (b)(4), impose a fine in accordance with the fine amounts and fine levels set forth in proposed Rule 10.9217 and/or a censure on any Participant, Participant Firm or covered person with respect to any rule listed in Rule 10.9217. If Enforcement has reason to believe a violation has occurred and if the Participant, Participant Firm or covered person does not dispute the violation, Enforcement may prepare and request that the Participant, Participant Firm or covered person execute a minor rule violation letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such Participant's, Participant Firm's or covered person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of

³¹ See SR-NYSECHX-2022-08.

review by the Exchange Board of Directors (“Board”), the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter would describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed would be a date to be determined by Regulatory Staff.

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

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

³² Rule 10.9143 (Ex Parte Communications) would prohibit certain ex parte

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

Proposed Rule 10.9216(b)(3) would provide that if the Participant, Participant Firm or covered person executes the minor rule violation letter, it would be submitted to the CRO. The CRO, on behalf of the SRO Board, may accept or reject such letter.

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

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

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

communications. Proposed 10.9144 (Separation of Functions) would establish separation of functions and provide for waivers.

Arca Rule 10.9216(b).

Proposed Rule 10.9217

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

Proposed Rule 10.9217(a) would provide that any Participant, Participant Firm or covered person may be subject to a fine, not to exceed \$5,000,³⁴ under Rule 10.9216(b) with respect to any rules listed below and that the fine amounts and fine levels set forth below would apply to the fines imposed.

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

Proposed Rule 10.9217(c) would provide that any person or organization found in violation of a minor rule would not be required to report such violation on SEC Form BD or Form U-4 if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Subsection (c) would further provide that any fine imposed in excess of \$2,500 would be subject to current rather than quarterly reporting to the Commission pursuant to Rule 19d-1 under the Act.

Proposed Rule 10.9217(d) would provide that nothing in the proposed Rule would

³³ See SR-NYSECHX-2022-08.

³⁴ See note 10, supra.

require the Exchange to impose a fine for a violation of any rule under this Minor Rule Plan and that if the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed under the proposed Rule 10.9000 Series rather than under proposed Rule 10.9217.

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

Proposed Rule 10.9217(e) would be titled “Exchange Rules and Policies subject to a Minor Rule Violation” and would set forth the list of rules under which a Participant, Participant Firm or covered person may be subject to a fine under a minor rule violation letter as described in proposed Rule 10.9216(b). The Exchange would retain the list of rules currently set forth in Article 12, Rule 8(h) under the existing headings for “Reporting and Record Retention Violations” and “Minor Trading Rule Violations” with the following additions and changes.

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

Article 6, Rule 2 currently sets forth certain employee registration, approval and other exchange requirements. Specifically, Article 6, Rule 2(a) governs registration of representatives, as defined in Article 6, Rule 14(b)(1), with the Exchange and is currently eligible for a minor rule fine under Article 12, Rule 8(h). Article 6, Rule 2(b) provides for the registration of principals, as defined in Article 6, Rule 14(a)(1). The Exchange proposes that the registration requirements of principals set forth in Article 6, Rule 2(b)

be eligible for a minor rule fine. The proposed change would be consistent with the practice on the Exchange's affiliates whose comparable rule requiring the registration of principals is eligible for a minor rule fine.³⁵

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

Article 6, Rule 5(a) (Adherence to Law) provides that no Participant shall engage in conduct in violation of the Act, as amended, rules or regulations thereunder, the Bylaws or the Rules of the Exchange, or any written interpretation thereof and that every Participant is responsible for reasonably supervising its associated persons to prevent such violations. The requirement to reasonably supervise individuals to ensure compliance with applicable laws, rules and regulations, is currently eligible for minor rule fines in the rules of the Exchange's affiliate NYSE Arca.³⁶

Article 6, Rule 5(b) (Designation of persons with supervisory authority) provides that each Participant Firm must designate a principal executive officer, general partner or managing partner to hold overall authority and responsibility for the firm's internal supervision and compliance with securities laws and regulations. This designated

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

³⁶ See NYSE Arca Rule 11.18(a) (Supervision) and 10.9217(g)(8).

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

As noted, Article 12, Rule 8(h)(1)(N) of the Exchange's current minor rule plan makes failure to establish, maintain and enforce written supervisory procedures under Article 6, Rule 5(b) eligible for a minor rule fine. However, as described above Article 6, Rule 5(b) relates to the designation of persons with supervisory authority and not written supervisory procedures, which is governed by Article 6, Rule 5(c). In 2011, Article 12, Rule 8 was amended to include, among other things, new reporting and recordkeeping provisions, which included "written supervisory procedures (Article 6, Rule 5(b))."³⁸ At

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

³⁸ See Securities Exchange Act Release No. 64370 (April 29, 2011), 76 FR 25727, 25727 (May 5, 2011) (SR-CHX-2011-07) (Notice); Securities Exchange Act

the time, Article 6, Rule 5(b) was titled “Written supervisory procedures” and contained the text of current subsection (c). In 2013, the Exchange filed to amend Article 6, Rule 5. As part of that filing, subsection (a), which was titled “Designation of persons with supervisory authority,” became new subsection (b), and old subsection (b), which was titled “Written supervisory procedures,” became current subsection (c).³⁹ The Exchange did not, however, update Article 12, Rule 8 to reflect that Article 6, Rule 5(b) had become Article 6, Rule 5(c). The Exchange proposes to make that correction in the text of proposed Rule 10.9217(e)(15). The Exchange notes that the requirement to establish, maintain and enforce written procedures is also currently eligible for minor rule fines in the rules of the Exchange’s affiliate NYSE Arca.⁴⁰

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

- The Exchange would add a new sub-heading titled “Reporting and Record Retention Violations”⁴¹ that would set forth the corresponding fines for first, second and third and subsequent violations for the rules set forth

Release 64686 (June 16, 2011), 76 FR 36596 (June 22, 2011) (SR-CHX-2011-07) (Order). See generally note 10, supra.

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

⁴⁰ See NYSE Arca Rule 11.18(c) (Supervision) and 10.9217(g)(8).

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

under the heading “Reporting and Record Retention Violations” in proposed Rule 10.9217(e).

- The first 12 entries as well as entries 16 through 23 would be reproduced without change from the current Recommended Fine Schedule in the Fee Schedule.
- Item 13 would be “Registration and Approval of Participant Personnel (Article 6, Rule 2(a) & (b))”. The proposed first, second and third level fines for violations of Article 6, Rule 2(b) of \$250 for the first violation, \$750 for the second violation and \$1,500 for the third and subsequent violations would be the same as those in the Exchange’s current Recommended Fine Schedule in the Fee Schedule for violations of Article 6, Rule 2(a).
- Items 14 and 15 -- “Failure to Comply with Supervision Requirements (Article 6, Rule 5(a) & (b))” and “Written Supervisory Procedures (Article 6, Rule 5(c)),” respectively -- would be added to proposed Rule 10.9271(f) consistent with the changes to proposed Rule 10.9217(e)(14) and (15) described above. The proposed first, second and third level fines for violations of Article 6, Rule 5(a) and (b) in proposed Rule 10.9217(e)(14) and Article 6, Rule 5(c) in proposed Rule 10.9217(e)(15) would be \$500 for the first violation, \$1,000 for the second violation and \$2,500 for the third and subsequent violations. These fine levels would be the same as the current fines in the Recommended Fine Schedule in the Fee Schedule for violations of Article 6, Rule 5(b).

- Finally, item 24 would be “Consolidated Audit Compliance Rule (Rule 6.6800 Series).” The corresponding fine “Up to \$2,500.00” would be transposed from current Article 12, Rule 8 to new footnote ** following “Rule 6.6800 Series.”⁴² The Exchange would also add the current text from Article 12, Rule 8(a) providing that “For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6.6800 Series, the Exchange may impose a minor rule violation fine of up to \$2,500. For more serious violations, other disciplinary action may be sought” to new footnote **.
- The Exchange would add a new second sub-heading titled “Minor Trading Rule Violations” that would set forth the corresponding fines for first, second and third and subsequent violations for the 11 rules set forth under the heading “Minor Trading Rule Violations” in proposed Rule 10.9217(e), with the following changes and corrections:
 - The entry for “Failure to clear the Matching System (Article 20, Rule 7)” and corresponding fines would not be included. This rule was deleted from Article 12, Rule 8 8(h)(2)(F) in 2019 as part of the transition of trading on the Exchange to the Pillar trading platform but the Exchange inadvertently failed to update the

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

Recommended Fine Schedule in the Fee Schedule.⁴³

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

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

⁴⁴ See id.

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

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

Arca Rule 7.30-E.⁴⁷

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

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

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

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

Proposed Rule 10.9220 would set forth the following rules.

Proposed Rules 10.9221 (Request for Hearing) and 10.9222 (Extensions of Time, Postponements, and Adjournments) would describe the process for a Respondent to request a hearing; the notice of a hearing; timing considerations; and the authority of a

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

⁴⁸ See note 10, *supra*.

⁴⁹ See proposed Rule 10.9216(b)(4).

Hearing Officer, Hearing Panel or Extended Hearing Panel to order a hearing. Proposed Rule 10.9221 provides that a Hearing Officer generally must provide at least 28 days' notice of the hearing. Current Article 12, Rule 4 governing hearing procedures does not provide for a respondent to request a hearing. Rather, Article 12, Rule 4(d) provides that within 30 days of the filing of a respondent's answer, the Hearing Officer will schedule the time and place at which the Hearing shall be held. Similarly, current Article 12, Rule 4 also does not provide for extensions of time, postponements, and adjournments like proposed Rule 10.9222.

Proposed Rules 10.9230 through 10.9235

Proposed Rule 10.9231 (Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer) would govern appointment of a Hearing Panel or Extended Hearing Panel, and would also govern appointment of a replacement Hearing Officer and the designation of an observer to a Hearing Panel or an Extended Hearing Panel. As proposed, under proposed Rule 10.9231(a) the Exchange would rely on FINRA's Chief Hearing Officer to appoint a Hearing Panel or an Extended Hearing Panel to conduct disciplinary proceedings and issue a decision. The Chief Hearing Officer and the Hearing Officers would all be FINRA employees. Under proposed Rule 10.9231(b), a Hearing Panel would be composed of a Hearing Officer and two Panelists, except as provided in paragraph (e) and in proposed Rule 10.9234(a), (c), (d), or (e). The Hearing Officer would serve as the chair of the Hearing Panel. The Chief Hearing Officer would appoint Panelists pursuant to the criteria in proposed Rule 10.9232.⁵⁰ The proposed procedure would differ from the

⁵⁰ NYSE Arca Rule 10.9231(b)(1) incorrectly states that the Hearing Officer would

current procedure under Article 12, Rule 4(e) where the Exchange CEO appoints a Hearing Officer to conduct a hearing but the rule does not provide for the appointment of a panelist.

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

Proposed Rule 10.9231(d) provides for the appointment of an observer. As proposed, a person who is qualified to serve as a Panelist may be designated by the Chief Hearing Officer to serve as an observer to a Hearing Panel or an Extended Hearing Panel. If the Chief Hearing Officer designates more than two people to serve as observers to a Hearing Panel or an Extended Hearing Panel, the Chief Hearing Officer would obtain the consent of the Parties. An observer may attend any hearing of a disciplinary proceeding

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

and observe the proceeding, but may not vote or participate in any other manner in the hearing or the deliberations of the Hearing Panel or the Extended Hearing Panel, or participate in the administration of the disciplinary proceeding.

Proposed Rule 10.9231(e) provides for the appointment of a replacement Hearing Officer. As proposed, in the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer shall appoint a replacement Hearing Officer. To ensure fairness to the parties and expedite completion of the proceeding when a replacement Hearing Officer is appointed after the hearing has commenced, the proposed Rule provides that a replacement Hearing Officer would have the discretion to (1) allow the Hearing Panelists to resolve the issues in the proceeding and issue a decision without the participation of the replacement Hearing Officer in the decision. The replacement Hearing Officer may advise the Hearing Panelists regarding legal issues, and shall exercise the powers of the Hearing Officer under Rule 10.9235(a), including preparing and signing the decision on behalf of the Hearing Panel, in accordance with Rule 10.9268; or (2) certify familiarity with the record and participate in the resolution of the issues in the case and in the issuance of the decision. In exercising this power, the replacement Hearing Officer may recall any witness before the Hearing Panel.

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

Proposed Rule 10.9232 (Criteria for Selection of Panelists and Replacement Panelists) would set forth the criteria for the selection of Panelists and Replacement

Panelists. Proposed Rule 10.9232 would be substantially the same as NYSE Arca Rule 10.9232. As is the case under the NYSE Arca Rule, Panelists would be required to be persons of integrity and judgment and, other than the Hearing Officer, would be a member of the Exchange hearing board. Moreover, at least one Panelist would be engaged in securities activities differing from that of the Respondent or, if retired, was so engaged in differing activities at the time of retirement. Proposed Rule 10.9232 would also provide that the Exchange Board would from time to time appoint a hearing board to be composed of such number of permit holders of the Exchange that are not members of the Exchange Board and registered employees and nonregistered employees of Participants and Participant Firms. In order to have the largest number of potential Panelists available, the proposed Rule would further provide that former Participants and registered and non-registered employees of Participants and Participant Firms who have retired from the securities industry may be appointed to the hearing board. The Exchange believes that there are well-qualified persons, in particular retirees, who would be valuable members of the hearing board. The members of the hearing board would also be appointed annually and would serve at the pleasure of the Exchange Board. As reflected in Article 12, Rule 4, Exchange hearings are currently conducted by a Hearing Officer appointed by the CEO acting alone.

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

similar provisions with respect to Hearing Officers appointed by the CEO.

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

Under proposed Rule 10.9233(a), if at any time a Hearing Officer determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Hearing Officer would notify the Chief Hearing Officer and the Chief Hearing Officer would issue and serve on the Parties a notice stating that the Hearing Officer has withdrawn from the matter. In the event that a Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer would appoint a replacement Hearing Officer. In such a case, the replacement Hearing Officer would proceed according to proposed Rule 10.9231(e).

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

Hearing Officer.

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

Proposed Rule 10.9234 sets forth similar procedures for the recusal of panelists on a Hearing Panel and Extended Hearing Panel. Under proposed Rule 10.9234(a), if at any time a Panelist of a Hearing Panel or an Extended Hearing Panel determines that he or she has a conflict of interest or bias or circumstances otherwise exist where his or her fairness might reasonably be questioned, the Panelist must notify the Hearing Officer and the Hearing Officer would issue and serve on the Parties a notice stating that the Panelist has withdrawn from the matter. In the event that a Panelist withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chief Hearing Officer may, in the exercise of discretion, determine whether to appoint a replacement Panelist. In the event that both Panelists withdraw, are incapacitated, or otherwise are unable to continue service after being appointed, the proposed Rule permits the Chief Hearing Officer to appoint two replacement Panelists.

Proposed Rule 10.9234(b) provides that a Party may file a motion to disqualify a Panelist of a Hearing Panel or an Extended Hearing Panel. Such a motion must be based upon a reasonable, good faith belief that a conflict of interest or bias exists or circumstances otherwise exist where the Panelist's fairness might reasonably be

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

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

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

Under proposed Rule 10.9234(e), if a Party files a motion to disqualify both

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

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

Current Article 12, Rule 4(h) does not address recusal of a Hearing Officer but does permit a party to move for disqualification of the Hearing Officer within 15 days of the appointment of the Hearing Officer based upon bias or conflict of interest. The proposed Rule is broader and permits recusal as well as motions for disqualification. Moreover, the proposed Rule permits motions for disqualification not later than 15 days after the later of (1) when the Party learned of the facts believed to constitute the disqualification, or (2) when the Party was notified of the assignment of the Hearing Officer or the appointment of the Panelist, respectively. The Exchange's current rule permits motions to disqualify based upon bias or conflict of interest within 15 days of the appointment of the Hearing Officer.

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

Proposed Rules 10.9240 through 10.9242

Proposed Rule 10.9240 would set forth the following rules.

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

Proposed Rules 10.9250 through 10.9253

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

Proposed Rule 10.9251 (Inspection and Copying of Documents in Possession of Staff) would require Enforcement to make available to a Respondent any documents prepared or obtained in connection with the investigation that led to the proceedings,

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

Under proposed Rule 10.9252 (Requests for Information), a Respondent could request that the Exchange invoke proposed Rule 10.8210 to compel the production of Documents or testimony at the hearing if the Respondent can show that certain standards are met, e.g., that the information sought is relevant, material, and non-cumulative. Under proposed Rule 10.9253 (Production of Witness Statements), a Respondent could file a motion to obtain certain witness statements. Current Article 12, Rule 4(c)(2) permits any party to request production of all or some of the documents that its adversary

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

Proposed Rules 10.9260 through 10.9269

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

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

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

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

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

Proposed Rule 10.9264 (Motion for Summary Disposition) would allow Parties to file a motion for summary disposition under certain circumstances and would describe

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

the procedures for filing and ruling on such motion. Under current Article 12, Rule 4, the Hearing Officer regulates the hearing, but the Rule does not specifically provide for motions for summary disposition.

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

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

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

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

the Chief Hearing Officer. Under current Article 12, Rule 4(f), a decision must be issued within 90 days after the conclusion of the hearing. The Exchange believes that the shorter period of time is appropriate to allow the Hearing Panel or Extended Hearing Panel adequate time to reach its decision and agree on the text of the decision and would not prejudice any Party.⁵²

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

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

Finally, proposed Rule 10.9269 (Default Decisions) would establish the process for the issuance and review of default decisions by a Hearing Officer when a Respondent

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

fails to timely answer a complaint or fails to appear at a pre-hearing conference or hearing where due notice has been provided. A Party may, for good cause shown, file a motion to set aside a default decision. Under Article 12, Rule 4(b), if a Respondent fails to file an answer within the required timeframe, the allegations of the charging document are deemed admitted and the Hearing Officer will hold a hearing to determine the appropriate sanctions. Under Article 12, Rule 5(a), a party can request review by the Judiciary Committee of such default decision. Proposed Rule 10.9269 would provide a robust process for the issuance and content of default decisions.

Proposed Rule 10.9270 (Settlement Procedure)

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

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

Under proposed Rule 10.9270(b), a Respondent making an offer of settlement would also be required to do so in conformity with the provisions of the proposed Rule

and would be prohibited from making a frivolous settlement offer or one that was inconsistent with the seriousness of the violations. Current Article 12, Rule 1(d) does not contain a similar prohibition.

Proposed Rule 10.9270(c) would provide that an offer of settlement shall be in writing and signed by the person making the offer, and, if the person is represented by counsel or a representative, signed also by the counsel or representative. Under the proposed Rule, the offer of settlement should contain in reasonable detail the required content of the proposal, which would include, among other things, a statement consenting to findings of fact and violations, a description of the proposed sanction and the effective date of any sanction(s) imposed, or a statement that the effective date of the sanction(s) will be a date to be determined by Regulatory Staff. Current Article 12, Rule 1(d) is not as detailed but specifies that the settlement agreement must admit jurisdiction and contain a proposed penalty that must be reasonable and consistent with the seriousness of the alleged violations.

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

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

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

As described below, if the offer of settlement were accepted by the CRO, Hearing Panel or Extended Hearing Panel, it would become final 10 days after being sent,

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

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

Proposed Rule 10.9270(g) would provide that the proceeding under the proposed rule would conclude as of the date the order of acceptance is final, and the order of acceptance would constitute final disciplinary action of the Exchange. The sanction would take effect as set forth in the order.

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

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

Proposed Rule 10.9280 (Contemptuous Conduct)

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

the retention of new counsel or selection of a new representative, and would set forth the criteria for determining whether to grant an adjournment and the length of an adjournment.

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

Proposed Rule 10.9290 (Expedited Disciplinary Proceedings)

Under proposed Rule 10.9290, for any disciplinary proceeding, the subject matter of which also is subject to a temporary cease and desist proceeding initiated pursuant to proposed Rule 10.9810 or a temporary cease and desist order, hearings would be required to be held and decisions rendered at the earliest possible time. The proposed Rule is identical to NYSE Arca Rule 10.9290. The Exchange does not currently have a similar rule.

Proposed Rule 10.9291 (Permanent Cease and Desist Orders) would govern the content, scope, form and delivery requirements of permanent cease and desist orders. Under proposed Rule 10.9291(a), when a decision issued under proposed Rule 10.9268 or proposed Rule 10.9269 or an order of acceptance issued under proposed Rule 10.9270 imposes a permanent cease and desist order, the decision shall: order a Respondent (and any successor of a Respondent, where the Respondent is a Participant or Participant Firm) to cease and desist permanently from violating a specific rule or statutory provision; set forth the violation; and describe in reasonable detail the act or acts the Respondent (and any successor of a Respondent, where the Respondent is a Participant or

Participant Firm) shall take or refrain from taking. The proposed Rule would also require Respondents that are a Participant or Participant Firm to deliver a copy of a permanent cease and desist order, within one business day of receiving it, to its covered persons. With the exception of conforming changes reflecting the Exchange's membership, the text of the proposed Rule is substantially same as NYSE Arca Rule 10.9291. The Exchange currently does not have a similar rule.

Proposed Rules 10.9300 through 10.9310

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

Proposed Rule 10.9310 (Review by Exchange Board of Directors) would provide for one review at the Board of Directors level, and discontinue the current practice under Article 12, Rule 5 whereby a decision by the Judiciary Committee is the final decision of the Exchange under subsection (a) except where the Board in its discretion determines to review a Judiciary Committee decision, as provided for in subsection (b). Under proposed Rule 10.9310(b), upon review, and with the advice of the CFR, the Board may, by the affirmative vote of a majority of the Board then in office, sustain any determination or penalty imposed, (including the terms of any permanent cease and desist order), or both, modify or reverse any such determination, and increase, decrease or eliminate any such penalty, or impose any penalty permitted under the Exchange's rules, as it deems appropriate. Unless the Board otherwise specifically directs, the determination and penalty, if any, of the Board after review shall be final and conclusive subject to the provisions for review of the Act. The Exchange believes that the proposed

appellate review process would be fair and efficient and harmonize the Exchange's appellate process with the process of the Exchange's affiliates who have adopted similar disciplinary rules.

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

Moreover, under proposed Rule 10.9310(a)(1)(A), a request for review would be made by filing with the Secretary a written request stating the basis and reasons for such review, within 25 days after notice of the determination and/or penalty was served upon the Respondent. However, any request for review of an offer of settlement determined to be uncontested after a hearing on the merits has begun under proposed Rule 10.9270(f) that has been accepted by a Hearing Panel or Extended Hearing Panel would be governed by Rule 10.9310(a)(1)(B)(i). The Secretary of the Exchange would give notice of any such request for review to the Parties.

Under proposed Rule 10.9310(a)(1)(B)(i), any Director and any member of the CFR could require a review by the Board of any determination or penalty, or both, imposed in connection with an AWC under Rule 10.9216 or an offer of settlement

determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), except for a determination or penalty concerning an Exchange affiliate as defined in Rule 12b-2 under the Act. Under the proposed rule, a request for review shall be made by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within 10 days after a letter of acceptance, waiver, and consent or an offer of settlement has been sent to each Director and each member of the CFR pursuant to proposed Rule 0.9216(a)(4) or Rule 10.9270(f)(3). The Secretary would give notice of any such request for review to the Parties.

Under proposed Rule 10.9310(a)(1)(B)(ii), any Party could require a review by the Exchange Board of any rejection by the CRO of a letter of acceptance, waiver, and consent under Rule 10.9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), except that no Party may request Board review of a rejection of an AWC or an offer of settlement concerning an Exchange affiliate as defined in Rule 12b-2 under the Act. As proposed, a request for review shall be made by filing with the Secretary a written request stating the basis and reasons for such review within 25 days after notification pursuant to proposed Rule 10.9216(a)(3) or Rule 10.9270(h) that a letter of acceptance, waiver, and consent, or an uncontested offer of settlement or an order of acceptance is not accepted by the CRO. The Secretary would provide notice of any such request for review to the Parties.

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

determinations.

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

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

Proposed Rule 10.9310(b) further provides that, upon review, and with the advice of the CFR, the Board, by the affirmative vote of a majority of the Exchange Board then in office, could sustain any determination or penalty imposed, (including the terms of any

permanent cease and desist order), or both, could modify or reverse any such determination, and could increase, decrease or eliminate any such penalty, or impose any penalty permitted under the Exchange's rules, as it deems appropriate. Unless the Board otherwise specifically directs, its determination and penalty, if any, after review shall be final and conclusive subject to the provisions for review of the Act.

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

Under proposed Rule 10.9310(c), notwithstanding the foregoing, if either Party upon review applied to the Exchange Board for leave to adduce additional evidence, and showed to the satisfaction of the Exchange Board that the additional evidence was material and that there were reasonable grounds for failure to adduce it before the Hearing Panel or Extended Hearing Panel, the Exchange Board could remand the case for further proceedings, in whatever manner and on whatever conditions the Exchange Board considered appropriate. Article 12, Rule 5 does not contain a remand provision.

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

Proposed Rules 10.9500 through 10.9527

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

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

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

Proposed Rule 10.9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) would govern the initiation of an eligibility proceeding by the Exchange and the obligation for a Participant or Participant Firm to file an application or, for matters set forth in proposed Rule 10.9522(e)(1), a written request for relief if the

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

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

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

prohibitions.

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

If a recommendation or supervisory plan is rejected, the Disqualified Person would be bound by the waivers made under proposed paragraph (a)(1) for conduct by

persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and would have the right to proceed under the proposed rule and proposed Rule 10.9524, as applicable.

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

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

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

Proposed Rules 10.9550 through 10.9559

Proposed Rules 10.9550 through 10.9559 would govern expedited proceedings.

Under proposed Rule 10.9551 (Failure to Comply with Public Communication Standards Pursuant to FINRA Rule 2210 as Incorporated by Reference in Rule 11.2210), Regulatory Staff could issue a written notice requiring a Participant or Participant Firm to file communications with FINRA's Advertising Regulation Department at least 10 days prior to use if the staff determined that the Participant or Participant Firm had departed from the standards of proposed Rule 11.2210 (Communications with the Public).⁵⁴ The notice would state the specific grounds and include the factual basis for the action as well as the effective date. The Participant or Participant Firm could file a written request for a hearing with the Office of Hearing Officers pursuant to proposed Rule 10.9559. A Participant or Participant Firm would be required to set forth with specificity any and all defenses to the action in its request for a hearing. Pursuant to proposed Rules 10.8310(a) and 10.9559(n), a Hearing Officer or, if applicable, Hearing Panel, could approve, modify or withdraw any and all sanctions or limitations imposed by the staff's notice, and impose any other fitting sanction. A Participant or Participant Firm subject to a pre-use filing requirement also could file a written request for modification or termination of the requirement. FINRA Rule 2210 proposed to be incorporated by reference in proposed Rule 11.2210 references the procedures in FINRA Rules 9551 and 9559, which are substantially the same as proposed Rules 10.9551 and 10.9559.

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

Under proposed Rule 10.9552 (Failure to Provide Information or Keep Information Current) would establish procedures in the event that a Participant, Participant Firm or covered person failed to provide any information, report, material, data, or testimony requested or required to be filed under the Exchange's rules, or failed to keep its membership application or supporting documents current. In the event of the foregoing, under proposed Rule 10.9552, the Participant, Participant Firm or covered person could be suspended if corrective action were not taken within 21 days after service of notice. A Participant, Participant Firm or covered person served with a notice could request a hearing within the 21-day period. A Participant, Participant Firm or covered person subject to a suspension could file a written request for termination of the suspension on the ground of full compliance. A Participant, Participant Firm or covered person suspended under the proposed rule that failed to request termination of the suspension within three months of issuance of the original notice of suspension would automatically be expelled or barred.⁵⁵ Proposed Rule 10.9552 is substantially the same as its NYSE Arca counterpart except for references reflecting the Exchange's membership. Under the Exchange's current rules, there is no procedure that relates to failure to keep a membership application or supporting documents current. Under current Article 6, Rule 9(a), a Participant or partner, officer, director or other person associated

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

with a Participant or other person or entity subject to the jurisdiction of the Exchange that fails to submit requested documents or information to the Exchange is subject to formal disciplinary action. The Exchange's current rules do not authorize an expedited proceeding against persons who fail to submit documents or information.

Proposed Rule 10.9554 (Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution)⁵⁶ would contain similar procedures and consequences as proposed Rule 10.9552 relating to a failure to comply with an arbitration award or related settlement or an Exchange order of restitution or Exchange settlement agreement providing for restitution. Under proposed Rule 10.9554, if a Participant, Participant Firm or covered person fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under the Exchange's rules, or an Exchange order of restitution or Exchange settlement agreement providing for restitution, Regulatory Staff could provide written notice to such Participant, Participant Firm or covered person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any Participant or Participant Firm. Proposed Rule 10.9554 is substantially the same as NYSE Arca Rule 10.9554 except for references reflecting the Exchange's membership. The Exchange lacks a comparable rule setting forth a uniform notice period and specific procedures to be followed in the event of suspension or cancellation.

Current Article 14, Rule 1(e) simply provides that any Participant, or covered

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

person who fails to honor an arbitration award can be subject to disciplinary proceedings in accordance with Article 12. To add clarity to the Exchange's rules, the Exchange would delete the phrase "in accordance with Article 12" following "disciplinary proceedings" in Article 14, Rule 1(e).

Proposed Rule 10.9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services) would govern the failure to meet the eligibility or qualification standards or prerequisites for access to services offered by the Exchange. Under proposed Rule 10.9555, if a Participant, Participant Firm or covered person did not meet the eligibility or qualification standards set forth in the Exchange's rules, Exchange staff could provide written notice to such Participant, Participant Firm or covered person that the failure to become eligible or qualified will result in a suspension or cancellation of membership or a suspension or bar from associating with any Participant or Participant Firm. Similarly, if a Participant, Participant Firm or covered person did not meet the prerequisites for access to services offered by the Exchange or a Participant or Participant Firm thereof or could not be permitted to continue to have access to services offered by the Exchange or a Participant or Participant Firm thereof with safety to investors, creditors, Participant, Participant Firms or the Exchange, Exchange staff could provide written notice to such Participant, Participant Firm or covered person limiting or prohibiting access to services offered by the Exchange or a Participant or Participant Firm thereof. The limitation, prohibition, suspension, cancellation, or bar referenced in the notice would become effective 14 days after service of the notice except that the effective date for a notice of a limitation or prohibition on access to services offered by the Exchange or a Participant, or Participant Firm thereof with respect to services to

which the Participant, Participant Firm or covered person does not have access would be upon service of the notice.

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

Proposed Rule 10.9557 (Procedures for Regulating Activities Under Article 7, Rules 3 or 8 Regarding a Participant or Participant Firm Experiencing Financial or Operational Difficulties) would allow the Exchange to issue a notice directing a Participant or Participant Firm comply with the provisions of Article 7, Rule 3 (Net Capital and Aggregate Indebtedness) or Article 7, Rule 8 (Operational Capability) or otherwise directing it to restrict its business activities. Article 7, Rule 3 establishes minimum net capital requirements and Article 7, Rule 8 governs the operational capability of Participants and Participant Firms. Article 7, Rule 3 and Rule 8 provide that the Exchange can take certain actions when it appears that a Participant Firm is unable or unwilling to comply with the requirements set forth in those rules. Proposed Rule 10.9557 would govern the process to be followed when the Exchange determines to take the prescribed actions under Article 7, Rules 3 and 8. Except for these rule references and references to reflect the Exchange's membership, the proposed rule is otherwise

substantially the same as NYSE Arca Rule 10.9557.

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

Proposed Rule 10.9558 (Summary Proceedings for Actions Authorized by Section 6(d)(3) of the Exchange Act) would allow the Exchange's CRO to provide written authorization to Exchange staff to issue a written notice for a summary proceeding for an action authorized by Section 6(d)(3) of the Act. The list of proceedings in the proposed Rule would track the types of proceedings currently provided for in Article 13, Rule 2(a), which governs summary proceedings in accordance with Section 6(d)(3) of the Act. The

Exchange does not have a rule comparable to NYSE Arca Rule 11.2(a)-(f), hence the Exchange will not include a subsection (4) to proposed Rule 10.9558(a).

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

Proposed Rule 10.9559 (Hearing Procedures for Expedited Proceedings Under the Rule 10.9550 Series) would set forth uniform hearing procedures for all expedited proceedings under the proposed Rule 10.9550 Series. Currently, emergency suspensions under Article 13, Rule 2 utilize the Article 15 rules, which are used for hearings and

appeals from certain decisions made by the Exchange pursuant to the Rules. The proposed rule is substantially the same as its NYSE Arca counterpart except for references reflecting the Exchange's membership.

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

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

Proposed Rule 10.9560(b) would govern the appointment of a Hearing Panel as well as potential disqualification or recusal of Hearing Officers or Panelists. The proposed provision is consistent with proposed Rule 10.9231(b) and (c), which govern the appointment of a Hearing Panel or Extended Hearing Panel to conduct disciplinary

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

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

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

effective upon service.

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

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

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

Proposed Rule 10.9560(d)(2) would also describe the content, scope and form of a suspension order. As proposed, under proposed Rule 10.9560(d)(2)(A), a suspension

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

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

For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Hearing Panel can modify the order to lift the suspension portion of the order while keeping in place the cease and desist portion of the order. With its broad modification powers, the Hearing

Panel also maintains the discretion to impose conditions upon the removal of a suspension – for example, the Hearing Panel could modify an order to lift the suspension portion of the order in the event a Respondent complies with the cease and desist portion of the order but additionally order that the suspension will be re-imposed if Respondent violates the cease and desist provisions of the modified order in the future. The Hearing Panel generally would be required to respond to the request in writing within 10 days after receipt of the request. An application to modify, set aside, limit or revoke a suspension order would not stay the effectiveness of the suspension order.

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

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

Proposed Rule 10.9600 Series (Procedures for Exemptions)

The Exchange proposes to adopt a new Rule 10.9600 Series, which would provide

procedures for exemptions.

Under proposed Rule 10.9610 (Application), a Participant or Participant Firm could seek exemptive relief as permitted under proposed Rule 10.8211 (Automated Submission of Trading Data Requested by the Exchange) or proposed Rule 11.2210 (Communications with the Public)⁵⁸ by filing a written application with the appropriate department or staff of the Exchange and provide a copy of the application to the CRO.⁵⁹

Under proposed Rule 10.9620 (Decision), after considering the application, the Exchange staff would be required to issue a written decision setting forth its findings and conclusions. The decision would be served on the Applicant⁶⁰ pursuant to proposed Rules 10.9132 and 10.9134. After the decision is served on the Applicant, the application and decision may be publicly available. Under proposed Rule 10.9630 (Appeal), an Applicant that wished to appeal the decision would be required to file a written notice of appeal with the Exchange's CRO within 15 days after service of the decision.

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

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

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

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

Proposed Rule 10.9700 Series

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

Proposed Rule 10.9800 Series (Temporary Cease and Desist Orders)

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

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

on a Participant, Participant Firm or covered person or upon counsel or other person authorized to represent others under Rule 10.9141, and filing a copy thereof with the Office of Hearing Officers. The notice issued under the proposed Rule would be effective when service is complete. Proposed Rule 10.9810(c) would provide that if the parties agree to the terms of the proposed temporary cease and desist order, the Hearing Officer shall have the authority to approve and issue the order. Finally, proposed Rule 10.9810(d) would provide that if Enforcement has not issued a complaint under Rule 10.9211 relating to the subject matter of the temporary cease and desist proceeding and alleging violations of the rule or statutory provision specified in the notice described in proposed paragraph (b), Enforcement shall serve and file such a complaint with the notice initiating the temporary cease and desist proceeding. Service of the complaint can be made in accordance with the service provisions in proposed Rule 10.9810(a). The proposed rule is substantially the same as its NYSE Arca counterpart except for references reflecting the Exchange's membership and the underlying rule references.⁶¹ The Exchange does not have a comparable rule.

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

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

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

hearing was conducted.

Under proposed Rule 10.9840 (Issuance of Temporary Cease and Desist Order by Hearing Panel), the Hearing Panel would be authorized to issue a written decision stating whether a temporary cease and desist order would be imposed. The Hearing Panel would be required to issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown.

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

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

unless the Commission otherwise ordered.

Proposed Rule 11.21 (Disruptive Quoting and Trading Activity Prohibited)

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

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

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

Displayed Orders.

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

Proposed Article 2, Rule 4 (CFR)

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

As proposed, upon the effective date of the proposed disciplinary rules, the CFR would be responsible for reviewing disciplinary decisions and acting in an advisory capacity to the Board with respect to disciplinary matters. The current Judiciary Committee is limited to reviewing disciplinary decisions and does not act in an advisory capacity to the Board. The Exchange proposes that the CFR, like the current NYSE Arca

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

⁶³ The composition and responsibilities of the ROC are described in the Second Amended and Restated CHX Bylaws (“Exchange Bylaws”), available here https://www.nyse.com/publicdocs/nyse/regulation/nyse/NYSE_Chicago_Second_Amended_and_Restated_Bylaws.pdf. The ROC consists of at least three members, each of whom shall be a Public Director of the Exchange.

CFR, would also advise the Board with respect to disciplinary matters. Unlike the NYSE Arca CFR, the Exchange does not propose that the CFR would review determinations to limit or prohibit the continued listing of an issuer's securities on the Exchange or act in an advisory capacity to the Board with respect to the listing and delisting of securities because the Exchange is not a listing market.⁶⁴ Further, the Exchange does not propose to permit the CFR to appoint a CFR Appeals Panel as on NYSE Arca.⁶⁵ As noted above, NYSE Arca retained appeals panels from its legacy disciplinary rules and the Exchange does not a similar current process.

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

⁶⁴ See NYSE Arca Rule 3.3(a)(2)(A).

⁶⁵ See, e.g., NYSE Arca Rule 3.3(a)(2)(B).

⁶⁶ See Exchange Bylaws, Art. II, Sec. 2(a).

⁶⁷ See id.

⁶⁸ 15 U.S.C. 78f(b)(3).

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

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

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,⁷⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule furthers the objectives of Section 6(b)(7) of the Act,⁷² in particular,

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

⁷⁰ 15 U.S.C. 78f(b).

⁷¹ 15 U.S.C. 78f(b)(5).

⁷² 15 U.S.C. 78f(b)(7).

in that it provides fair procedures for the disciplining of members⁷³ and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(3) of the Act,⁷⁴ in particular, in that it supports the fair representation of members in the administration of the Exchange's affairs.

The proposed changes will provide greater harmonization among SROs resulting in less burdensome and more efficient regulatory compliance for common members of the Exchange, the Exchange's affiliates, and FINRA. As previously noted, the proposed rule text is substantially the same as the NYSE Arca disciplinary rules, which were in turn modeled on the FINRA rules. The proposed rule change will enhance the Exchange's ability to have a direct and meaningful impact on the end-to-end quality of its regulatory program, from detection and investigation of potential violations through the efficient initiation and completion of disciplinary measures where appropriate. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system. In this regard, the Exchange believes that amending Article 7, Rule 12 so that failure to pay any fine, sanction or cost levied in connection with a disciplinary action would be governed

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

⁷⁴ 15 U.S.C. 78f(b)(3).

by proposed Rule 10.8320 would further harmonize the Exchange's rules with its affiliates that have adopted the substantially similar version of proposed Rule 10.8320. Similarly, the Exchange believes that adopting a new jurisdiction rule based on the Exchange's current jurisdiction rule Article 12, Rule 7 that incorporates substantially similar provisions based on NYSE Arca's jurisdiction Rule 2.0 would also further harmonize the Exchange's disciplinary rules with its affiliates.

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

Similarly, the Exchange believes that adopting its affiliates' appellate procedures would be fair and efficient and create consistency with its affiliates' practices. The proposed rule change would provide individual directors with the opportunity to call a case for review. Currently, in addition to the parties, only the Board may order review of a decision. Adopting the appellate rules of the Exchange's affiliates would also apply a uniform period to all requests for review of a disciplinary determination or penalty.

Subject to a separate notice and comment filing, the Exchange would retain its list of minor rule violations with certain technical and conforming amendments, while adopting its affiliates' and FINRA's process for imposing minor rule violation fines.⁷⁵ In

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

addition, as set forth in the Exchange's companion filing and herein, the Exchange believes that adding certain rules to its list of eligible minor rule violations based on the rules of its affiliate will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation.

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

The Exchange also believes that adding rules based on the rules of its affiliate to its list of eligible minor rule violations would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of substantially similar rules that are eligible for minor rule treatment on the Exchange's affiliate, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct. As noted above, Article 6, Rule 2(b), 5(a) and 5(b) are substantially similar to NYSE National and NYSE Arca rules of similar purpose, which are each separately eligible for a minor rule fine under the respective market's version of proposed

Rule 10.9217.⁷⁶

Further, the Exchange believes that the proposed additions to its list of rules eligible for minor rule fines based on the rules of its affiliate are consistent with Section 6(b)(6) of the Act,⁷⁷ which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations pursuant to the Exchange's rules and would increase the amounts of fines in order for the Exchange to better deter violative activity and to harmonize its rules with that of its affiliates.

The Exchange believes that moving the Recommended Fine Schedule for minor rule violations from the Fee Schedule to proposed Rule 10.9217 and removing it from the Fee Schedule would add clarity and transparency to the Exchange's rules by reflecting the recommended fines for minor rule violations in the same place in the Exchange's rules. Similarly, updating the Recommended Fine Schedule to delete obsolete rules and add recommended fines for rules that were added to the list of minor rules but inadvertently omitted from the Recommended Fine Schedule would also add clarity and transparency to the Exchange's rules. The Exchange believes that adding such clarifying language would also be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased

⁷⁶ See text accompanying notes 35-37, supra.

⁷⁷ 15 U.S.C. 78f(b)(6).

transparency, thereby reducing potential confusion.

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

The Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members consistent with Sections 6(b)(7) and 6(d) of the Act.⁷⁹ Proposed Rules 10.9216(b) and 10.9217 would not preclude a Participant, Participant Firm or covered person from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

In addition, the Exchange believes that its proposed transition plan would allow for a more orderly and less burdensome transition for the Exchange's permit holders. The proposed delayed implementation of the new rule set would provide a clear

⁷⁸ See text accompanying notes 44-47, supra.

⁷⁹ 15 U.S.C. 78f(b)(7) & 78f(d).

demarcation between matters that would proceed under the new rules and those that would be completed under the legacy rules.

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

The Exchange believes that proposed Rule 11.21 (Disruptive Quoting and Trading Activity Prohibited), which is modeled on NYSE American Rule 5220 – Equities, NYSE Rule 5220, and NYSE Arca Rule 11.21, which in turn are modeled on Commentary .03 to FINRA Rule 5210, would remove impediments to and perfect the mechanism of a free and open market and a national market system by harmonizing the Exchange's rules with those of other SROs, including its affiliated exchanges.

⁸⁰ 15 U.S.C. 78f(b)(7).

⁸¹ 15 U.S.C. 78f(b)(3).

⁸² 15 U.S.C. 78f(b)(5).

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues, but is rather designed to (i) provide greater harmonization among Exchange, NYSE Arca,

⁸³ 15 U.S.C. 78f(b)(1) & (b)(6).

NYSE, NYSE American, and FINRA rules of similar purpose for investigations and disciplinary matters; and (ii) enhance the quality of the Exchange's regulatory program, from detection of violations through disciplinary actions, resulting in less burdensome and more efficient regulatory compliance and facilitating performance of regulatory functions. In addition, the proposed rule change will provide the Exchange with necessary means to enforce against violations of manipulative quoting and trading activity in an expedited manner, while providing Participants, Participant Firms and covered person with the necessary due process. The Exchange believes that it is important for all exchanges to be able to take similar action to enforce its rules against manipulative conduct thereby leaving no exchange prey to such conduct.

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

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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act⁸⁴ and Rule 19b-4(f)(6) thereunder.⁸⁵ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public

⁸⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

⁸⁵ 17 CFR 240.19b-4(f)(6).

interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)⁸⁶ of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic comments:

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

Paper comments:

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

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

⁸⁶ 15 U.S.C. 78s(b)(2)(B).

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSECHX-2022-10 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸⁷

Eduardo A. Aleman
Deputy Secretary

⁸⁷ 17 CFR 200.30-3(a)(12).

Additions underlined.
Deletions [bracketed].

Rules of NYSE Chicago, Inc.

* * * * *

RULE 2 TRADING PERMITS

Rule 2.0. Disciplinary Jurisdiction

- (a) A Participant or Participant Firm, or a person associated with a Participant or Participant Firm, or any other person or organization subject to the jurisdiction of the Exchange (the "Respondent"), who is alleged to have violated or aided and abetted a violation of any provision of the Exchange Act or the rules and regulations promulgated thereunder, or any by-law or rule of the Exchange or any interpretation thereof or resolution of the Board regulating the conduct of business on the Exchange shall be subject to the disciplinary jurisdiction of the Exchange under the Rule 10.8000 and 10.9000 Series, and after notice and opportunity for a hearing may be appropriately disciplined by: expulsion; suspension; limitation of activities, functions and operation; fine; censure; suspension or bar from association with a Participant or Participant Firm or any other fitting sanction, in accordance with the provisions of the Rule 10.8000 and 10.9000 Series. A Participant or Participant Firm may be charged with any violation committed by its employees or other person associated with such Participant or Participant Firm, as though such violation were its own.
- (b) A Participant or Participant Firm that resigns or has its membership canceled or revoked, and a person who is no longer a covered person as defined in Rule 10.9120 or a covered person whose registration has been revoked or canceled, shall continue to be subject to the Exchange's disciplinary jurisdiction as set forth in Rule 10.8130.
- (c) The Board of Directors may authorize any officer, on behalf of the Exchange, subject to the approval of the Board of Directors, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Securities Exchange Act of 1934. Any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision shall affect the oversight of such other self-regulatory organization by the Securities and Exchange Commission. Notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide.

* * * * *

RULE 10 DISCIPLINARY PROCEEDINGS; SUSPENSION, CANCELLATION AND REINSTATEMENT, OTHER HEARINGS AND APPEALS

Article 12 shall apply only to an investigation or proceeding instituted under Article 12, Rule 1 prior to [insert date] and will continue to apply until such proceeding is final. Article 12 shall also continue to apply to any Participant, Participant Firm or covered person over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry under Article 12, Rule 7(b) prior to [insert date]. Otherwise, the Rule 10.8000 Series and Rule 10.9000 Series will apply.

RULE 10.8000. INVESTIGATIONS AND SANCTIONS

Rule 10.8001. Effective Date of Rule 10.8000 Series

The Rule 10.8000 Series shall become effective on [insert date], except as otherwise provided in Rule 10.8130(d).

RULE 10.8100. GENERAL PROVISIONS

Rule 10.8110. Availability of Rules for Customers

Participants and Participant Firms shall make available a current copy of the Exchange rules for examination by customers upon request. Participants and Participant Firms may comply with this Rule by maintaining electronic access to the Exchange rules and providing customers with such access upon request.

Rule 10.8120. Definitions

(a) Unless otherwise provided, terms used in the Rule 10.8000 Series shall have the same meaning as in applicable Exchange rules.

(b) The terms "Adjudicator," "covered person," and "Regulatory Staff" shall have the same meaning as in Rule 10.9120.

Rule 10.8130. Retention of Jurisdiction

(a) A Participant or Participant Firm that resigns or has its membership canceled or revoked shall continue to be subject to the filing of a complaint under Exchange rules based upon conduct which commenced prior to the effective date of the Participant's or Participant Firm's resignation from the Exchange or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within two years after the effective date of resignation, cancellation, or revocation.

(b) A person whose status as a covered person has been terminated and who is no longer a covered person of any Participant or Participant Firm or a covered person whose registration has been revoked or canceled shall continue to be subject to the filing of a

complaint under Exchange rules based upon conduct that commenced prior to the termination, revocation, or cancellation or upon such person's failure, while subject to the jurisdiction of the Exchange as provided herein, to provide information requested by the Exchange pursuant to Exchange rules, but any such complaint shall be filed within:

(1) two years after the effective date of termination of registration pursuant to Article 6, Rule 2; Article 16, Rule 1; and Article 17, Rule 1 provided, however that any amendment to a notice of termination filed pursuant to such rules that is filed within two years of the original notice that discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the two-year period under this Rule;

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

(3) in the case of an unregistered person, two years after the date upon which such person ceased to be a covered person of the Participant or Participant Firm.

(c) A person whose status as a covered person is terminated and is no longer a covered person of any Participant or Participant Firm shall continue to be subject to a proceeding to suspend his or her ability to associate with a Participant or Participant Firm based on such person's failure to comply with an arbitration award or a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to Exchange rules, provided that such proceeding is instituted within two years after the date of entry of such award or settlement.

(d) Article 12 shall continue to apply to any Participant, Participant Firm or covered person over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry pursuant to Article 12, Rule 7(b) prior to [insert date].

RULE 10.8200. INVESTIGATIONS

Rule 10.8210. Provision of Information and Testimony and Inspection and Copying of Books

(a) Authority of Adjudicator and Exchange Staff

For the purpose of an investigation, complaint, examination, or proceeding authorized by Exchange rules, an Adjudicator or Exchange staff shall have the right to:

(1) require a Participant, Participant Firm or covered person 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 Exchange 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 Participant, Participant Firm or covered person with respect to any matter involved in the investigation, complaint, examination, or proceeding that is in such Participant's or Participant Firm's or covered person's possession, custody or control.

In performing the functions of investigation, complaint, examination, or proceeding authorized by Exchange rules, the CRO and Regulatory Staff shall function independently of the commercial interests of the Exchange and the commercial interests of Participants and Participant Firms. No member of the Board of Directors or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.

(b) Other SROs and Regulators

(1) Exchange staff may enter into an agreement with a domestic federal agency, or subdivision thereof, or foreign regulator to share any information in the Exchange's possession for any regulatory purpose set forth in such agreement, provided that the agreement must require the other regulator, in accordance with the terms of the agreement, to treat any shared information confidentially and to assert such confidentiality and other applicable privileges in response to any requests for such information from third parties.

Any such agreement with a foreign regulator must also meet the following conditions:

(A) the other regulator party to the agreement must have jurisdiction over common regulatory matters; and

(B) the agreement must require the other regulator to reciprocate and share with the Exchange information of regulatory interest or concern to the Exchange.

(2) Exchange staff 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 Participant, Participant Firm or covered 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 Participant, Participant Firm or covered person (including a currently or formerly registered person) to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the Participant or Participant Firm or the last known residential address of the covered person as reflected in the Central Registration Depository. With respect to a person who is currently associated with a Participant or Participant Firm in an unregistered capacity, a notice under this Rule shall be deemed received by the person by mailing or otherwise transmitting the notice to the last known business address of the Participant or Participant Firm as reflected in the Central Registration Depository. With respect to a person subject to the Exchange's jurisdiction who was formerly associated with a Participant or Participant Firm in an unregistered capacity, a notice under this Rule shall be deemed received by the person upon personal service, as set forth in Rule 10.9134(a)(1).

If the Adjudicator or Exchange staff responsible for mailing or otherwise transmitting the notice to the Participant, Participant Firm or a covered 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 Participant or Participant Firm or the last known residential address of the covered person as reflected in the Central Registration Depository; and

(2) any other more current address of the Participant, Participant Firm or covered person known to the Adjudicator or Exchange staff who is responsible for mailing or otherwise transmitting the notice.

If the Adjudicator or Exchange staff responsible for mailing or otherwise transmitting the notice to the Participant, Participant Firm or covered person knows that the Participant, Participant Firm or covered person is represented by counsel regarding the investigation, complaint, examination, or proceeding that is the subject of the notice, then the notice shall be served upon counsel by mailing or otherwise transmitting the notice to the counsel in lieu of the Participant, Participant Firm or covered person, and any notice served upon counsel shall be deemed received by the Participant, Participant Firm or covered person.

(e) Electronic Interface

In carrying out its responsibilities under this Rule, the Exchange may, as appropriate, establish programs for the submission of information to the Exchange on a regular basis through a direct or indirect electronic interface between the Exchange and a Participant or Participant Firm.

(f) Inspection and Copying

A witness, upon proper identification, may inspect the official transcript of the witness' own testimony. Upon written request, a person who has submitted documentary evidence or testimony in an Exchange 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, Exchange staff may for good cause deny such request.

(g) Encryption of Information Provided in Electronic Form

(1) Any Participant, Participant Firm or covered person who, in response to a request pursuant to this Rule, provides the requested information on a portable media device must ensure that such information is encrypted.

(2) For purposes of this Rule, a "portable media device" is a storage device for electronic information, including but not limited to a flash drive, CD-ROM, DVD, portable hard drive, laptop computer, disc, diskette, or any other portable device for storing and transporting electronic information.

(3) For purposes of this Rule, "encrypted" means the transformation of data into a form to which meaning cannot be assigned without the use of a confidential process or key. To ensure that encrypted information is secure, a Participant, Participant Firm or covered person providing encrypted information to Exchange staff pursuant to this Rule shall (a) use an encryption method that meets industry standards for strong encryption, and (b) provide the confidential process or key regarding the encryption to Exchange staff in a communication separate from the encrypted information itself.

Commentary:

.01 Books and Records Relating to Investigations. This rule requires Participants, Participant Firms and covered persons to provide Exchange staff and adjudicators with requested books, records and accounts. In specifying the books, records and accounts "of such Participant, Participant Firm or covered person," paragraph (a) of the rule refers to books, records and accounts that the broker-dealer or its covered persons makes or keeps relating to its operation as a broker-dealer or relating to the person's association with the Participant or Participant Firm. This includes but is not limited to records relating to an Exchange investigation of outside business activities, private securities transactions or possible violations of just and equitable principles of trade, as well as other Exchange

rules and the federal securities laws. It does not ordinarily include books and records that are in the possession, custody or control of a Participant, Participant Firm or covered person, but whose bona fide ownership is held by an independent third party and the records are unrelated to the business of the Participant, Participant Firm or covered person. The rule requires, however, that a Participant, Participant Firm or covered person must make available its books, records or accounts when these books, records or accounts are in the possession of another person or entity, such as a professional service provider, but the Participant, Participant Firm or covered person controls or has a right to demand them.

Rule 10.8211. Automated Submission of Trading Data Requested by the Exchange

(a) A Participant or Participant Firm shall submit the trade data specified below in automated format as may be prescribed by the Exchange 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 Exchange.

(b) If the transaction was a proprietary transaction effected or caused to be effected by the Participant or Participant Firm for any account in which such Participant, Participant Firm or covered person is directly or indirectly interested, such Participant or Participant Firm shall submit or cause to be submitted the following information:

(1) Clearing house number, or alpha symbol as used by the Participant or Participant Firm submitting the data;

(2) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the Participant(s) or Participant Firm(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 Participant or Participant Firm for any customer account, such Participant or Participant Firm shall submit or cause to be submitted the following information:

(1) The data described in paragraphs (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 Participant or Participant Firm, whether the other Participant or Participant Firm was acting as principal or agent.

(d) In addition to the above trade data, a Participant or Participant Firm shall submit such other information in such automated format as may from time to time be required by the Exchange.

(e) Pursuant to the Rule 10.9600 Series, the Exchange may exempt a Participant or Participant Firm from the requirement that the data prescribed in paragraphs (b) through (d) above be submitted to the Exchange in an automated format for good cause shown.

Rule 10.8212. Reserved.

Rule 10.8213. Reserved.

RULE 10.8300. SANCTIONS

Rule 10.8310. Sanctions for Violation of the Rules

(a) Imposition of Sanction

After compliance with the Rule 10.9000 Series, the Exchange may impose one or more of the following sanctions on a Participant, Participant Firm or covered person for each violation of the federal securities laws, rules or regulations thereunder or Exchange rules, or may impose one or more of the following sanctions on a Participant, Participant Firm or covered person for any neglect or refusal to comply with an order, direction, or decision issued under Exchange rules:

(1) censure a Participant, Participant Firm or covered person;

(2) impose a fine upon a Participant, Participant Firm or covered person;

(3) suspend the membership of Participant or Participant Firm, or suspend the registration of a covered person for a definite period or a period contingent on the performance of a particular act;

(4) expel a Participant or Participant Firm, cancel the membership of a Participant or Participant Firm or revoke or cancel the registration of a covered person;

(5) suspend or bar a Participant, Participant Firm or covered person from association with all Participants or Participant Firms;

(6) impose a temporary or permanent cease and desist order against a Participant, Participant Firm or covered person; 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 review or relief pursuant to the Rule 10.9000 Series.

Rule 10.8311. Effect of a Suspension, Revocation, Cancellation, Bar or Other Disqualification

(a) If a person is subject to a suspension, revocation, or cancellation of registration, bar from association with a Participant or Participant Firm (each a "sanction") or other disqualification, a Participant or Participant Firm shall not allow such person to be associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity. A Participant or Participant Firm also shall not pay or credit to any person subject to a sanction or disqualification, during the period of the sanction or disqualification or any period thereafter, any salary, commission, profit, or any other remuneration that the person might accrue during the period of the sanction or disqualification. However, a Participant or Participant Firm may make payments or credits to a person subject to a sanction that are consistent with the scope of activities permitted under the sanction where the sanction solely limits a covered person from conducting specified activities (such as a suspension from acting in a principal capacity) or a disqualified person has been approved (or is otherwise permitted pursuant to Exchange rules and the federal securities laws) to associate with a Participant or Participant Firm.

(b) Notwithstanding paragraph (a) of this Rule, a Participant or Participant Firm may pay to a person that is subject to a sanction or disqualification described in paragraph (a) of this Rule, any remuneration pursuant to an insurance or medical plan, indemnity agreement relating to legal fees, or as required by an arbitration award or court judgment.

Commentary:

.01 Remuneration Accrued Prior to Effective Date of Sanction or Disqualification. Notwithstanding this Rule, a Participant or Participant Firm may pay or credit to a person that is the subject of a sanction or disqualification, salary, commission, profit or any other remuneration that the Participant or Participant Firm can evidence accrued to the person prior to the effective date of such sanction or disqualification; provided, however, the Participant or Participant Firm may not pay any salary, commission, profit or any other remuneration that accrued to the person that relates to or results from the activity giving rise to the sanction or disqualification, and any such payment or credit must comply with applicable federal securities laws.

Rule 10.8312. Reserved.

Rule 10.8313. Release of Disciplinary Complaints, Decisions and Other Information

(a) General Standards

(1) The Exchange shall release to the public a copy of, and at the Exchange's discretion information with respect to, any disciplinary complaint or disciplinary decision issued by the Exchange, as defined in paragraph (e) of this Rule under the Rule 10.9000 Series, other than minor rule violations, on its website. The Exchange 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, as defined in paragraph (e) of this Rule.

(2) The Exchange shall release to the public a copy of, and at the Exchange's discretion information with respect to, any statutory disqualification decision, notification, or notice issued by the Exchange pursuant to the Rule 10.9520 Series that will be filed with the SEC and any temporary cease and desist order or decision issued by the Exchange pursuant to the Rule 10.9800 Series.

(3) The Exchange shall release to the public information with respect to any suspension, cancellation, expulsion, or bar that constitutes final Exchange action imposed pursuant to Rules 10.9552, 10.9554, 10.9555, 10.9556, 10.9558 and 10.9560, and information with respect to any suspension imposed pursuant to Rule 10.9557. The Exchange shall release to the public a copy of, and information with respect to, any decision issued pursuant to Rule 10.9559 that constitutes final Exchange action. The Exchange shall release to the public information with respect to the summary suspension or expulsion of a Participant or Participant Firm or the summary revocation of the registration of a covered person for a failure to pay fines, other monetary sanctions, or costs pursuant to Rule 10.8320.

(4) The Exchange may release to the public a copy of, and information with respect to, any decision or notice issued pursuant to the Rule 10.9600 Series, and any other decision appealable to the SEC under Exchange Act Section 19(d).

(b) Release Specifications

(1) Copies of, and information with respect to, any disciplinary complaint released to the public pursuant to paragraph (a) of this Rule shall indicate that a disciplinary complaint represents the initiation of a formal proceeding by the Exchange 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.

(2) Copies of, and information with respect to, any disciplinary decision or other decision, order, notification, or notice released to the public pursuant to paragraph (a) of this Rule prior to the expiration of the time period provided for an appeal or call for review as permitted under Exchange rules or the Exchange Act, or while such an appeal or call for review is pending, shall indicate that the findings and sanctions imposed therein are subject to review and modification by the Exchange or the SEC.

(c) Discretion to Redact Certain Information or Waive Publication

(1) Notwithstanding paragraph (a) of this Rule, the Exchange reserves the right to redact, on a case-by-case basis, information that contains confidential customer information, including customer identities, or information that raises significant identity theft, personal safety, or privacy concerns that are not outweighed by investor protection concerns.

(2) Notwithstanding paragraph (a) of this Rule, the Exchange may determine, in its discretion, to waive the requirement to release a copy of, or information with respect to, any disciplinary complaint, disciplinary decision or other decision, order, notification, or notice under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice.

(d) Notice of Appeals of Exchange Decisions to the SEC

The Exchange shall provide notice to the public if a disciplinary decision of the Exchange is appealed to the SEC and the notice shall state whether the effectiveness of the decision has been stayed pending the outcome of proceedings before the SEC.

(e) Definitions

(1) For the purpose of this Rule, the term "disciplinary complaint" shall mean any complaint issued pursuant to the Rule 10.9200 Series or any notice served pursuant to Rule 10.9560.

(2) For the purpose of this Rule, the term "disciplinary decision" shall mean any decision issued pursuant to the Rule 10.9000 Series, including, decisions issued by a Hearing Officer, Hearing Panel, Extended Hearing Panel, or the Board of Directors, orders accepting offers of settlement, and Letters of Acceptance, Waiver and Consent and suspension orders pursuant to Rule 10.9560; provided, however, such term does not include decisions issued pursuant to the Rule 10.9550 Series, Rule 10.9600 Series, or Rule 10.9800 Series, or decisions, notifications, or notices issued pursuant to the Rule 10.9520 Series, which are addressed by paragraphs (a)(2), (a)(3) and (a)(4) of this Rule.

Minor rule violation letters issued pursuant to Rules 10.9216 and 10.9217 are not subject to this Rule.

Rule 10.8320. 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.

(b) Summary Suspension or Expulsion

After seven days' notice in writing, the Exchange may summarily suspend or expel from membership a Participant or Participant Firm that fails to:

(1) pay promptly a fine or other monetary sanction imposed pursuant to Rule 10.8310 or a cost imposed pursuant to Rule 10.8330 when such fine, monetary sanction, or cost becomes finally due and payable; or

(2) terminate immediately the association of a covered person who fails to pay promptly a fine or other monetary sanction imposed pursuant to Rule 10.8310 or a cost imposed pursuant to Rule 10.8330 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 covered person if such person fails to pay promptly a fine or other monetary sanction imposed pursuant to Rule 10.8310 or a cost imposed pursuant to Rule 10.8330 when such fine, monetary sanction, or cost becomes finally due and payable.

(d) Transition

The Exchange may exercise the authority set forth in paragraphs (b) and (c) above with respect to non-payment of a fine, monetary sanction, or cost assessed in a disciplinary action initiated under Article 12 for which a decision was issued on or after [insert date].

Rule 10.8330. Costs of Proceedings

A Participant or Participant Firm or covered person disciplined pursuant to Rule 10.8310 shall bear such costs of the proceeding as the Adjudicator deems fair and appropriate under the circumstances.

RULE 10.9000. CODE OF PROCEDURE

Rule 10.9001. Effective Date of Rule 10.9000 Series

The Rule 10.9000 Series shall become effective on [insert date], except as otherwise provided in Rule 10.8130(d).

RULE 10.9100. APPLICATION AND PURPOSE

Rule 10.9110. Application

(a) Proceedings

The Rule 10.9000 Series is the Code of Procedure and includes proceedings for disciplining a Participant or Participant Firm or covered person; proceedings for regulating the activities of a Participant or Participant Firm 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's rules. The Rule 10.9100 Series is of general applicability to all proceedings set forth in the Rule 10.9000 Series, unless a Rule specifically provides otherwise. In performing the functions under the Code, the CRO and Regulatory Staff shall function independently of the commercial interests of the Exchange and the commercial interests of Participants and Participant Firms. No member of the Board of Directors or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.

(b) Rights, Duties, and Obligations of Participants, Participant Firms and Covered Persons

Unless otherwise specified, a covered person shall have the same rights as a Participant or Participant Firm and shall be subject to the same duties and obligations under the Code of Procedure.

(c) Incorporation of Defined Terms and Cross References

Unless otherwise provided and where applicable, terms used in the Rule 10.9000 Series shall have the same meaning as in Rule 10.9120 and applicable rules of the Exchange.

Rule 10.9120. 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 paragraph (a)(1); or

(3) a natural person who serves on a body, board, committee, or group described in paragraphs (a)(1) or (2).

(b) Reserved

(c) "Chief Hearing Officer"

The term "Chief Hearing Officer" means the Hearing Officer that manages the Office of Hearing Officers, or his or her delegatee.

(d) "Chief Regulatory Officer" or "CRO"

The term "Chief Regulatory Officer" or "CRO" means the Chief Regulatory Officer of the Exchange, or his or her delegatee.

(e) "Code"

The term "Code" refers to the Code of Procedure.

(f) "Counsel to the Exchange Board of Directors"

The term "Counsel to the Exchange Board of Directors" means an attorney from the Exchange Office of General Counsel who is responsible for advising the Exchange Board of Directors regarding a disciplinary proceeding on review before the Exchange Board of Directors.

(g) "Covered Person"

The term "covered person" means an Associated Person as defined in Article 1, Rule 1(d) and any other person subject to the jurisdiction of the Exchange.

(h) "Department of Enforcement"

The term "Department of Enforcement" means the Department of Enforcement of FINRA.

(i) Reserved.

(j) "Department of Member Regulation"

The term "Department of Member Regulation" means the Department of Member Regulation of FINRA.

(k) "Director"

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

(l) "Document"

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

(m) "Enforcement"

The term "Enforcement" refers to (A) any department reporting to the CRO of the Exchange with responsibility for investigating or, when appropriate after compliance with the Rule 10.9000 Series, imposing sanctions on a Participant or Participant Firm or covered person; and (B) the Department of Enforcement of FINRA.

(n) Reserved

(o) "Extended Hearing"

The term "Extended Hearing" means a disciplinary proceeding described in Rule 10.9231(c).

(p) "Extended Hearing Panel"

The term "Extended Hearing Panel" means an Adjudicator that is constituted under Rule 10.9231(c) to conduct a disciplinary proceeding that is classified as an "Extended Hearing" and is governed by the Rule 10.9200 Series.

(q) Reserved

(r) "Hearing Officer"

The term "Hearing Officer" means an employee of FINRA who is an attorney and who is appointed by the Chief Hearing Officer to act in an adjudicative role and fulfill various adjudicative responsibilities and duties described in the Rule 10.9200 Series regarding disciplinary proceedings, the Rule 10.9550 Series regarding expedited proceedings, and the Rule 10.9800 Series regarding temporary cease and desist proceedings brought against Participants, Participant Firms and covered persons.

(s) "Hearing Panel"

The term "Hearing Panel" means an Adjudicator that is constituted under Rule 10.9231 to conduct a disciplinary proceeding governed by the Rule 10.9200 Series, that is constituted under the Rule 10.9520 Series or the Rule 10.9550 Series to conduct a proceeding, or that is constituted under the Rule 10.9800 Series to conduct a temporary cease and desist proceeding.

(t) "Interested Staff"

The term "Interested Staff" means, in the context of any proceeding under the Code of Procedure, Regulatory Staff or staff who:

(A) report, directly or indirectly, to any Enforcement employee, or to the head of any department or office that issues a notice, petition or decision or is designated as a Party under the Rule 10.9000 Series; or

(B)(i) directly participated in the authorization or initiation of a complaint or proceeding, (ii) directly participated in the proceeding, or (iii) directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and any person(s) who supervise(s) such staff.

(u) "Office of Hearing Officers"

The term "Office of Hearing Officers" means the Office of Hearing Officers for FINRA.

(v) "Panelist"

The term "Panelist," as used in the Rule 10.9200 Series, the Rule 10.9550 Series, and the Rule 10.9800 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer.

(w) "Party"

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

(1) in the Rule 10.9200 Series and the Rule 10.9300 Series, and the Rule 10.9800 Series, Enforcement or a Respondent;

(2) in the Rule 10.9520 Series, the Department of Member Regulation or a Participant, Participant Firm or covered person that is the subject of a notice or files an application under Rule 10.9522;

(3) in the Rule 10.9550 Series, 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, the Exchange department or office that is so designated or a

Participant, Participant Firm or covered person that is the subject of a notice under the Rule 10.9550 Series; or

(4) in the Rule 10.9600 Series, the department or office designated under Rule 10.9620 to issue the decision granting or denying an exemption or a Participant or Participant Firm that seeks the exemption under Rule 10.9610.

(x) "Regulatory Staff"

The term "Regulatory Staff," and for purposes of the Rule 10.8000 Series and Rule 10.9000 Series (except for Rule 10.9557), the term "Exchange staff," refers to (A) any officer or employee reporting, directly or indirectly, to the CRO of the Exchange; and (B) FINRA staff acting on behalf of the Exchange in connection with the Rule 10.8000 Series and Rule 10.9000 Series.

(y) "Respondent"

The term "Respondent" means, in a disciplinary proceeding governed by the Rule 10.9200 Series and in a review governed by the Rule 10.9300 Series, a Participant, Participant Firm or a covered person against whom a complaint is issued. In a proceeding governed by the Rule 10.9800 Series, the term "Respondent" means a Participant, Participant Firm or covered person that has been served a notice initiating a cease and desist proceeding.

Rule 10.9130. Service; Filing of Papers

Rule 10.9131. Service of Complaint

(a) Service on Each Party

Except as provided below, a complaint shall be served on each Party by Enforcement. When counsel for a Party or other person authorized to represent others under Rule 10.9141 agrees to accept service of the complaint, then Enforcement may serve the complaint on counsel for a Party or other person authorized to represent others under Rule 10.9141 as specified in Rule 10.9134(a).

(b) How Served

A complaint or document initiating a proceeding shall be served pursuant to Rule 10.9134.

(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 FINRA pursuant to Rule 10.9135.

Rule 10.9132. 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 10.9200 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 10.9134.

(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 10.9141, service shall be made upon counsel or the representative. The Adjudicator, at its discretion, may also order that service be made upon the person.

Rule 10.9133. 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 10.9134.

(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 FINRA pursuant to Rule 10.9135.

(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 10.9141, service shall be made upon counsel or the representative. The Adjudicator, at its discretion, may also order that service be made upon the person.

Rule 10.9134. 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.

Rule 10.9135. 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, delivery by electronic mail, 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, delivered by electronic mail, or sent by courier to FINRA.

(b) Where to File

All papers required to be filed pursuant to the Rule 10.9200 Series shall be filed with the Office of Hearing Officers. All other papers required to be filed pursuant to the Rule 10.9000 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.

Rule 10.9136. Filing of Papers: Form

(a) Specifications

Papers filed in connection with any proceeding under the Rule 10.9200 Series and the Rule 10.9300 Series shall:

- (1) be on unglazed white paper measuring 8 1/2 x 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 single-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 10.9137.

(c) Number of Copies

A signed original and one copy of all papers shall be filed with the Adjudicator unless otherwise ordered.

(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 10.9200 Series shall be preserved under Rule 10.9267(b).

Rule 10.9137. 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.

Rule 10.9138. Computation of Time

(a) Calendar Day

In the Rule 10.9000 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.

Rule 10.9140. Proceedings

Rule 10.9141. 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 10.9150 and 10.9280, 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.

(c) One Year Revolving Door Restriction

No former Regulatory Staff shall, within a period of one year immediately following termination of employment with the Exchange or FINRA, make an appearance before an Adjudicator on behalf of any other person in a proceeding under the Rule 10.9000 Series.

Rule 10.9142. Withdrawal by Attorney or Representative

An attorney for a Party or other person authorized to represent others by Rule 10.9141 seeking to withdraw his or her appearance shall file a motion to withdraw. The motion shall set forth the good cause for withdrawal and state the name, current address, and telephone number of the Party no longer being represented.

Rule 10.9143. 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 10.9000 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 an Exchange employee 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 employee 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 Interested 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 an Exchange employee 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 any representative to a Party, or any Interested Staff in violation of paragraph (a)(1), the Exchange or an Adjudicator may, to the extent consistent with the interests of justice, the policies underlying the Act, and Exchange rules, 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 10.9200 Series and the Rule 10.9300 Series, the prohibitions of this Rule shall apply beginning with the authorization of a complaint as provided in Rule 10.9211, 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 10.9270, 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 Participant, Participant Firm or covered person submits an executed letter of acceptance, waiver, and consent under Rule 10.9216(a), the submission constitutes a waiver by such Participant, Participant Firm or covered person 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 Letter

If a Participant, Participant Firm or covered person submits an executed minor rule violation letter under Rule 10.9216(b), the submission constitutes a waiver by such Participant, Participant Firm or covered person 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 letter, or other consideration of the minor rule violation letter, including acceptance or rejection of such minor rule plan violation letter, has been violated.

Rule 10.9144. Separation of Functions

(a) Interested Staff

Except as counsel or a witness in a proceeding or as provided in the Rule 10.9550 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 request a review of a disciplinary proceeding by the Exchange Board of Directors.

(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 10.9211 and a decision whether to file a request for a review by the Exchange Board of Directors pursuant to Rule 10.9310. A Director is prohibited from participating in a discussion or a decision relating to the above referenced acts with 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 10.9270, 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 Participant, Participant Firm or covered person submits an executed letter of acceptance, waiver, and consent under Rule 10.9216(a), the submission constitutes a waiver by such Participant, Participant Firm or covered person 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 Letter

If a Participant, Participant Firm or covered person submits an executed minor rule violation letter under Rule 10.9216(b), the submission constitutes a waiver by such Participant, Participant Firm or covered person 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 letter or other consideration of the minor rule violation letter, including acceptance or rejection of such minor rule violation letter.

Rule 10.9145. Rules of Evidence; Official Notice

(a) Rules of Evidence

The formal rules of evidence shall not apply in a proceeding brought under the Rule 10.9000 Series.

(b) Official Notice

In a proceeding governed by the Rule 10.9000 Series, an Adjudicator may take official notice of such matters as might be judicially noticed by a court, or of other matters within the specialized knowledge of the Exchange as an expert body. 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.

Rule 10.9146. 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 10.9146(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 are fully informed and have been provided adequate notice and an 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 10.9200 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 10.9300 Series, a motion on a procedural matter may be decided by the Exchange Board of Directors.

(3) In the Rule 10.9500 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 10.8210 or any other Rule which may be introduced as evidence in a disciplinary proceeding, or a witness who testifies at a hearing in a disciplinary proceeding may file a motion requesting a protective order to limit disclosure or prohibit from disclosure to other Parties, witnesses or other persons, except Regulatory 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 10.9134(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 Regulatory Staff of such Documents or testimony in the staff's performance of its 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 10.9133, 10.9134, 10.9135, 10.9136 and 10.9137.

Rule 10.9147. Rulings On Procedural Matters

The Exchange Board of Directors, 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 provided by the Code.

Rule 10.9148. Interlocutory Review

Except as provided in Rule 10.9280, 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 10.9280 or as otherwise ordered by the Adjudicator.

Rule 10.9150. Exclusion From Rule 10.9000 Series Proceeding

(a) Exclusion

An Adjudicator may exclude an attorney for a Party or other person authorized to represent others by Rule 10.9141 from acting as counsel, acting in any representative capacity, or otherwise appearing in a particular Rule 10.9000 Series proceeding for contemptuous conduct under Rule 10.9280 or unethical or improper conduct in that proceeding. If an attorney for a Party, or other person authorized to represent others by Rule 10.9141, is excluded from a disciplinary hearing or conference, or any portion thereof, such attorney or person may seek review by the Exchange Board of Directors of such exclusion under Rule 10.9280(c).

(b) Other Proceedings Not Precluded

Prohibiting an attorney or other person authorized to represent others by Rule 10.9141 from practicing or appearing in an Exchange proceeding shall not preclude the Exchange from initiating other proceedings against such person.

Rule 10.9160. 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 of Directors

The Chair of the Exchange Board of Directors shall have authority to order the disqualification of a Director, and a majority of members of the Board of Directors, excluding the Chair of the Exchange Board of Directors, shall have authority to order the disqualification of the Chair.

(b) Reserved.

(c) Reserved.

(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 10.9200 Series shall be governed by Rule 10.9234.

(f) Hearing Officer

Disqualification of a Hearing Officer of a Hearing Panel or an Extended Hearing Panel shall be governed by Rule 10.9233.

RULE 10.9200. DISCIPLINARY PROCEEDINGS

Rule 10.9210. Complaint and Answer

Rule 10.9211. Authorization of Complaint

(a) Complaint

(1) If Enforcement has reason to believe that any Participant, Participant Firm or covered 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, Enforcement may request authorization from the CRO to issue a complaint.

(2) The Exchange Board of Directors shall have the authority to direct the CRO to authorize and Enforcement to issue a complaint when, on the basis of information and belief, the Exchange Board of Directors is of the opinion that any Participant, Participant Firm or covered 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.

Rule 10.9212. Complaint Issuance — Requirements, Service, Amendment, Withdrawal, and Docketing

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

(1) Each complaint shall be in writing and signed by authorized Enforcement staff. 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 Enforcement on each Party pursuant to Rules 10.9131 and 10.9134, and filed at the time of service with the Office of Hearing Officers pursuant to Rules 10.9135, 10.9136, and 10.9137.

(2) At the time of issuance of a complaint, Enforcement may propose an appropriate location for the hearing.

(b) Amendments to Complaint

Enforcement 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 Enforcement, the Hearing Officer may permit Enforcement to amend the complaint, including amendments so as to make the complaint conform to the evidence presented, after considering whether Enforcement 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, Enforcement may withdraw a complaint. If Enforcement 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 Enforcement shall be without prejudice and Enforcement 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 Enforcement 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.

Rule 10.9213. 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 Enforcement 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 10.9132.

(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 10.9231 and 10.9232 to a Hearing Panel or, if the Chief Hearing Officer determines that an Extended Hearing Panel should be appointed, to an Extended Hearing Panel.

Rule 10.9214. 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 10.9132. 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) appears 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 10.9133, 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 in 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 10.9231 and 10.9232.

(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 10.9132. 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) appears 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 10.9133, 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 10.9231 and 10.9232.

Rule 10.9215. Answer to Complaint

(a) Form, Service, Notice

Pursuant to Rule 10.9133, 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 10.9135, 10.9136 and 10.9137. The Hearing Officer assigned to a disciplinary proceeding pursuant to Rule 10.9213 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 10.9212(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, Enforcement 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 10.9269 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 10.9269.

Rule 10.9216. Acceptance, Waiver, and Consent; Procedure for Imposition of Fines for Minor Violation(s) of Rules

(a) Acceptance, Waiver, and Consent Procedures

- (1) Notwithstanding Rule 10.9211, if Enforcement has reason to believe a violation has occurred and the Participant, Participant Firm or covered person does not dispute the violation, Enforcement may prepare and request that the Participant, Participant Firm or covered person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such Participant's,

Participant Firm's or covered person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right to review by the Exchange Board of Directors, the SEC, 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(s) to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by Regulatory Staff.

(2)(A) If a Participant, Participant Firm or covered person submits an executed letter of acceptance, waiver, and consent, by the submission such Participant, Participant Firm or covered person also waives:

(i) any right to claim bias or prejudice of the CRO, the Exchange Board of Directors, Counsel to the Exchange Board of Directors, or any Director, 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 to claim that a person violated the ex parte prohibitions of Rule 10.9143 or the separation of functions prohibitions of Rule 10.9144, 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 Participant, Participant Firm or covered person shall be bound by the waivers made under paragraphs (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 Participant, Participant Firm or covered person executes the letter of acceptance, waiver, and consent, it shall be submitted to the CRO. The CRO may accept or reject such letter. If the letter is rejected by the CRO, the Participant, Participant Firm or covered person who executed the letter shall be notified in writing and the letter shall be deemed withdrawn.

(4) If the letter is accepted by the CRO, it shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means, and shall be deemed final and shall constitute the complaint, answer, and decision in the matter, 10 days after it is sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to Rule 10.9310(a)(1)(B)(i). If the letter is rejected by the CRO, the Exchange may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the Participant, Participant Firm or covered person shall not be prejudiced by the execution of the letter of acceptance, waiver, and consent under paragraph (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 Imposition of Fines for Minor Violation(s) of Rules

(1) Notwithstanding Rule 10.9211, the Exchange may, subject to the requirements set forth in paragraphs (b)(2) through (b)(4), impose a fine in accordance with the fine amounts and fine levels set forth in Rule 10.9217 and/or a censure on any Participant, Participant Firm or covered person with respect to any rule listed in Rule 10.9217. If Enforcement has reason to believe a violation has occurred and if the Participant, Participant Firm or covered person does not dispute the violation, Enforcement may prepare and request that the Participant, Participant Firm or covered person execute a minor rule violation letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such Participant's, Participant Firm's or covered person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of review by the Exchange Board of Directors, the SEC, 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 Regulatory Staff.

(2)(A) If a Participant, Participant Firm or covered person submits an executed minor rule violation letter, by the submission such Participant, Participant Firm or covered person also waives:

(i) any right to claim bias or prejudgment of the CRO, the Exchange Board of Directors, Counsel to the Exchange Board of Directors, or any Director, in connection with such person's or body's participation in discussions regarding the

terms and conditions of the minor rule violation letter or other consideration of the minor rule violation letter, including acceptance or rejection of such minor rule violation letter; and

(ii) any right to claim that a person violated the ex parte prohibitions of Rule 10.9143 or the separation of functions prohibitions of Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the minor rule violation letter or other consideration of the minor rule violation letter, including acceptance or rejection of such minor rule violation letter.

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

(3) If the Participant, Participant Firm or covered person executes the minor rule violation letter, it shall be submitted to the CRO. The CRO, on behalf of the SRO Board, may accept or reject such letter.

(4) If the letter is accepted by the CRO, it shall be deemed final. Any fine imposed pursuant to this Rule and not contested shall not be publicly reported, 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. If the letter is rejected by the CRO, the Exchange may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the Participant, Participant Firm or covered person shall not be prejudiced by the execution of the minor rule violation letter under paragraph (b)(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.

Rule 10.9217. Violations Appropriate for Disposition Under Rule 10.9216(b)

(a) Any Participant, Participant Firm or covered person may be subject to a fine, not to exceed \$5,000, under Rule 10.9216(b) with respect to any rules listed below. The fine amounts and fine levels set forth below shall apply to the fines imposed.

(b) Regulatory Staff designated by the Exchange shall have the authority to impose a fine pursuant to this Rule.

(c) Any person or organization found in violation of a minor rule is not required to report such violation on SEC Form BD or Form U-4 if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Any fine imposed in excess of \$2,500 is subject to current rather than quarterly reporting to the Commission pursuant to Rule 19d-1 under the Act.

(d) Nothing in this Rule shall require the Exchange to impose a fine for a violation of any rule under this Minor Rule Plan. If the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed under the Rule 10.9000 Series rather than under this Rule.

List of Rule Violations and Fines Applicable Thereto

Any Participant, Participant Firm or covered person may be subject to a fine under Rule 10.9216(b) with respect to any rules listed below.

(e) Exchange Rules and Policies subject to a Minor Rule Violation

Reporting and Record Retention Violations

1. Notice of Death or Retirement of Partner, Officer or Director (Article 3, Rule 9)
2. Filing Requirements/Parties Bound by Rules of Exchange (Article 3, Rule 4)
3. Failure to Notify Exchange of Request to Withdraw Capital Contribution (Article 3, Rule 6(b))
4. Failure to Request Exchange Approval of Transfer of Equity Securities of Participant Firm (Article 3, Rule 11)
5. Reporting of Loans (Article 3, Rule 12)
6. Record of Margin Calls and Receipt of Margin (Article 10, Rule 2)
7. Record of Orders and Executions (Article 11, Rule 3)
8. Designation of E-mail Addresses (Article 3, Rule 13)
9. Failure to provide Exchange with Information (Article 6, Rule 7)
10. Financial and Operational Reports (Article 7, Rule 4)
11. Notification of Change in Bond Coverage (Article 7, Rule 6)
12. Filing Requirements on Change of Examining Authority (Article 7, Rule 7)
13. Registration and Approval of Participant Personnel (Article 6, Rule 2(a) & (b))
14. Failure to Comply with Supervision Requirements (Article 6, Rule 5(a) & (b))
15. Written Supervisory Procedures (Article 6, Rule 5(c))
16. Impede or delay an Exchange Examination, Inquiry or Investigation (Article 6, Rule 9)
17. Failure to Report Short Positions (Article 7, Rule 9)
18. Furnishing of Records (Article 11, Rule 1)
19. Maintenance of Books & Records (Article 11, Rule 2)
20. Participant Communications (Article 11, Rule 4)
21. Registration of Market Makers and Market Maker Authorized Traders (Article 16, Rules 1 and 3)

- 22. Market Maker Reporting of Position Information (Article 16, Rule 6)
- 23. Institutional Broker Registration and Appointment (Article 17, Rule 1)
- 24. Consolidated Audit Compliance Rule (Rule 6.6800 Series)

Minor Trading Rule Violations

- 1. Reporting of Transactions (Article 9, Rule 13)
- 2. Violations of the Rule Relating to Conduct on Exchange Premises or Involving Participants or Exchange Employees (Article 8, Rule 16)
- 3. Failure by Participants to Comply with Rules Relating to Short Sales (Article 9, Rule 23)
- 4. Failure to Comply with Minimum Order Increments (Article 20, Rule 4 or Rule 7.6)
- 5. Institutional Broker Responsibilities for Entry of Orders into an Automated System (Article 17, Rule 3(a))
- 6. Institutional Broker Responsibilities for Handling Orders within an Integrated System (Article 17, Rule 3(b))
- 7. Trading Ahead of Customer Orders (Article 9, Rule 17)
- 8. Failure to Comply with the Firm Quote Rule (Reg. NMS Rule 602)
- 9. Institutional Broker Obligations in Handling Orders (Best Execution) (Article 17, Rule 3(d))
- 10. Short Sales (Rule 7.16)
- 11. Failure to comply with Authorized Trader requirements (Rule 7.30)

These fines are intended to apply to minor violations. For more serious violations, other disciplinary action may be sought.

(f) Recommended Fine Schedule

Reporting and Record Retention Violations

<u>Rule Violation</u>	<u>Fine for First Violation*</u>	<u>Fine for Second Violation*</u>	<u>Fine for Third and Subsequent Violation*</u>
<u>1. Notice of death or retirement of partner, officer or director (Article 3, Rule 9)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>2. Filing Requirements / Parties Bound by Rules of the Exchange (Article 3, Rule 4)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>

<u>3. Failure to Notify Exchange of Request to Withdraw Capital contribution</u> (Article 3, Rule 6(b))	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>4. Failure to Request Exchange Approval of Transfer of Equity Securities of a Participant Firm</u> (Article 3, Rule 11)	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>5. Reporting of loans</u> (Article 3, Rule 12)	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>6. Record of margin calls and receipt of margin</u> (Article 10, Rule 2)	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>7. Records of orders and executions</u> (Article 11, Rule 3)	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>8. Designation of E-mail Addresses</u> (Article 3, Rule 13)	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>9. Failure to provide information to the Exchange</u> (Article 6, Rule 7)	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>
<u>10. Financial and Operational Reports</u> (Article 7, Rule 4)	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>11. Notification of change in bond coverage</u> (Article 7, Rule 6)	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>12. Filing requirements on change of examining authority</u> (Article 7, Rule 7)	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>13. Registration and approval of Participant Personnel</u> (Article 6, Rule 2(a) & (b))	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>

<u>14. Failure to Comply with Supervision Requirements (Article 6, Rule 5(a) & (b))</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>
<u>15. Written Supervisory Procedures (Article 6, Rule 5(c))</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>
<u>16. Impede or delay an Exchange examination, inquiry or investigation (Article 6, Rule 9)</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>
<u>17. Failure to report short positions (Article 7, Rule 9)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>18. Furnishing of records (Article 11, Rule 1)</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>
<u>19. Maintenance of books & records (Article 11, Rule 2)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>20. Participant Communications (Article 11, Rule 4)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>21. Registration of Market Maker and Market Maker Authorized Traders (Article 16, Rules 1 and 3)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>22. Reporting of Position Information by Market Makers (Article 16, Rule 6)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>23. Institutional Broker registration and appointment (Article 17, Rule 1)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>24. Consolidated Audit Compliance Rule (Rule 6.6800 Series)**</u>			

** For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6.6800 Series, the Exchange may impose a minor rule violation fine of up to \$2,500. For more serious violations, other disciplinary action may be sought.

Minor Trading Rule Violations

<u>1. Reporting of transactions (Article 9, Rule 13)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>2. Violations of the rule relating to conduct on Exchange premises or involving Participants or Exchange employees (Article 8, Rule 16)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>3. Failure by Participants to comply with rules relating to short sales (Article 9, Rule 23)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>4. Failure to comply with minimum order increments (Article 20, Rule 4)</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>5. Institutional Broker responsibilities for entry of orders into an automated system (Article 17, Rule 3(a))</u>	<u>\$250</u>	<u>\$750</u>	<u>\$1500</u>
<u>6. Institutional Broker responsibilities for handling orders within an integrated system (Article 17, Rule 3(b))</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>
<u>7. Trading ahead of customer orders (Article 9, Rule 17)</u>	<u>\$1000</u>	<u>\$2500</u>	<u>\$5000</u>
<u>8. Failure to comply with the firm quote rule (Reg NMS Rule 602)</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>
<u>9. Institutional Broker obligations in handling orders (best execution)</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>

<u>(Article 17, Rule 3(d))</u>			
<u>10. Short Sales (Rule 7.16)</u>	<u>\$500</u>	<u>\$1000</u>	<u>\$2500</u>
<u>11. Failure to comply with Authorized Trader requirements (Rule 7.30)</u>	<u>\$1,000</u>	<u>\$2,500</u>	<u>\$3,500</u>

*The number of violations shall be calculated on a 24-month rolling basis.

Rule 10.9220. Request for Hearing; Extensions of Time, Postponements, Adjournments

Rule 10.9221. 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 10.9267. 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.

Rule 10.9222. 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 paragraph (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.

Rule 10.9230. Appointment of Hearing Panel, Extended Hearing Panel

Rule 10.9231. 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 10.9234(a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel. The Chief Hearing Officer shall appoint Panelists pursuant to the criteria in Rule 10.9232.

(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 10.9234(a), (c), (d), or (e). The Hearing Officer will serve as the chair of the Extended Hearing Panel. 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 FINRA arbitrators. The Chief Hearing Officer shall select as a Panelist a person who meets the criteria set forth in Rule 10.9232.

(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 10.9235(a), including preparing and signing the decision on behalf of the Hearing Panel, in accordance with Rule 10.9268; or

(2) Certify familiarity with the record and participate in the resolution of the issues in the case and in the issuance of the decision. In exercising this power, the replacement Hearing Officer may recall any witness before the Hearing Panel.

Rule 10.9232. Criteria for Selection of Panelists and Replacement Panelists

(a) Each Panelist shall be a person of integrity and judgment and, other than the Hearing Officer, shall be a member of the Exchange hearing board as provided in paragraph (b). At least one Panelist shall be engaged in securities activities differing from that of the Respondent or, if retired, was so engaged in differing activities at the time of retirement.

(b) The Exchange Board of Directors shall from time to time appoint a hearing board to be composed of such number of Participants and Participant Firms of the Exchange that are not members of the Exchange Board of Directors and registered employees and nonregistered employees of Participants or Participant Firms. Former Participants and registered and non-registered employees of Participants or Participant Firms who have retired from the securities industry may be appointed to the hearing board. The members of the hearing board shall be appointed annually and shall serve at the pleasure of the Exchange Board of Directors.

(c) Criteria for Appointment of a Panelist

The Chief Hearing Officer shall select Panelists from the current members of the Exchange hearing board 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 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.

Rule 10.9233. 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 10.9231(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.

Rule 10.9234. 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 10.9232.

Rule 10.9235. 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.

Rule 10.9240. Pre-hearing Conference and Submission

Rule 10.9241. 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 10.9290, 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 10.9251;

(10) designation of relevant portions of transcripts from investigative testimony or other proceedings and the inclusion of an index for such testimony; and

(11) 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 10.9215(f). When a complaint names multiple Respondents, the 21-day period shall commence from the later of:

- (1) the date on which the last timely answer was filed, or
- (2) if one or more Respondents has failed to answer, from the expiration of the second period provided for filing an answer under Rule 10.9215(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 10.9269, against a Party that fails to appear, in person or through counsel or a representative, at a prehearing conference of which the Party has due notice.

Rule 10.9242. 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.

(b) Prohibition on Serving as Expert Witness

No former Regulatory Staff shall, within a period of one year immediately following termination of employment with the Exchange or FINRA, provide expert testimony on behalf of any other person in any proceeding under the Rule 10.9000 Series. Nothing in this Rule shall prohibit former Regulatory Staff from testifying as a witness on behalf of the Exchange or FINRA.

Rule 10.9250. Discovery

Rule 10.9251. 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, Enforcement 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 10.8210;

(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) Enforcement shall promptly inform the Hearing Officer and each other Party if, after the issuance of a complaint, requests for information under Rule 10.8210 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 10.8210 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 paragraph (a)(1) shall limit the discretion of Enforcement to make available any other Document or the authority of the Hearing Officer to order the production of any other Document.

(b) Withheld Documents

(1) Enforcement 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 a 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) Enforcement shall withhold a Document if the Document is prohibited from disclosure by federal law.

(3) Nothing in paragraph (b)(1) authorizes Enforcement to withhold a Document, or a part thereof, that contains material exculpatory evidence.

(c) Withheld Document List

The Hearing Officer may require Enforcement to submit to the Hearing Officer a list of Documents withheld pursuant to paragraph (b) or to submit to the Hearing Officer any Document withheld. Upon review, the Hearing Officer may order Enforcement to make the list or any Document withheld available to the other Parties for inspection and copying unless federal law prohibits disclosure of the Document or its existence. A motion to require Enforcement 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, Enforcement 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, Enforcement 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 10.9215(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 office 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 the Documents or be permitted to remove the Documents from the Exchange's offices.

(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 Enforcement, 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 review under Rule 10.9310, the Exchange Board of Directors, shall determine whether the failure to make the document available was not harmless error, applying applicable Exchange, FINRA, SEC, and federal judicial precedent.

Rule 10.9252. Requests for Information**(a) Content and Timing of Requests**

A Respondent who requests that the Exchange invoke Rule 10.8210 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 Exchange 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.

Rule 10.9253. Production of Witness Statements

(a) Availability

Notwithstanding the provisions of Rule 10.9251(b),

(1) A Respondent in a disciplinary proceeding may file a motion requesting that Enforcement produce for inspection and copying any statement of any person called or to be called as a witness by Enforcement 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 Enforcement 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 Enforcement, 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 Enforcement, 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 review under Rule 10.9310, the Exchange Board of Directors, shall determine whether the failure to provide any statement was not harmless error, applying applicable Exchange, FINRA, SEC, and federal judicial precedent.

Rule 10.9260. Hearing and Decision

Rule 10.9261. 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. The documentary evidence submitted by the Parties prior to the hearing pursuant to this paragraph shall not become part of the record, unless the Hearing Officer, Hearing Panel, or Extended Hearing Panel orders some or all of it included pursuant to Rule 10.9267(a)(8). The Hearing Officer may order each Party to refrain from submitting its documentary evidence to the Hearing Officer.

(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.

Rule 10.9262. 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.

Rule 10.9263. 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 10.9267.

Rule 10.9264. 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 10.9251, the Respondent or Enforcement, 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 10.9146(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 Enforcement 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 10.9145. 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.

Rule 10.9265. 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.

Rule 10.9266. 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.

Rule 10.9267. 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 10.9233 or a Panelist under Rule 10.9234, 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 10.9136(e); and

(C) a list of Documents, if any, that a Respondent unsuccessfully sought by motion to inspect and copy under Rule 10.9251(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 SEC 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.

Rule 10.9268. 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, if not otherwise contained in the record;
- (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 pursuant to paragraph (f) of this Rule; and
- (7) a statement, when the sanctions include a permanent cease and desist order, that is consistent with the requirements of Rule 10.9291(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 Participant or Participant Firm with which a Respondent is associated.

(e) Review

(1) If a request for review is not timely filed pursuant to Rule 10.9310, the majority decision shall constitute final disciplinary action of the Exchange for purposes of Exchange Act Rule 19d-1(c)(1).

(2) A majority decision with respect to an affiliate of the Exchange as such term is defined in Rule 12b-2 under the Exchange Act shall constitute final disciplinary action of the Exchange for purposes of SEC Rule 19d-1(c)(1) and may not be reviewed pursuant to Rule 10.9310.

(f) Effectiveness of Sanctions

Unless otherwise provided in the majority decision issued under paragraph (a) of this Rule:

(1) a sanction (other than a bar or an expulsion) specified in a decision constituting final disciplinary action of the Exchange for purposes of Exchange Act Rule 19d-1(c)(1) shall become effective on a date to be determined by the Exchange; and

(2) a bar or an expulsion specified in a decision shall become effective immediately upon the decision becoming the final disciplinary action of the Exchange for purposes of Exchange Act Rule 19d-1(c)(1).

Rule 10.9269. 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 10.9215, or a Party that fails to appear at a pre-hearing conference held pursuant to Rule 10.9241 of which the Party has due notice, or a Party that fails to appear at any hearing that the Party is

required to attend under the Rule 10.9200 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 Enforcement, 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 prehearing 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 Participant or Participant Firm with which a Respondent is associated.

(b) Contents of Decision

The contents of a default decision shall conform to the requirements of Rule 10.9268(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

If a request for a review of a default decision is not filed pursuant to Rule 10.9310 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 Exchange Act Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become effective on a date to be determined by Regulatory 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 or other means reasonably likely to obtain prompt service when the sanction is a bar or an expulsion.

Rule 10.9270. 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 Participant, Participant Firm or covered person is alleged to have violated;

(3) a statement containing the acts or practices which the Participant, Participant Firm or covered 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 paragraphs (c)(2) and (c)(3);

(5) a proposed sanction to be imposed that is consistent with the Exchange's then current sanction guidelines, if applicable, or, if inconsistent with the sanction guidelines, a detailed statement supporting the proposed sanction;

(6) a description of the proposed sanction and the effective date of any sanction(s) imposed, or a statement that the effective date of the sanction(s) will be a date to be determined by Regulatory Staff; and

(7) if applicable, a proposed permanent cease and desist order to be imposed that is consistent with the requirements of Rule 10.9291(a)

concerning the content, scope, and form of a permanent cease and desist order.

(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 review by the Exchange Board of Directors, the SEC, 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 prejudice 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 CRO, the Exchange Board of Directors, Counsel to the Exchange Board of Directors, or any Director, 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 10.9143 or the separation of functions prohibitions of Rule 10.9144, 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) Contested Offers of Settlement Deemed Rejected

If a Respondent makes an offer of settlement and Enforcement opposes it, the offer of settlement is contested. A contested offer of settlement shall be deemed rejected, shall not be transmitted to the Office of Hearing Officers, CRO, or Hearing Panel or Extended Hearing Panel, and shall not constitute a part of the record in any proceeding against the Respondent making the offer.

(f) Uncontested Offers of Settlement

If a Respondent makes an offer of settlement and Enforcement does not oppose it, the offer of settlement is uncontested. If an offer of settlement is determined to be uncontested by Enforcement before a hearing on the merits has begun, Enforcement shall transmit the uncontested offer of settlement and a proposed order of acceptance to the CRO with its recommendation. If an offer of settlement is determined to be uncontested by Enforcement after a hearing on the merits has begun, Enforcement shall transmit the offer of settlement and a proposed order of acceptance to the Hearing Panel or, if applicable, the Extended Hearing Panel to be accepted or rejected.

(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 CRO, the Hearing Panel, or if applicable, Extended Hearing Panel. The CRO, Hearing Panel, or if applicable, Extended Hearing Panel, may or may not accept such offer of settlement and order of acceptance.

(3) If the offer of settlement and order of acceptance are accepted by the CRO, the Hearing Panel or, if applicable, Extended Hearing Panel, they shall be issued and shall be sent to each Director and each member of the Committee for Review via courier, express delivery or electronic means. The offer of settlement and order of acceptance shall become final 10 days after they are sent to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is requested pursuant to Rule 10.9310(a)(1). Enforcement shall provide a copy of an issued order of acceptance to each Participant or Participant Firm with which a Respondent is associated.

(g) Final Disciplinary Action of the Exchange

The proceeding shall conclude as of the date the order of acceptance is final. The final order of acceptance shall constitute final disciplinary action of the Exchange. The sanction shall take effect as set forth in the order.

(h) Uncontested Offer of Settlement Not Accepted

If an uncontested offer of settlement or an order of acceptance is not accepted by the CRO, the Hearing Panel or the Extended Hearing Panel, the Respondent shall be notified in writing and the offer of settlement and proposed order of acceptance shall be deemed withdrawn. An offer and a proposed order of acceptance that are not accepted 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 the CRO, a Hearing Panel or Extended Hearing Panel, 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.

Rule 10.9280. Contemptuous Conduct

(a) Persons Subject to Sanctions

If a Party, attorney for a Party, or other person authorized to represent others by Rule 10.9141, 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 10.9141, 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 10.9141, under Rule 10.9150.

(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 10.9141.

(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 10.9240 Series and the Rule 10.9250 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 paragraphs (b)(1)(A) through (C).

(c) Review of Exclusions

If an attorney for a Party, or other person authorized to represent others by Rule 10.9141, 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 Chief Hearing Officer. 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 Chief Hearing Officer and served on all Parties within five days after the service

of the motion to vacate. The Chief Hearing Officer 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 Chief Hearing Officer. 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 Chief Hearing Officer of an exclusion order in paragraph (c). In the event that the Chief Hearing Officer upholds an exclusion of an attorney or other person authorized to represent others by Rule 10.9141, 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.

Rule 10.9290. 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 10.9810 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 10.9241.

Rule 10.9291. Permanent Cease and Desist Orders

(a) Content, Scope and Form Requirements

When a decision issued under Rule 10.9268 or Rule 10.9269 or an order of acceptance issued under Rule 10.9270 imposes a permanent cease and desist order, it shall:

(1) order a Respondent (and any successor of a Respondent, where the Respondent is a Participant or Participant Firm) 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 Participant or Participant Firm) shall take or refrain from taking.

(b) Delivery Requirement

Where a Respondent is a Participant or Participant Firm, Respondent shall deliver a copy of a permanent cease and desist order, within one business day of receiving it, to its covered persons.

RULE 10.9300. REVIEW OF DISCIPLINARY PROCEEDING BY EXCHANGE BOARD OF DIRECTORS

Rule 10.9310. Review by Exchange Board of Directors

(a) Request for Review

(1)(A) Any Party, any Director, and any member of the Committee for Review may require a review by the Exchange Board of Directors of any determination or penalty, or both, imposed by a Hearing Panel or Extended Hearing Panel under the Rule 10.9200 Series, except that none of the aforementioned persons may request a review by the Exchange Board of Directors of a decision concerning an affiliate of the Exchange as such term is defined in Rule 12b-2 under the Exchange Act. A request for review shall be made by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within 25 days after notice of the determination and/or penalty is served upon the Respondent. However, any request for review of an offer of settlement determined to be uncontested after a hearing on the merits has begun under Rule 10.9270(f) that has been accepted by a Hearing Panel or Extended Hearing Panel shall be governed by Rule 10.9310(a)(1)(B)(i) below. The Secretary of the Exchange shall give notice of any such request for review to the Parties.

(B) In addition to the provisions for review by the Exchange Board of Directors set forth in Rule 10.9310(a)(1)(A):

(i) Any Director and any member of the Committee for Review may require a review by the Exchange Board of Directors of any determination or penalty, or both, imposed in connection with a letter of acceptance, waiver, and consent under Rule 10.9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), except that none of the aforementioned persons may request a review by the Exchange Board of Directors of a determination or penalty concerning an affiliate of the Exchange as such term is defined in Rule 12b-2 under the Exchange Act. A request for review shall be made by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within 10 days after a letter of acceptance, waiver, and consent or an offer of settlement has been sent to each Director

and each member of the Committee for Review pursuant to Rule 10.9216(a)(4) or Rule 10.9270(f)(3). The Secretary of the Exchange shall give notice of any such request for review to the Parties.

(ii) Any Party may require a review by the Exchange Board of Directors of any rejection by the CRO of a letter of acceptance, waiver, and consent under Rule 10.9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), except that no Party may request a review by the Exchange Board of Directors of a rejection of a letter of acceptance, waiver, and consent or an offer of settlement concerning an affiliate of the Exchange as such term is defined in Rule 12b-2 under the Exchange Act. A request for review shall be made by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within 25 days after notification pursuant to Rule 10.9216(a)(3) or Rule 10.9270(h) that a letter of acceptance, waiver, and consent, or an uncontested offer of settlement or an order of acceptance is not accepted by the CRO. The Secretary of the Exchange shall give notice of any such request for review to the Parties.

(2) In connection with any review under paragraph (a)(1)(A), the Secretary of the Exchange shall direct the Office of Hearing Officers to complete and transmit a record of the disciplinary proceeding in accordance with Rule 10.9267. Within 21 days after the Secretary of the Exchange gives notice of a request for review to the Parties, or at such later time as the Secretary of the Exchange may designate, the Office of Hearing Officers shall assemble and prepare an index to the record, transmit the record and the index to the Secretary of the Exchange, 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 Secretary of the Exchange is complete.

(b) Review by Exchange Board of Directors

Any review by the Exchange Board of Directors shall be based on oral arguments and written briefs and shall be limited to consideration of the record before the Hearing Panel or Extended Hearing Panel. Upon review, and with the advice of the Committee for Review, the Exchange Board of Directors, by the affirmative vote of a majority of the Exchange Board of Directors then in office, may sustain any determination or penalty imposed, (including the terms of any permanent cease and desist order), or both, may modify or reverse any such determination, and may increase, decrease or eliminate any such penalty, or impose any penalty permitted under the Exchange's rules, as it deems

appropriate. Unless the Exchange Board of Directors otherwise specifically directs, the determination and penalty, if any, of the Exchange Board of Directors after review shall be final and conclusive subject to the provisions for review of the Securities Exchange Act of 1934.

(c) Remand

Notwithstanding the foregoing, if either Party upon review applies to the Exchange Board of Directors for leave to adduce additional evidence, and shows to the satisfaction of the Exchange Board of Directors that the additional evidence is material and that there were reasonable grounds for failure to adduce it before the Hearing Panel or Extended Hearing Panel, the Exchange Board of Directors may remand the case for further proceedings, in whatever manner and on whatever conditions the Exchange Board of Directors considers appropriate.

(d) Chief Executive Officer

Notwithstanding any other provisions of this Rule 10.9000 Series, the Chief Executive Officer may not require a review by the Exchange Board of Directors under this Rule and shall be recused from deliberations and actions of the Exchange Board of Directors with respect to matters to be reviewed by the Exchange Board of Directors under this Rule.

RULE 10.9500. OTHER PROCEEDINGS

Rule 10.9520. Eligibility Proceedings

Rule 10.9521. Purpose and Definitions

(a) Purpose

The Rule 10.9520 Series sets forth procedures for a covered person to become or remain associated with a Participant or Participant Firm notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act and for a current Participant, Participant Firm or covered person to obtain relief from the eligibility or qualification requirements of the Exchange's Rules. Such actions hereinafter are referred to as "eligibility proceedings."

(b) Definitions

(1) The term "Application" means FINRA's Form MC-400 for covered persons or Form MC-400A for Participants or Participant Firms filed with FINRA's Department of Registration and Disclosure ("RAD").

(2) The term "disqualified Participant" or "disqualified Participant Firm" means a broker, dealer, municipal securities broker or dealer, government securities broker or dealer, or Participant that is or

becomes subject to a disqualification or is otherwise ineligible for membership under Exchange rules.

(3) The term "disqualified person" means a covered person or person seeking to become a covered person who is or becomes subject to a disqualification as defined in Section 3(a)(39) of the Exchange Act or is otherwise ineligible for association under Exchange rules.

(4) The term "sponsoring Participant" or "sponsoring Participant Firm" means the Participant, Participant Firm or applicant for membership pursuant to Exchange rules that is sponsoring the association or continued association of a disqualified person to be admitted, readmitted, or permitted to continue in association.

Rule 10.9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) Initiation by the Exchange

(1) Issuance of Notice of Disqualification or Ineligibility

If Exchange staff has reason to believe that a disqualification exists or that a Participant, Participant Firm or covered person otherwise fails to meet the eligibility requirements of the Exchange, Exchange staff shall issue a written notice to the Participant, Participant Firm or applicant for membership under Exchange rules. The notice shall specify the grounds for such disqualification or ineligibility. Exchange staff shall not issue such written notice to Participants, Participant Firms or applicants for membership under Exchange rules 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 Participant, Participant Firm or applicant for membership under Exchange rules is required to file an application pursuant to an Regulatory Bulletin entitled "Eligibility Proceedings: Exchange Rule 10.9520 Series to Establish Procedures Applicable to Participants, Participant Firms and Covered Persons Subject to Certain Statutory Disqualifications" (the "SD Information Memo").

(2) Notice Regarding a Participant or Participant Firm

A notice issued to a disqualified Participant or Participant Firm shall state that the disqualified Participant or Participant Firm may apply for relief by filing an application or, in the case of a matter set forth in Rule 10.9522(e)(1), a written request for relief, within ten business days after service of the notice. If the Participant or Participant Firm

fails to file the application or, where appropriate, the written request for relief, within the 10-day period, the membership of the Participant or Participant Firm shall be canceled, unless the Department of Member Regulation grants an extension for good cause shown.

(3) Notice Regarding a Covered Person

A notice issued regarding a disqualified person to a Participant, Participant Firm or applicant for membership under Exchange rules shall state that such Participant, Participant Firm or applicant for membership may file an application on behalf of itself and such covered person or, in the case of a matter set forth in Rule 10.9522(e)(1), a written request for relief, within ten business days after service of the notice. If the Participant or Participant Firm 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 paragraph (a) shall be served pursuant to Rules 10.9131 and 10.9134.

(b) Obligation of Participant or Participant Firm to Initiate Proceeding

(1) A Participant or Participant Firm shall file an application or, in the case of a matter set forth in Rule 10.9522(e)(1), a written request for relief, with RAD, if the Participant or Participant Firm determines prior to receiving a notice under paragraph (a) that:

(A) it has become a disqualified Participant or Participant Firm;

(B) a covered person or a person whose association is proposed by an applicant for membership under Exchange rules has become a disqualified person; or

(C) the Participant, Participant Firm or applicant for membership under Exchange rules wishes to sponsor the association of a covered 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 Participant or Participant Firm shall not file an application unless instructed to do so by the SD Information Memo.

(c) Withdrawal of Application

A Participant or Participant Firm may withdraw its application or written request for relief prior to a hearing by filing a written notice with RAD pursuant to Rules 10.9135, 10.9136, and 10.9137. A Participant or Participant Firm may withdraw its application after the start of a hearing but prior to the issuance of a decision by the Exchange Board of Directors by filing a written notice with RAD and the CRO pursuant to Rules 10.9135, 10.9136, and 10.9137.

(d) Ex Parte Communications

The prohibitions against ex parte communications set forth in Rule 10.9143 shall become effective under the Rule 10.9520 Series when Exchange staff has initiated the eligibility proceeding and Exchange staff has knowledge that a Participant or Participant Firm intends to file an application or written request for relief pursuant to the Rule 10.9520 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 Participant or Participant Firm or a sponsoring Participant or Participant Firm without the filing of an application by such disqualified Participant or Participant Firm or sponsoring Participant or Participant Firm if a disqualified Participant or Participant Firm or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification:

(A) a disqualified Participant or Participant Firm 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 Participant or Participant Firm makes a request to change the supervisor of a disqualified person; or

(C) a disqualified Participant or Participant Firm or sponsoring Participant or Participant Firm is a member of both the Exchange and another self-regulatory organization; and:

(i) the other self-regulatory organization intends to file a Notice under Exchange Act Rule 19h-1 approving the membership continuance of the disqualified Participant or Participant Firm or, in the case of a sponsoring Participant or Participant Firm, 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 Participant or Participant Firm or sponsoring Participant or Participant Firm if the disqualified Participant or Participant Firm 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 paragraph (e)(1)):

(A) The disqualified person is already a participant in, a member of, or a person associated with a member 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 covered person's prior admission or continuance pursuant to an order of the SEC under Exchange Act 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 SEC under Exchange Act 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 SEC in determining a sanction against such disqualified person in the proceeding; and the SEC 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;

(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 SEC will not institute a proceeding against such covered person pursuant to Section 15(b) or 15B of the Exchange Act or that the future securities activities of such covered 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 Participant or Participant Firm, Sponsoring Participant or Participant Firm, 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 paragraph (e)(1), the disqualified

Participant or Participant Firm or sponsoring Participant or Participant Firm may file an application, and such Participant or Participant Firm shall have the right to proceed under Rule 10.9523 or 10.9524, as applicable. The Department of Member Regulation may require a disqualified Participant or Participant Firm or sponsoring Participant or Participant Firm to file an application with RAD, notwithstanding the provisions of paragraph (e)(1).

(B) In the event the Department of Member Regulation does not approve an application pursuant to paragraph (e)(2), the disqualified Participant or Participant Firm or sponsoring Participant or Participant Firm shall have the right to proceed under Rule 10.9523 or 10.9524, as applicable.

Rule 10.9523. Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to Exchange Act 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 Participant or Participant Firm or sponsoring Participant or Participant Firm or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person, as the case may be, consent to the recommendation and the imposition of the supervisory plan. The disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, 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 Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm and/or disqualified person waive:

(A) the right to a hearing before a Hearing Panel and any right of appeal to the Exchange Board of Directors, 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 Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person to claim bias or prejudice by the Department of

Member Regulation, the CRO, the Exchange Board of Directors, or any member of the Exchange Board of Directors, 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 Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 10.9143 or the separation of functions prohibitions of Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the recommendation or supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan.

(2) If a recommendation or supervisory plan is rejected, the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person shall be bound by the waivers made under paragraph (a)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and shall have the right to proceed under this rule and Rule 10.9524, as applicable.

(3) If the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person execute the letter consenting to the supervisory plan, it shall be submitted to the CRO by the Department of Member Regulation with a proposed Notice under Exchange Act Rule 19h-1, where required. The CRO may accept or reject the recommendation of the Department of Member Regulation and the supervisory plan.

(4) If the recommendation and supervisory plan is accepted by the CRO, it shall be deemed final and, where required, the proposed Notice under Exchange Act Rule 19h-1 will be filed by the Exchange. If the recommendation and supervisory plan are rejected by the CRO, the Exchange may take any other appropriate action with respect to the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person. If the recommendation and supervisory plan are rejected, the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person shall not be prejudiced by the execution of the letter

consenting to the supervisory plan under this paragraph (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 10.9522(e)(2)(F), the Department of Member Regulation is authorized to accept the membership or continued membership of a disqualified Participant or Participant Firm or sponsoring Participant or Participant Firm or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified persons, as the case may be, consent to the imposition of the supervisory plan. The disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, 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 Exchange Act Rule 19h-1, where required, and the Exchange shall file such Notice.

(1) If a disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person submitted an executed letter consenting to a supervisory plan, by the submission of such letter, the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm and/or disqualified person waive:

(A) the right of appeal to the Exchange Board of Directors, 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 Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person to claim bias or prejudice by the Department of Member Regulation or the CRO 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 Participant or Participant Firm, sponsoring Participant or Participant Firm, and/or disqualified person to claim that a person violated the ex parte prohibitions of Rule 10.9143 or the separation of functions prohibitions of Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the

supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such supervisory plan.

(2) If the supervisory plan is rejected, the disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, 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 10.9524.

Rule 10.9524. Exchange Board of Directors Consideration

(a) Request for Review

A disqualified Participant or Participant Firm, sponsoring Participant or Participant Firm, or applicant may request that the Exchange Board of Directors review a decision to reject a supervisory plan under Rule 10.9523. A request for review shall be made by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within 25 days after notice of the decision is served. The Secretary of the Exchange shall give notice of any such request for review to the CRO and the Department of Member Regulation.

(b) Review by Exchange Board of Directors

Any review by the Exchange Board of Directors shall be based on oral arguments and written briefs and shall be limited to consideration of the record before the Department of Member Regulation and the CRO. Upon review, the Exchange Board of Directors, by the affirmative vote of a majority of the Exchange Board of Directors then in office, may sustain, modify, or reverse any such decision. Unless the Exchange Board of Directors otherwise specifically directs, the decision of the Exchange Board of Directors after review shall be final and conclusive subject to the provisions for review of the Securities Exchange Act of 1934.

(c) Remand

Notwithstanding the foregoing, if either Party upon review applies to the Exchange Board of Directors for leave to adduce additional evidence, and shows to the satisfaction of the Exchange Board of Directors that the additional evidence is material and that there was reasonable ground for failure to adduce it previously, the Exchange Board of Directors may remand the matter for further proceedings, in whatever manner and on whatever conditions the Exchange Board of Directors considers appropriate.

Rule 10.9525. Reserved.

Rule 10.9526. Reserved.

Rule 10.9527. Application to SEC for Review

The right to have any action taken pursuant to this Rule Series 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 final action by the Exchange, unless the SEC otherwise orders.

Rule 10.9550. Expedited Proceedings**Rule 10.9551. Failure to Comply with Public Communication Standards Pursuant to FINRA Rule 2210 as Incorporated by Reference in Rule 11.2210****(a) Notice of Pre-Use Filing Requirement**

Pursuant to Rule 11.2210(c)(1)(B), Regulatory Staff may issue a written notice requiring a Participant or Participant Firm to file communications with the FINRA's Advertising Regulation Department at least ten days prior to use if Regulatory Staff determines that the Participant or Participant Firm has departed from the standards of Rule 11.2210.

(b) Service of Notice of Pre-Use Filing Requirement

Except as provided below, Regulatory Staff shall serve the Participant or Participant Firm (or counsel representing the Participant or Participant Firm or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Participant or Participant Firm) with such notice in accordance with Rule 10.9134 or by email. Papers served on a Participant or Participant Firm by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 10.9134. Papers served on counsel for a Participant or Participant Firm, or other person authorized to represent others under Rule 10.9141, by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 10.9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 10.9134. Service is complete upon sending the notice by 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. The notice shall state that the respondent may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 10.9559. 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 10.8310(a) and 10.9559(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 Notice of Pre-Use Filing Requirement

Pursuant to Rule 11.2210(c)(1)(B), the pre-use filing requirement 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 10.9559.

(e) Request for Hearing

A Participant or Participant Firm served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 10.9559. 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 Participant or Participant Firm does not timely request a hearing, the pre-use filing requirements 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 Modification or Termination of Pre-Use Filing Requirement

A Participant or Participant Firm that is subject to a pre-use filing requirement under this Rule may file a written request for modification or termination of the requirement. 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 head of the appropriate department or office may grant relief for good cause shown.

Rule 10.9552. Failure to Provide Information or Keep Information Current

(a) Notice of Suspension of a Participant, Participant Firm or Covered Person if Corrective Action is Not Taken

If a Participant, Participant Firm or covered person fails to provide any information, report, material, data, or testimony requested or required to be filed pursuant to the Exchange's Rules, or fails to keep its membership application or supporting documents current, Regulatory Staff may provide written notice to such Participant, Participant Firm or covered 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 of the Participant, Participant Firm or of association of the covered person with any Participant or Participant Firm.

(b) Service of Notice of Suspension

Except as provided below, Regulatory Staff shall serve the Participant, Participant Firm or covered person (or counsel representing the Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Participant, Participant Firm or covered person) with such notice in accordance with Rule 10.9134 or by email. A copy of a notice under this Rule that is served on a covered person also shall be served on such Participant or Participant Firm. Papers served on a Participant or Participant Firm by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 10.9134. Papers served on a person by email shall be sent to the person's last known 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 10.9134. Papers served on counsel for a Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141, by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 10.9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 10.9134. Service is complete upon sending the notice by 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 10.9559. 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 10.8310(a) and 10.9559(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 10.9559.

(e) Request for Hearing

A Participant, Participant Firm or covered 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 10.9559. 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 Participant, Participant Firm or covered 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 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 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 10.9270, except that, if an uncontested offer of settlement, made under Rule 10.9270(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 Participant, Participant Firm or covered 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.

Rule 10.9553. Reserved.

Rule 10.9554. 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 Participant, Participant Firm or covered person fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under the

Exchange's Rules, or an Exchange order of restitution or Exchange settlement agreement providing for restitution, Regulatory Staff may provide written notice to such Participant, Participant Firm or covered person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any Participant or Participant Firm. When a Participant, Participant Firm or covered person fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation involving a customer, a claim of inability to pay is no defense.

(b) Service of Notice of Suspension or Cancellation

Except as provided below, Regulatory Staff shall serve the Participant, Participant Firm or covered person (or counsel representing the Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Participant, Participant Firm or covered person) with such notice in accordance with Rule 10.9134 or by email. A copy of a notice under this Rule that is served on a covered person also shall be served on such Participant or Participant Firm. Papers served on a Participant or Participant Firm by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 10.9134. Papers served on a person by email shall be sent to the person's last known 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 10.9134. Papers served on counsel for a Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141, by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 10.9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 10.9134. Service is complete upon sending the notice by 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 10.9559. 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 10.8310(a) and 10.9559(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 10.9559.

(e) Request for Hearing

A Participant, Participant Firm or covered 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 10.9559. 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 Participant, Participant Firm or covered 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 Participant, Participant Firm or covered 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 department or office that issued the notice or, if another department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

Rule 10.9555. Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services

(a) Notice to Participant, Participant Firm or Covered Person of Suspension, Cancellation, Bar, or Limitation or Prohibition on Access to Services

(1) If a Participant, Participant Firm or covered person does not meet the eligibility or qualification standards set forth in the Exchange's Rules, Exchange staff may provide written notice to such Participant, Participant Firm or covered 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 Participant or Participant Firm.

(2) If a Participant, Participant Firm or covered person does not meet the prerequisites for access to services offered by the Exchange or a Participant or Participant Firm thereof or cannot be permitted to continue to have access to services offered by the Exchange or a Participant or Participant Firm thereof with safety to investors, creditors, Participants, Participant Firms or the Exchange, Exchange staff may provide written notice to such Participant, Participant Firm or covered person limiting or prohibiting access to services offered by the Exchange or a Participant or Participant Firm thereof.

(b) Service of Notice

Except as provided below, Exchange staff shall serve the Participant, Participant Firm or covered person (or counsel representing the Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Participant, Participant Firm or covered person) with such notice in accordance with Rule 10.9134 or by email. A copy of a notice under this Rule that is served on a covered person also shall be served on such Participant or Participant Firm. Papers served on a Participant or Participant Firm by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 10.9134. Papers served on a person by email shall be sent to the person's last known 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 10.9134. Papers served on counsel for a Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141, by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 10.9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 10.9134. Service is complete upon sending the notice by 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 10.9559. 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 10.8310(a) and 10.9559(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 Participant or Participant Firm thereof with respect to services to which the Participant, Participant Firm or covered person does not have access shall be upon service of the notice. A request for a hearing, pursuant to Rule 10.9559, 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 Participant or Participant Firm thereof with respect to services to which the Participant, Participant Firm or covered person does not have access shall not be stayed by a request for a hearing.

(e) Request for Hearing

A Participant, Participant Firm or covered 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 10.9559. 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 Participant, Participant Firm or covered 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 Participant or Participant Firm thereof with respect to services to which the Participant, Participant Firm or covered person does not have access shall be upon service of the notice. The notice shall constitute final Exchange action if the Participant, Participant Firm or covered 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 Participant, Participant Firm or covered 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 department or office that issued the notice or, if another department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

Rule 10.9556. Failure to Comply with Temporary and Permanent Cease and Desist Orders**(a) Notice of Suspension, Cancellation or Bar**

If a Participant, Participant Firm or covered person fails to comply with a temporary or permanent cease and desist order issued under the Rule 10.9200, 10.9300 or 10.9800 Series, Regulatory Staff, after receiving written authorization from the Exchange's CRO or such other senior officer as the CRO may designate, may issue a notice to such Participant, Participant Firm or covered 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 Participant or Participant Firm.

(b) Service of Notice

Regulatory Staff shall serve the Participant, Participant Firm or covered person subject to a notice issued under this Rule (or upon counsel representing the Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Participant, Participant Firm or covered person) by email, overnight courier or personal delivery. Papers served on a Participant, Participant Firm, covered person or counsel for such Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a Participant, Participant Firm or covered person, (b)(1) and (2) of Rule 10.9134. Papers served on a Participant or Participant Firm by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 10.9134. Papers served on a person by email shall be sent to the person's last known 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 10.9134. Papers served on counsel for a Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141 by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 10.9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 10.9134. A copy of a notice under this Rule that is served on a covered person also shall be served on such Participant or Participant Firm. Service is complete upon sending the notice by email or 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 10.9559. 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 10.8310(a) and 10.9559(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 10.9559.

(e) Request for a Hearing

A Participant, Participant Firm or covered 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 10.9559. 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 Participant, Participant Firm or covered 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 Participant, Participant Firm or covered 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 department or office that issued the notice or, if another department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the 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 Participant, Participant Firm or covered person fails to comply with a temporary or permanent cease and desist order issued under the Rule 10.9200, 10.9300, or 10.9800

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, Regulatory Staff, after receiving written authorization from the CRO, may file a petition with the Office of Hearing Officers seeking a hearing pursuant to Rule 10.9559 and the imposition of any fitting sanctions for such Participant's, Participant Firm's or covered 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 Regulatory Staff seeks to have imposed, and note that a hearing under Rule 10.9559 is requested. Regulatory Staff may seek the imposition of any fitting sanction.
- (3) Upon the filing of the petition, Rule 10.9559 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) After having filed the petition, Regulatory Staff 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.

Rule 10.9557. Procedures for Regulating Activities Under Article 7, Rules 3 or 8 Regarding a Participant or Participant Firm Experiencing Financial or Operational Difficulties

(a) Notice of Requirements and/or Restrictions; Exchange Action

Exchange staff may issue a notice directing a Participant or Participant Firm to comply with the provisions of Article 7, Rules 3 or 8 or restrict its business activities, either by limiting or ceasing to conduct those activities consistent with Article 7, Rules 3 or 8, if Exchange staff has reason to believe that a condition specified in Article 7, Rules 3 or 8 exists. A notice served under this Rule shall constitute Exchange action.

(b) Service of Notice

Exchange staff shall serve a Participant or Participant Firm subject to a notice issued under this Rule (or counsel representing the Participant or Participant Firm, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Participant or Participant Firm) by email, overnight courier or personal delivery. Papers served by overnight courier or personal delivery shall conform to paragraphs (a)(1) and

(3) and (b)(1) and (2) of Rule 10.9134. Papers served on a Participant or Participant Firm by email shall be sent to the email address on file with the Exchange and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 10.9134. Papers served on counsel for a Participant or Participant Firm, or other person authorized to represent others under Rule 10.9141 by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 10.9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 10.9134. Service is complete upon sending the notice by email or 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 Participant or Participant Firm 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 Exchange staff, to result in automatic and immediate suspension unless Exchange 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 Participant or Participant Firm 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 Participant or Participant Firm may file a written request for a hearing with the Office of Hearing Officers pursuant to Rule 10.9559;

(8) inform the Participant or Participant Firm 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 10.9559(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 Participant or Participant Firm has not complied with all of them, the Hearing Panel shall impose an immediate suspension on the Participant or Participant Firm.

(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 10.9559(o)(4)(A) (whichever period is less), unless the Exchange's CRO (or such other senior officer as the CRO may designate) determines that such a stay cannot be permitted with safety to investors, creditors or other Participants or Participant Firms. Such a determination by the Exchange's CRO (or such other senior officer as the CRO may designate) 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 10.9559(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 Exchange 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 Participant or Participant Firm served with a notice under this Rule may request from Exchange staff 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 10.9559.

(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 Participant or Participant Firm making the request must demonstrate to the satisfaction of Exchange staff that the requirements and/or restrictions imposed by the notice should be removed or reduced. If such a request

is denied by Exchange staff, the Participant or Participant Firm 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) Exchange 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 Participant or Participant Firm.

(f) Enforcement of Notice

A Participant or Participant Firm 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 Exchange staff, automatically and immediately suspended. Such suspension shall remain in effect unless Exchange staff 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 Participant or Participant Firm continues to experience financial or operational difficulty specified in Article 7, Rules 3 or 8, notwithstanding an effective notice, Exchange staff may impose additional requirements and/or restrictions by serving an additional notice under paragraph (b) of this Rule. The additional notice shall inform the Participant or Participant Firm 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 10.9559. 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 Participant's or Participant Firm's demonstration to the satisfaction of Exchange staff, Exchange staff determines that any requirements and/or restrictions imposed by a notice under this Rule should be removed or reduced, Exchange staff shall serve the Participant or Participant Firm, pursuant to paragraph (b) of this Rule, a written letter of withdrawal that shall, in the sole discretion of Exchange staff, withdraw the notice in whole or in part. A notice that is withdrawn in part shall remain in force, unless Exchange staff shall remove the remaining requirements and/or restrictions.

(B) Lifting of Suspension

If, upon the Participant's or Participant Firm's demonstration to the satisfaction of Exchange staff, Exchange staff determines that a suspension imposed by a notice under this Rule should be lifted, Exchange staff shall serve the Participant or Participant Firm, pursuant to paragraph (b) of this Rule, a letter that shall, in the sole discretion of Exchange staff, 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 Participant's or Participant Firm's failure to continue to comply with those requirements and/or restrictions that remain effective shall result in the Participant or Participant Firm being immediately suspended.

(h) Exchange Staff

For purposes of this Rule, "Exchange staff" shall mean:

- (1) the head of the Exchange department or office that issued the notice, or his or her written officer delegate; or
- (2) if another department or office is named as the party handling the matter on behalf of the issuing department or office, the head of the department or office that is so designated, or his or her written officer delegate.

Rule 10.9558. Summary Proceedings for Actions Authorized by Section 6(d)(3) of the Exchange Act

(a) Notice of Initiation of Summary Proceedings

The Exchange's CRO or such other senior officer as the CRO may designate may provide written authorization to Exchange staff to issue on a case-by-case basis a written notice that summarily:

(1) suspends a Participant, Participant Firm or covered person 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 Participant or Participant Firm that is in such financial or operating difficulty that Exchange staff determines and so notifies the SEC that the Participant or Participant Firm cannot be permitted to continue to do business as a Participant or Participant Firm with safety to investors, creditors, other Participants or Participant Firms, or the Exchange; or

(3) limits or prohibits any person with respect to access to services offered by the Exchange if paragraphs (a)(1) or (2) of this Rule or the provisions of Section 6(d)(3) of the Exchange Act applies to such person or, in the case of a person who is not a Participant, Participant Firm or covered person, if the Exchange's CRO or such other senior officer as the CRO may designate 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, Participants, Participant Firms or the Exchange, and so notifies the SEC.

(b) Service of Notice

Exchange staff shall serve the Participant, Participant Firm or covered person or other person subject to a notice issued under this Rule (or counsel representing the Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Participant, Participant Firm or covered person) by email, overnight courier or personal delivery. Papers served by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 10.9134. Papers served on a Participant or Participant Firm by email shall be sent to the email address on file with the Exchange staff and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) and (2) of Rule 10.9134. Papers served on a person by email shall be sent to the person's last known 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 10.9134. Papers served on counsel for a Participant, Participant Firm or covered person, or other person authorized to represent others under Rule 10.9141 by email shall be sent to the email address that counsel or other person authorized to represent others under Rule 10.9141 provides and shall also be served by either overnight courier or personal delivery in

conformity with paragraphs (a)(1) and (3) of Rule 10.9134. A copy of a notice under this Rule that is served on a covered person also shall be served on such Participant or Participant Firm. Service is complete upon sending the notice by email or 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 10.9559. 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 10.8310(a) and 10.9559(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 Participant, Participant Firm or covered person or other 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 10.9559. 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 Participant, Participant Firm or covered person or other 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 Participant, Participant Firm or covered person or other 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 Participant, Participant Firm or covered person or other 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 department or office that issued the notice or, if another department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

Rule 10.9559. Hearing Procedures for Expedited Proceedings Under the Rule 10.9550 Series

(a) Applicability

The hearing procedures under this Rule shall apply to a Participant, Participant Firm, covered person or other person who is served with a notice issued under the Rule 10.9550 Series and who timely requests a hearing or who is served with a petition instituting an expedited proceeding under Rule 10.9556(h). For purposes of this Rule, such Participants, Participant Firms, covered persons or other persons shall be referred to as respondents.

(b) Computation of Time

Rule 10.9138 shall govern the computation of time in proceedings brought under the Rule 10.9550 Series, except that intermediate Saturdays, Sundays and Federal holidays shall be included in the computation in proceedings brought under Rules 10.9556 through 10.9558, 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 10.9551 through 10.9556, except that: (A) the effectiveness of a notice of a limitation or prohibition on access to services offered by the Exchange or a Participant or Participant Firm thereof under Rule 10.9555 with respect to services to which the Participant, Participant Firm, covered person or other 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 10.9556(h).

(2) A timely request for a hearing shall stay the effectiveness of a notice issued under Rule 10.9557 for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 10.9559(o)(4)(A) (whichever period is less), unless the Exchange's CRO (or such other senior officer as the CRO may designate) determines that a notice under Rule 10.9557 shall not be stayed. Where a notice under Rule 10.9557 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 10.9559(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 10.9558, 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 10.9554 and 10.9556(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 10.9551, 10.9552, 10.9555, 10.9556 (except Rule 10.9556(h)), 10.9557 and 10.9558, 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 10.9551, 10.9552, 10.9555, 10.9556 (except Rule 10.9556(h)), 10.9557 and 10.9558, the Chief Hearing Officer shall select as Panelists persons who meet the qualifications delineated in Rules 10.9231 and 10.9232.

(3) Rules 10.9231(e), 10.9233 and 10.9234 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 10.9235 and 10.9280.

(5) Hearings under the Rule 10.9550 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 10.9557.

(e) Consolidation or Severance of Proceedings

Rule 10.9214 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 Exchange's CRO (or such other senior officer as the CRO may designate), in the case of Rule 10.9557, or Hearing Officer, in the case of Rule 10.9558(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 10.9557 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 10.9557 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 10.9556(h).

(3) A hearing shall be held within 14 days after a respondent subject to a notice issued under Rules 10.9556 (except Rule 10.9556(h)) and 10.9558 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 10.9551 through 10.9555 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 10.9557;

(2) At least six days prior to the hearing in the case of an action brought pursuant to Rule 10.9556(h);

(3) At least seven days prior to the hearing in the case of an action brought pursuant to Rules 10.9556 (except Rule 10.9556(h)) and 10.9558; and

(4) At least 21 days prior to the hearing in the case of an action brought pursuant to Rules 10.9551 through 10.9555.

(h) Transmission of Documents

(1) Not less than two business days before the hearing in an action brought under Rule 10.9557, not less than six days before the hearing in an action brought under Rule 10.9556(h), not less than seven days before the hearing in an action brought under Rules 10.9556 (except Rule 10.9556(h)) and 10.9558, and not less than 14 days before the hearing in an action brought under Rules 10.9551 through 10.9555, Exchange staff shall provide to the respondent who requested the hearing or the respondent who has received a petition pursuant to Rule 10.9556(h), by email, overnight courier or personal delivery, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 10.9251(b)(1)(A), (B), (C) or (b)(2). Documents served by 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 SEC or the federal courts.

(2) Not less than two business days before the hearing in an action brought under Rule 10.9557, not less than three days before the hearing in an action brought under Rules 10.9556 and 10.9558, and not less than seven days before the hearing in an action brought under Rules 10.9551 through 10.9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by email, overnight courier or personal delivery. Documents served by 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 10.9262 and 10.9263 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 10.9265 shall govern the requirements for the record of the hearing.

(l) Record of Proceeding

Rule 10.9267 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 10.9550 Series. In such cases:

(1) The notice issued under the Rule 10.9550 Series shall be deemed to be final 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 10.9556(h) and may deem the allegations against that respondent admitted. The contents of a default decision shall conform to the content requirements of Rule 10.9559(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 10.9559(q), the default decision shall become the final Exchange action.

(n) Sanctions, Costs and Remands

(1) In any action brought under the Rule 10.9550 Series, other than an action brought under Rule 10.9556(h) or Rule 10.9557, 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 10.8310(a), may also impose any other fitting sanction.

(2) In an action brought under Rule 10.9556(h), the Hearing Officer may impose any fitting sanction.

(3) In an action brought under Rule 10.9557, 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 Exchange staff issues a letter of withdrawal of all requirements and/or restrictions pursuant to Rule 10.9557(g)(2).

(4) The Hearing Officer or, if applicable, the Hearing Panel may impose costs pursuant to Rule 10.8330 regarding all actions brought under the Rule 10.9550 Series.

(5) In any action brought under the Rule 10.9550 Series, other than an action brought under Rule 10.9557, 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 Rule 10.9554

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 Board of Directors.

(2) Proceedings initiated under Rules 10.9556 and 10.9558

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 Board of Directors.

(3) Proceedings initiated under Rules 10.9551, 10.9552 and 10.9555

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 Board of Directors.

(4) Proceedings initiated under Rule 10.9557

(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 10.9557 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 Board of Directors 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 10.9551 through 10.9556 and 10.9558, 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 Participant or Participant Firm 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 10.9557 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 10.9550 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.

(q) Call for Review by the Exchange Board of Directors

(1) For proceedings initiated under the Rule 10.9550 Series (other than Rule 10.9557), the Exchange Board of Directors may call for review a proposed decision prepared by a Hearing Officer or, if applicable, Hearing Panel in accordance with Rule 10.9310. For proceedings initiated under Rule 10.9557, the Exchange Board of Directors may call for review a written decision issued under paragraph (o)(4)(B) of this Rule by a Hearing Panel in accordance with Rule 10.9310.

(r) Application to SEC for Review

The right to have any action pursuant to this Rule reviewed by the SEC is governed by Section 19 of the Exchange Act. The filing of an application for review by the SEC shall not stay the effectiveness of final Exchange action, unless the SEC otherwise orders.

Rule 10.9560. Expedited 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, Enforcement may initiate an expedited suspension proceeding with respect to alleged violations of Rule 11.21 (Disruptive Quoting and Trading Activity Prohibited).

(2) Service of Notice

Enforcement shall initiate the proceeding by serving a notice on a Participant, Participant Firm or covered person (hereinafter "Respondent"). Enforcement 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 Enforcement 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 Enforcement initiates a suspension proceeding, a Hearing Panel shall be assigned in accordance with paragraphs (a) and (b) of Rule 10.9231.

(2) If at any time a Hearing Officer or 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 Panelist, the recusal and disqualification proceeding shall be conducted in accordance with Rules 10.9233 and 10.9234, except that:

- (A) a motion seeking disqualification of a Hearing Officer or Panelist must be filed no later than 5 days after the announcement of the Hearing Panel; and
- (B) Enforcement 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 Hearing Officer with the consent of the Parties for good cause shown. If a Hearing Officer or Panelist is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer or Panelist 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 Hearing Officer. 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 Rules 10.9235 and 10.9280.

(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 subparagraph (a)(3) above; the transcript of the hearing; all evidence considered by the Hearing Panel; and any other document or item accepted into the record by the Hearing Panel. Enforcement 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 Enforcement 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 Hearing Officer 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 11.21, 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 11.21;

(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 opposing Party shall have an opportunity to respond to the request within a period of time set by the Hearing Officer. The Hearing Panel shall respond to the request in writing within ten days after receipt of the request, unless otherwise extended by the Hearing Officer 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) Call for Review by the Exchange Board of Directors

If there is no pending application to the Hearing Panel to have a suspension order modified, set aside, limited, or revoked, the Exchange Board of Directors, in accordance with Rule 10.9310, may call for review the Hearing Panel decision on whether to issue a

suspension order. A call for review by the Exchange Board of Directors shall not stay the effectiveness of a suspension order.

(g) Application to SEC for Review

If there is no call for review by the Exchange Board of Directors, sanctions imposed pursuant to this Rule constitute final and immediately effective disciplinary sanctions imposed by the Exchange. If there is a call for review by the Exchange Board of Directors, their decision shall 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.

RULE 10.9600. PROCEDURES FOR EXEMPTIONS

Rule 10.9610. Application

(a) Where to File

A Participant or Participant Firm seeking exemptive relief as permitted under Rule 10.8211 or Rule 11.2210 shall file a written application with the appropriate department or staff of the Exchange and provide a copy of the application to the CRO.

(b) Content

An application filed pursuant to this Rule shall contain the Participant's or Participant Firm's name and address, the name of a covered person who will serve as the primary contact for the application, the Rule from which the Participant or Participant Firm is seeking an exemption, and a detailed statement of the grounds for granting the exemption. If the Participant or Participant Firm does not want the application or the decision on the application to be publicly available in whole or in part, the Participant or Participant Firm 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 Participant or Participant Firm that files an application under this Rule is referred to as "Applicant" hereinafter in the Rule 10.9600 Series.

Rule 10.9620. Decision

After considering an application, Exchange staff shall issue a written decision setting forth its findings and conclusions. The decision shall be served on the Applicant pursuant

to Rules 10.9132 and 10.9134. After the decision is served on the Applicant, the application and decision may be publicly available.

Rule 10.9630. Appeal

(a) Notice

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 10.9620. The notice of appeal shall be filed with the CRO, with a copy of the notice also provided to the appropriate department or staff of the Exchange. 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 Exchange staff pursuant to Rule 10.9620 shall be decided by the CRO. 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 CRO 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 CRO.

(d) Oral Argument

Following the filing of a notice of appeal, the CRO may order oral argument. The CRO may consider any new evidence if the Applicant can show good cause for not including it in its application.

(e) Decision

After considering all matters on appeal, the CRO shall affirm, modify, or reverse the decision issued under Rule 10.9620. The CRO 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 10.9132 and 10.9134. The decision shall be effective upon service and shall constitute final action of the Exchange.

RULE 10.9700. Reserved.

RULE 10.9800. TEMPORARY CEASE AND DESIST ORDERS

Rule 10.9810. Initiation of Proceeding

(a) Enforcement; Service and Filing of Notice

With the prior written authorization of the Exchange's CRO or such other senior officers as the CRO may designate, Enforcement may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; Exchange Act Rules 15g-1 through 15g-9; Article 9, Rule 2 (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act); and Article 9, Rules 9, 10, 11 and 12. Enforcement shall initiate the proceeding by serving a notice on a Participant, Participant Firm or covered person (hereinafter "Respondent") (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Respondent) and filing a copy thereof with the Office of Hearing Officers. Enforcement shall serve the notice by personal service, overnight commercial courier, or email. If service is made by email, Enforcement shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by email or 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 Enforcement is seeking to have the Respondent ordered to cease violating. The notice also shall state whether Enforcement 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 Enforcement 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 10.9840(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 Enforcement has not issued a complaint under Rule 10.9211 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), Enforcement shall serve and file such a complaint with the notice initiating the temporary cease and desist proceeding. Service of the complaint can be made in accordance with the service provisions in paragraph (a).

Rule 10.9820. Appointment of Hearing Officer and Hearing Panel

(a) As soon as practicable after Enforcement 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. The Panelists shall be appointed pursuant to Rule 10.9231.

(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 10.9233 and 10.9234, 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 10.9233 and 10.9234; and

(2) the Chief Hearing Officer shall appoint a replacement Panelist using the criteria set forth in paragraph (a) of this Rule.

Rule 10.9830. 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 Enforcement and the Respondent (or upon counsel representing the Respondent, or

other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 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, or email. If service is made by 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 email or 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 10.9235.

(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 10.9242(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 10.9830(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 10.9810(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 Enforcement 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.

Rule 10.9840. 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 Enforcement 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 10.9200 and 10.9300 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 Participant or Participant Firm) 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 Participant or Participant Firm) 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 Participant or Participant Firm) 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 10.9268 or Rule 10.9269, or until a settlement offer is accepted pursuant to Rule 10.9270.

(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 Enforcement and the Respondent (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Respondent) by personal service, overnight commercial courier, or email. If service is made by 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 email or 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 Participant or Participant Firm with which a Respondent is associated.

(e) Delivery Requirement

Where a Respondent is a Participant or Participant Firm, Respondent shall deliver a copy of a temporary cease and desist order, within one business day of receiving it, to its covered persons.

Rule 10.9850. 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 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 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 10.9211 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 10.9141, when counsel or other person authorized to represent others under Rule 10.9141 agrees to accept service for the Respondent) via personal service, overnight commercial courier, or email. If service is made by 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.

Rule 10.9860. 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 10.9556. The Exchange's CRO or such other senior officer as the CRO may designate must authorize the initiation of any such proceeding in writing.

Rule 10.9870. Application to SEC 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 SEC 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 SEC otherwise orders.

RULE 11 BUSINESS CONDUCT

Rule 11.21. Disruptive Quoting and Trading Activity Prohibited

(a) No Participant, Participant Firm or covered person shall engage in or facilitate disruptive quoting and trading activity on the Exchange, including acting in concert with other persons to effect such activity.

(b) For purposes of this rule, disruptive quoting and trading activity shall include a frequent pattern in which the following facts are present:

1. Disruptive Quoting and Trading Activity Type 1:

- A. a party enters multiple limit orders on one side of the market at various price levels (the “Displayed Orders”); and
- B. following the entry of the Displayed Orders, the level of supply and demand for the security changes; and
- C. 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
- D. following the execution of the Contra-Side Orders, the party cancels the Displayed Orders.

2. Disruptive Quoting and Trading Activity Type 2:

- A. a party narrows the spread for a security by placing an order inside the national best bid and national best offer (“NBBO”); and
- B. 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 (A).

(c) **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 all of 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 is conducted on one or more other exchanges.

11.2210 Communications with the Public -- Reserved

Rule 11.5190 Notification Requirements for Offering Participants

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ARTICLE 2 Committees

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Rule 3. Judiciary Committee

Whenever, in accordance with the Rules, a disciplinary matter initiated pursuant to Article 12, Rule 1 is to be reviewed by a Judiciary Committee, the Chief Executive

Officer shall appoint five disinterested Participants of the Exchange and/or general partners or officers of Participant Firms as a Judiciary Committee, for that purpose. A new Judiciary Committee shall be appointed to consider and determine each such matter. If a vacancy shall occur on a Judiciary Committee after it has begun its proceedings, the remaining members appointed by the Chief Executive Officer shall complete consideration and disposition of the matter. Once a Judiciary Committee has determined the matter for which it was appointed and has notified the Secretary in writing of its decision, it shall be dissolved automatically.

Rule 4. Committee for Review ("CFR")

The Board shall, on an annual basis, appoint the CFR as a subcommittee of the ROC. Effective on [insert date], the CFR will be responsible for reviewing disciplinary decisions and acting in an advisory capacity to the Board with respect to disciplinary matters, regulatory programs, rulemaking, and regulatory rules, including trading rules. The CFR shall be made up of the Non-Affiliated Director(s) and the Public Directors of the Exchange.

Subject to the Rule 10.9000 Series, decisions of the CFR shall be subject to the review of the Board of Directors. The decision of the Board of Directors shall constitute the final action of the Exchange, unless such Board remands the proceedings.

Rule [4]5. Committee Quorum

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ARTICLE 6 Registration, Supervision and Training

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Rule 9. Reserved[Provision of Information to the Exchange]

(a) No Participant or partner, officer, director or other person associated with a Participant or other person or entity subject to the jurisdiction of the Exchange shall impede or delay an Exchange examination, inquiry or investigation (whether formal or informal) with respect to possible violations within the disciplinary jurisdiction of the Exchange or with respect to possible limitations on access to Exchange services or otherwise with respect to the discharge of its duties nor refuse to permit an inspection and copying of books, records, or accounts or to furnish testimony, documentary materials or other information requested by the Board of Directors or by the Exchange (or by any committee, subcommittee, or officer or employee thereof) during the course of such examination, inquiry or investigation or otherwise in furtherance of the discharge of its or his duties. Failure to permit an inspection and copying of books, records, or accounts or to furnish such testimony, documentary materials or other information requested pursuant to this Rule on the date or within the time period requested shall be considered obstructive of an Exchange inquiry or investigation and shall be subject to formal disciplinary action.

(b) No Participant, or partner, officer, director or other person associated with a Participant or other person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange pursuant to subsection (c) of this Rule. The requirements of this Rule 9(b) shall apply regardless of whether the Exchange has itself initiated a formal investigation or disciplinary proceeding.

(c) The Exchange may enter into agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and regulatory purposes.

• • • *Interpretations and Policies:*

.01 The terms "exchange" and "self-regulatory organization," as used in Rule 9, shall include, but not be limited to, any member or affiliate member of the Intermarket Surveillance Group.

.02 Any person or entity required to furnish information or testimony pursuant to Rule 9 shall be afforded the same rights and procedural protections as that person or entity would have if the Exchange had initiated the request for information or testimony.]

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ARTICLE 7 Financial Responsibility and Reporting Requirements

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Rule 12. Failure to Pay [Debts]Fees

Any Participant or Participant Firm that shall fail to pay a fee[any debt for Trading Permit fees, fines, transaction fees, or other sums owing the Exchange or its subsidiaries] within 60 days after the same shall become payable shall, after due notice, be suspended from trading on the Exchange until payment is made. If payment is not made within six months after such suspension, the Participant's status as a Participant may be terminated by the Chief Executive Officer on at least 10 days' written notice mailed to the Participant or Participant Firm at the address last registered with the Exchange. Exchange action under this Rule is subject to the opportunity to be heard and to appeal as provided for in Article 15. Notwithstanding the foregoing, any failure to pay any fine, sanction or cost levied in connection with a disciplinary action shall be governed by Rule 10.8320.

The failure to pay any debt owing the Exchange within the timeframes noted herein shall also constitute grounds for initiating disciplinary proceedings [pursuant to Article 12] against any Participant, associated person or other person or entity subject to the jurisdiction of the Exchange. In any such action, the Exchange shall, if it prevails, be entitled to any sanction that it could obtain in a disciplinary proceeding [under Article 12,] plus interest on the amount owed at the Internal Revenue Service rate for prejudgment interest calculated from the date when the debt was first due and payable.

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ARTICLE 12 Legacy Disciplinary Matters and Trial Proceedings Investigation and Charges

Article 12 shall apply only to an investigation or proceeding instituted under Article 12, Rule 1 prior to [insert date] and will continue to apply until such proceeding is final. Article 12 shall also continue to apply to any Participant, Participant Firm or person over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry pursuant to Article 12, Rule 7(b) prior to [insert date]. Otherwise, the Rule 10.8000 Series and Rule 10.9000 Series will apply.

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ARTICLE 13 Suspension—Reinstatement

The provisions of Article 13, Rule 2 governing emergency suspensions by the CRO shall apply only to a proceeding for which the Exchange has issued a written notice or statement thereunder prior to [insert date]. Thereafter, the Rule 10.9500 Series will apply.

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ARTICLE 14 Arbitration

Rule 1. Arbitration

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(e) Payment of Awards. Any Participant, or associated person with a Participant, who fails to honor an award of arbitrators appointed in accordance with this Rule shall be subject to disciplinary proceedings[in accordance with Article 12].

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