

treatment.²¹ As discussed above, however, the Exchange now proposes to amend ISE Gemini Rule 804(g) to require Clearing Member approval before a market maker can resume trading after triggering a market-wide speed bump.

The Exchange justifies the change as appropriate because, “[w]hile in some cases this may result in a minimal delay for a market maker that wants to reenter the market quickly following a market-wide speed bump, the Exchange believes that Clearing Member approval . . . ensure[s] that the market maker does not prematurely enter the market without adequate safeguards . . .”²² The Exchange, however, does not provide any basis for its statement that the proposed rule would result in only a “minimal delay” for a market maker seeking to resume quoting. Moreover, the Exchange does not address how the proposal impacts the continuous quoting obligations of market makers. The Commission accordingly believes the proposed rule change raises questions regarding the ability of market makers to meet their quoting obligations and, therefore, whether the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(5)²³ or any other provision of the Act, or the rules and regulations thereunder. Although there does not appear to be any issue relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b-4 under the Act,²⁴ any request

for an opportunity to make an oral presentation.²⁵

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by March 24, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by April 7, 2016. In light of the concerns raised by the proposed rule change, as discussed above, the Commission invites additional comment on the proposed rule change as the Commission continues its analysis of the proposed rule change's consistency with Sections 6(b)(5) and 6(b)(8),²⁶ or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposed rule change, in addition to any other comments they may wish to submit about the proposed rule change.

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 email to rule-comments@sec.gov. Please include File Number SR-ISE Gemini-2015-17 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-ISE Gemini-2015-17. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE Gemini-2015-17 and should be submitted by March 24, 2016. Rebuttal comments should be submitted by April 7, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-04638 Filed 3-2-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77241; File No. SR-NYSEMKT-2016-30]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adopting Investigation, Disciplinary, Sanction, and Other Procedural Rules Modeled on the Rules of the New York Stock Exchange LLC and Certain Conforming and Technical Changes

February 26, 2016.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on February 19, 2016, NYSE MKT LLC (“Exchange” or “NYSE MKT”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II 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.

²¹ See, e.g., Securities Exchange Act Release No. 68341 (December 3, 2012), 77 FR 73065, 73076 (December 7, 2012) (approving the application of Miami International Securities Exchange, LLC for registration as a national securities exchange); Securities Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (approving the application of Topaz Exchange, LLC for registration as a national securities exchange); Securities Exchange Act Release No. 76998 (January 29, 2016), 81 FR 6066 (February 4, 2016) (approving the application of ISE Mercury, LLC for registration as a national securities exchange).

²² See Notice, *supra* note 4, at 74825.

²³ 15 U.S.C. 78f(b)(5).

²⁴ 17 CFR 240.19b-4.

²⁵ Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94-29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. See Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

²⁶ 15 U.S.C. 78f(b)(5), (b)(8).

²⁷ 17 CFR 200.30-3(a)(57).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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

The Exchange proposes to [sic] (1) investigation, disciplinary, sanction, and other procedural rules modeled on the rules of the New York Stock Exchange LLC ("NYSE"), and (2) certain conforming and technical changes. The text of the proposed rule change is available on the Exchange's Web site at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes (1) investigation, disciplinary, sanction, and other procedural rules that are modeled on the rules of its affiliate New York Stock Exchange LLC ("NYSE"), and (2) certain conforming and technical changes.

Background and Description of Proposed Rule Change

On July 30, 2007, the National Association of Securities Dealers, Inc. ("NASD"), NYSE, and NYSE Regulation, Inc. ("NYSE Regulation"), a not-for-profit subsidiary of the NYSE,⁴ consolidated their member firm regulation operations into a combined organization, the Financial Industry Regulatory Authority, Inc. ("FINRA"), and entered into a plan to allocate to FINRA regulatory responsibility for common rules and common members ("17d-2 Agreement").⁵ In 2007, the

parties entered into a Regulatory Services Agreement ("RSA"), whereby FINRA was retained to perform certain regulatory services for non-common rules. Following its acquisition by NYSE Euronext in 2008, NYSE MKT amended certain of its disciplinary rules to make them substantially the same as NYSE's disciplinary rules, and NYSE MKT became a party to the RSA.⁶

On June 14, 2010, the RSA was amended to retain FINRA to perform the market surveillance and enforcement functions that had, up to that point, been performed by NYSE Regulation.⁷ To facilitate FINRA's performance of these functions, the Exchange amended its rules to provide that Exchange rules that refer to NYSE Regulation or its staff, Exchange staff, and Exchange departments should be understood to also refer to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the RSA.⁸

In 2013, the NYSE adopted disciplinary rules that are, with certain exceptions, substantially the same as the text of the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions (the "2013 NYSE Disciplinary Rule Filing").⁹ The new NYSE disciplinary rules were implemented on July 1, 2013.¹⁰

To achieve further rule harmonization among exchanges and to facilitate the reintegration of regulatory functions from FINRA,¹¹ the Exchange proposes

⁶ See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-Amex-2008-62 & SR-NYSE-2008-60). Certain of these rules were transitional in nature, and the Exchange later deleted them because they were obsolete. See Securities Exchange Act Release No. 70294 (August 30, 2013), 78 FR 54943 (September 6, 2013) (SR-NYSEMKT-2013-72).

⁷ See Securities Exchange Act Release No. 62355 (June 22, 2010), 75 FR 36729 (June 28, 2010) (SR-NYSE-2010-46); Securities Exchange Act Release No. 62354 (June 22, 2010), 75 FR 36730 (June 28, 2010) (SR-NYSEAmex-2010-57).

⁸ See Rule 0. Notwithstanding the RSA, the Exchange retains ultimate legal responsibility for, and control of, the Exchange's regulatory functions performed by FINRA. Securities Exchange Act Release No. 62354 (June 22, 2010), 75 FR 36730 (June 28, 2010) (SR-NYSEAmex-2010-57).

⁹ See Securities Exchange Act Release Nos. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR-NYSE-2013-02) ("2013 Notice"), 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR-NYSE-2013-02) ("2013 Approval Order"), and 69963 (July 10, 2013), 78 FR 42573 (July 16, 2013) (SR-NYSE-2013-49).

¹⁰ See NYSE Information Memorandum 13-8 (May 24, 2013).

¹¹ In October 2014, the Exchange announced that, upon expiration of the current RSA on December 31, 2015, certain market surveillance, investigation and enforcement functions performed on behalf of the Exchange would be reintegrated. It is anticipated that FINRA, under the new RSA, will continue to conduct, *inter alia*, the registration, testing and examination of broker-dealer members

to adopt, with certain changes, the text of the NYSE Rule 8000 and Rule 9000 Series, as modified to reflect amendments recently proposed by the NYSE and described in more detail below.

The Exchange notes that some of its member organizations, by virtue of their membership in other self-regulatory organizations ("SRO"), are already subject to rules that are similar to the proposed rules. All NYSE MKT member organizations that have equity trading licenses are also NYSE members pursuant to Rule 2—Equities. Several other NYSE MKT member organizations and NYSE Amex Trading Permit ("ATP") Holders also are members of FINRA ("Dual Members"). As such, these Dual Members are already subject to their respective Rule 8000 Series and Rule 9000 Series. Certain member organizations that are not members of FINRA or NYSE are members of The NASDAQ Stock Market ("NASDAQ"), which has similar disciplinary rules to FINRA and are therefore also already subject to similar rules. The proposed rule change would result in the Exchange and NYSE having substantially the same disciplinary process, which would closely resemble FINRA's process.

Set forth below in this Purpose section are:

- A description of the Exchange's current disciplinary rules, Rules 475–477;
- a description of the proposed rule change and transition generally;
- a more detailed description of the proposed rules with a comparison to the current rules;
- a description of technical and conforming amendments; and
- a description of current rules that will not be carried over into the proposed rule set and the reasons therefor.

Current Rules 475–477¹²

This section summarizes NYSE MKT's current disciplinary rules, which

of the Exchange, and certain cross-market surveillance and related investigation and enforcement activities. On August 14, 2015, NYSE filed a proposed rule change to amend certain of its disciplinary rules to facilitate the reintegration of these regulatory functions from FINRA as of January 1, 2016, which filing was approved on November 13, 2015 (the "NYSE Reintegration Facilitation Filing"). See Securities Exchange Act Release No. 75721 (Aug. 18, 2015), 80 FR 51334 (August 24, 2015) ("Notice") and Exchange Act Release No. 76436 (November 13, 2015), 80 FR 72460 (November 19, 2015) ("Approval Order") (SR-NYSE-2015-35).

¹² All references are to NYSE MKT rules unless otherwise noted. Further, where current or proposed NYSE MKT rules or NYSE rules use capitalized terms, descriptions of such rules herein follow those capitalization conventions.

⁴ NYSE Regulation performs regulatory functions for the Exchange pursuant to an intercompany Regulatory Services Agreement (the "Intercompany RSA").

⁵ See Securities Exchange Act Release No. 56148 (July 26, 2007), 72 FR 42146 (August 1, 2007) (File No. 4-544) (Notice of Filing and Order Approving and Declaring Effective a Plan for the Allocation of Regulatory Responsibilities).

are set forth in Section 9A of the Office Rules and apply to both the NYSE MKT equities market and the NYSE Amex options market.

Current Rule 475—Summary Proceedings

Rule 475 sets forth summary procedures under which the Exchange may prohibit or limit access to services. Under Rule 475(a), except as otherwise provided in Rule 475(b), the Exchange may not prohibit or limit any person with respect to access to services offered by the Exchange or any member or member organization thereof unless the Exchange has provided 15 days' prior written notice of, and an opportunity to be heard upon, the specific grounds for such prohibition or limitation. The Exchange must keep a record of any such proceeding. Any determination by the Exchange to prohibit or limit access to services must be supported by a statement setting forth the specific grounds for the prohibition or limitation.

Under Rule 475(b), the Exchange may summarily suspend persons subject to its jurisdiction that have been expelled or suspended by another SRO, or barred or suspended from being associated with a member or any such SRO, as long as any such summary suspension imposed by the Exchange does not exceed the termination of the suspension imposed by the other SRO. The Exchange also may suspend a member or member organization that is in such financial or operating difficulty that the Exchange determines, and so notifies the SEC, that the member or member organization cannot be permitted to continue to do business with safety to investors, creditors, other members or member organizations, or the Exchange. The Exchange also may limit or prohibit any person with respect to access to Exchange services if such person has been summarily suspended under this rule or, in the case of a person who is not a member or member organization, if the Exchange determines that such person does not meet the qualification requirements or other prerequisites for such access and such person cannot be permitted to continue to have such access with safety to investors, creditors, members, member organizations, or the Exchange.

Any person subject to summary action must receive written notice and an opportunity to be heard by the Exchange upon the specific grounds for the action, and the Exchange must keep a record of any summary proceeding. Any determination by the Exchange with respect to such summary action must be supported by a statement setting forth

the specific grounds on which the summary action is based. The Commission, by order, may stay any such summary action in accordance with the provisions of the Act.

Rule 475(c) governs hearings and proceedings pursuant to Rule 475(a) and (b). Hearings are conducted by a Hearing Officer, appointed by the Exchange Board of Directors, acting alone. The Hearing Officer schedules and conducts hearings promptly and, in doing so, provides such discovery to the person whose access or suspension is the subject of such a hearing and to the Exchange officers and employees. The Hearing Officer renders determinations based upon the record at such hearings. The Hearing Officer may modify, reverse, or terminate a summary action, unless within 10 days of such determination, a request for review is filed with the Secretary of the Exchange. Any member of the Exchange Board of Directors, any member of the Committee for Review ("CFR"),¹³ and either the Exchange or the respondent may require a review by the Exchange Board of Directors of any determination by the Hearing Officer. The Exchange Board of Directors, with the advice of the CFR, may affirm, modify, or reverse any such determination, or remand the matter to the Hearing Officer for further proceedings. Unless the Exchange Board of Directors otherwise specifically directs, the determination and the penalty, if any, of the Exchange Board of Directors after review is final and conclusive, subject to the provisions for review under the Act.

Under Rule 475(d), whenever a member or member organization fails to perform its contracts, becomes insolvent, or is in such financial or operating difficulty that it cannot be permitted to continue to do business as a member or member organization with safety to investors, creditors, other members or member organizations, or the Exchange, such member or member organization must promptly give written notice thereof to the Secretary of the Exchange.

Under Rule 475(e), any person suspended under the provisions of the rule must, at the request of the Exchange, submit to the Exchange its books and records or the books and records of any employee thereof and furnish information to or appear or testify before or cause any such employee to appear or testify before the Exchange.

¹³ The CFR is a subcommittee of the Exchange's Regulatory Oversight Committee ("ROC"). See Securities Exchange Act Release No. 77008 (February 1, 2016) (NYSEMKT 2015-106).

Under Rule 475(f), any person suspended under Rule 475 may, at any time, be reinstated by the Exchange Board of Directors.

Under Rule 475(g), any person suspended under Rule 475 may be disciplined in accordance with the Exchange's rules for any offense committed before or after the suspension.

Under Rule 475(h), a member suspended under Rule 475 is deprived during the term of the suspension of all rights and privileges of membership, and any suspension of a member or principal executive creates a vacancy in any office or position held by such member or principal executive.

Under Rule 475(i), the limitations on the Chief Executive Officer ("CEO") of the Exchange contained in Rule 476(l) that prohibit the CEO from initiating a call for review apply to all matters under Rule 475.

Under Rule 475(j), any member of the Exchange Board of Directors, any member of the CFR, the Exchange, and the respondent may require a review by the Exchange Board of Directors of any determination under Rule 475 by filing with the Secretary of the Exchange a written request therefor within 10 days following such determination. The Exchange Board of Directors, with the advice of the CFR, shall have the power to affirm, modify, or reverse any such determination, or remand the matter for further proceedings. Unless the Exchange Board of Directors otherwise specifically directs, the determination and the penalty, if any, of the Exchange Board of Directors after review is final and conclusive, subject to the provisions for review under the Act.

Current Rule 476—Disciplinary Proceedings

Rule 476 governs disciplinary proceedings involving charges against members, member organizations, principal executives, approved persons, employees, or others subject to the Exchange's jurisdiction. Under Rule 476(a), if such a person is adjudged guilty of certain offenses in a proceeding under Rule 476, then a Hearing Panel or Hearing Officer, in accordance with the Sanctions Guidelines in Rule 476.10,¹⁴

¹⁴ The Sanctions Guidelines in Rule 476.10 apply to certain options-related violations. See Securities Exchange Act Release Nos. 45412 (February 7, 2002), 67 FR 6770 (February 13, 2002); 45566 (March 15, 2002), 67 FR 13379 (March 22, 2002) (SR-Amex-2001-68). The Exchange filed this proposed rule change pursuant to the provisions of Section IV.B.i of the Commission's September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules

may impose disciplinary sanctions on such person, including expulsion; suspension; limitation as to activities, functions, and operations, including the suspension or cancellation of a registration in, or assignment of, one or more stocks; fine; censure; suspension or bar from being associated with any member or member organization; or any other fitting sanction. The list of offenses under Rule 476(a)(1)–(11) includes, for example, violating an Exchange rule or the Act, making a material misstatement, or engaging in manipulation.

Rule 476(b) describes the role of Hearing Panels and Hearing Officers. Under Rule 476(b), all proceedings under Rule 476, except for matters resolved by a Hearing Officer when authorized by the rule, are conducted at a hearing in accordance with the Rule and held before a Hearing Panel consisting of at least three persons of integrity and judgment: A Hearing Officer, who chairs the Hearing Panel, and at least two members of the Hearing Board, at least one of whom must 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. In any disciplinary proceeding involving activities on the Floor of the Exchange, no more than one of the persons serving on the Hearing Panel may be, or if retired, may have been, active on the Floor of the Exchange. A Hearing Panel may include only one retired person.

The Chairman of the Exchange Board of Directors, subject to the approval of the Exchange Board of Directors, from time to time appoints a Hearing Board to be composed of persons of integrity and judgment who are members and principal executives of the Exchange who are not members of the Exchange Board of Directors, registered and non-registered employees of members and member organizations, and such other persons as the Chairman deems necessary. Former members, principal executives, or registered and non-registered employees of members and member organizations who have retired

from the securities industry may be appointed to the Hearing Board within five years of their retirement. The members of the Hearing Board are appointed annually and serve at the pleasure of the Exchange Board of Directors.

The Chairman, subject to the approval of the Exchange Board of Directors, annually designates a Chief Hearing Officer and one or more other Hearing Officers who have no Exchange duties or functions relating to the investigation or preparation of disciplinary matters. Hearing Officers serve at the pleasure of the Exchange Board of Directors. An individual cannot be a Hearing Officer (including the Chief Hearing Officer) if he or she is, or within the last three years was, a member, principal executive, or registered or non-registered employee of a member or member organization.

Under the rule, the decision of a majority of the Hearing Panel is the decision of the Hearing Panel and is final and conclusive, unless a request to the Exchange Board of Directors for review is filed.

Rule 476(c) governs procedural matters and the conduct of the hearing. Under Rule 476(c), upon application to the Chief Hearing Officer by either party to a proceeding, the Chief Hearing Officer, or any Hearing Officer designated by the Chief Hearing Officer, resolves any and all procedural and evidentiary matters and substantive legal motions, and may require the Exchange to permit the respondent to inspect and copy documents or records in the possession of the Exchange that are material to the preparation of the defense or are intended for use by the Exchange as evidence in chief at the hearing. The respondent may be required to provide discovery of non-privileged documents and records to the Exchange. The rule does not authorize the discovery or inspection of reports, memoranda, or other internal Exchange documents prepared by the Exchange in connection with the proceeding. There is no interlocutory appeal to the Exchange Board of Directors of any determination as to which this provision applies.

Rule 476(d) governs Charge Memorandums, Answers, and motions. Under Rule 476(d), except as otherwise provided in Rule 476(g), which governs Stipulations and Consents, the specific charges against the respondent must be in the form of a written statement (a "Charge Memorandum") and signed by an authorized officer or employee of the Exchange, or an authorized employee of another SRO with which the Exchange has entered into an RSA pursuant to

Rule 1B on behalf of the Exchange. A copy of such Charge Memorandum must be filed with the Hearing Board at the same time it is served upon the respondent. Service is deemed effective by personal service of such Charge Memorandum, or by leaving the same either at the respondent's last known office address during business hours or the respondent's last place of residence as reflected in Exchange records, or upon mailing same to the respondent at such office address or place of residence. The Hearing Board assumes jurisdiction upon receipt of the Charge Memorandum.

A written Answer to the Charge Memorandum must be filed not later than 25 days from the date of service or within such longer period of time as the Hearing Officer may deem proper. The Answer must be signed by or on behalf of the respondent and filed with the Hearing Board, with a copy served on the Exchange. The Answer must indicate specifically which assertions of fact and charges in the Charge Memorandum are denied and which are admitted, and also contain any specific facts in contradiction of the charges and any affirmative defenses. A general denial is insufficient. Any assertions of fact not specifically denied in the Answer may be deemed admitted and failure to file an Answer may be deemed an admission of any facts asserted in the Charge Memorandum.

The Hearing Board sets a schedule for the filing of motions and establishes hearing dates. If the respondent fails to file an Answer, the Exchange, by motion, accompanied by proof of notice to the respondent, may request a determination of guilt by default and may recommend a penalty to be imposed. If the respondent opposes the motion, the Hearing Officer, on a determination that the respondent had adequate reason to fail to file an Answer, may adjourn the hearing date and direct the respondent to promptly file an Answer. If the default motion is unopposed, or the respondent did not have adequate reason to fail to file an Answer, or the respondent failed to file an Answer after being given an opportunity to do so, the Hearing Officer, on a determination that the respondent has had notice of the charges and that the Exchange has jurisdiction in the matter, may find guilt and determine a penalty.

Notice of the hearing is served upon the Exchange and the respondent. The respondent is entitled to be personally present. The Hearing Officer determines the specific facts at issue, and with respect to those facts only, both the Exchange and the respondent may

establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3–10282. The Sanctions Guidelines, as under the current rules, would not apply to equities-related violations. As such, the CRO, Hearing Panel or Extended Hearing Panel, as applicable, would consider relevant Exchange precedent or such other precedent as it deemed appropriate in determining sanctions that should be imposed in connection with a decision pursuant to proposed Rule 9268 or 9269, or in connection with a settlement pursuant to proposed Rule 9216 or 9270.

produce witnesses and any other evidence and they may examine and cross-examine any witnesses so produced. After hearing all the witnesses and considering all the evidence, the Hearing Panel determines whether the respondent is guilty of the charges, and if so, may impose a penalty.

Rule 476(e) concerns the hearing record and time for appeal. Under Rule 476(e), the Exchange must keep a record of any hearing conducted and a written notice of the result must be served upon the respondent and the Exchange.

The determination of the Hearing Panel, or of the Hearing Officer on a determination of default, and any penalty imposed, is final and conclusive 25 days after notice has been served upon the respondent, unless a request to the Exchange Board of Directors for review of such determination and/or penalty is filed, in which case any penalty imposed is stayed pending the outcome of such review.

Rule 476(f) concerns appeals to the Exchange Board of Directors. Under Rule 476(f), the Exchange, the respondent, any member of the Exchange Board of Directors, and any member of the CFR may require a review by the Exchange Board of Directors of any determination or penalty, or both, imposed by a Hearing Panel or Hearing Officer. A written request for review must be filed with the Secretary of the Exchange within 25 days after notice of the determination and/or penalty is served upon the respondent. The Secretary of the Exchange gives notice of any such request for review to the Exchange and any respondent affected thereby.

Any review must be conducted by the Exchange Board of Directors or the CFR, in the sole discretion of the Exchange Board of Directors, and is based on oral arguments and written briefs and is limited to consideration of the record before the Hearing Panel or Hearing Officer. The CFR in turn can appoint an appeals panel to conduct the review and make a recommendation to the CFR.¹⁵

Upon review, and with the advice of the CFR, the Exchange Board of Directors, by majority vote, may sustain any determination or penalty imposed, 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 provisions of this rule. Unless the Exchange Board of Directors otherwise specifically directs, the determination and penalty, if any, of the Exchange Board of Directors after review is final and conclusive, subject to the provisions for review under the Act.

Notwithstanding the foregoing, if either party upon review applies for leave to adduce additional evidence, and shows to the satisfaction of the Exchange Board of Directors, with the advice of the CFR, that the additional evidence is material and that there was reasonable ground for failure to adduce it before the Hearing Panel or Hearing Officer, the Exchange Board of Directors, with the advice of the CFR, may remand the case for further proceedings, in whatever manner and on whatever conditions the Exchange Board of Directors considers appropriate.

Rule 476(g) sets forth an alternative Stipulation and Consent procedure that may be used in lieu of the procedures set forth in Rule 476(d). Under Rule 476(g), a Hearing Officer acting alone may determine whether a person subject to the Exchange's jurisdiction has committed an offense on the basis of a written Stipulation and Consent entered into between the respondent and any authorized officer or employee of the Exchange or an authorized employee of another SRO with which the Exchange has entered into an RSA pursuant to Rule 1B on behalf of the Exchange. Any such Stipulation and Consent must contain a stipulation with respect to the facts, or the basis for findings of fact by the Hearing Officer; a consent to findings of fact by the Hearing Officer, including a finding that a specified offense had been committed; and a consent to the imposition of a specified penalty.

A Hearing Officer must convene a Hearing Panel if the Hearing Officer requires clarification or further information on the Stipulation and Consent, or if either party requests a hearing before a Hearing Panel. A Hearing Officer, acting alone, may not reject a Stipulation and Consent, but must convene a Hearing Panel to consider such action.

Notice of any hearing held for the purpose of considering a Stipulation and Consent is served upon the respondent as provided in Rule 476(d). In any such hearing, if the Hearing Panel determines that the respondent has committed an offense, it may impose the penalty agreed to in such Stipulation and Consent. In addition, a

Hearing Panel may reject such Stipulation and Consent.

Such rejection does not preclude the parties to the proceeding from entering into a modified Stipulation and Consent or preclude the Exchange from bringing or presenting the same or different charges to a Hearing Panel in accordance with Rule 476(d). The Exchange must keep a record of any hearing conducted under this Rule and a written notice of the result setting forth the requirements contained in Section 6(d)(1) of the Act must be served on the parties to the proceeding.

The determination of the Hearing Panel or Hearing Officer and any penalty imposed are final and conclusive 25 days after notice thereof has been served upon the respondent, unless a request to the Exchange Board of Directors for review of such determination and/or penalty is filed, in which case any penalty imposed is stayed pending the outcome of such review.

Any member of the Exchange Board of Directors and any member of the CFR may require a review by the Exchange Board of Directors of any determination or penalty, or both, imposed by a Hearing Panel or Hearing Officer in connection with a Stipulation and Consent. The respondent or the Exchange Division that entered into the Stipulation and Consent may require a review by the Exchange Board of Directors of any rejection of such Stipulation and Consent by the Hearing Panel. A written request for review must be filed with the Secretary of the Exchange within 25 days after notice of the determination and/or penalty is served on the respondent. The Secretary of the Exchange gives notice of any such request for review to the Exchange Division involved in the proceeding and any respondent affected thereby.

Any review must be conducted by the Exchange Board of Directors, or the CFR, in the sole discretion of the Exchange Board of Directors, and consists of oral arguments and written briefs and is limited to consideration of the record before the Hearing Panel or Hearing Officer. Upon review, and with the advice of the CFR, the Exchange Board of Directors, by majority vote, may fix and impose the penalty agreed to in such Stipulation and Consent or any penalty that is less severe than the stipulated penalty, or may remand for further proceedings. Unless the Exchange Board of Directors otherwise specifically directs, the determination and penalty, if any, of the Exchange Board of Directors after review is final and conclusive, subject to the provisions for review under the Act.

¹⁵ An appeals panel appointed by the CFR must consist of at least three and no more than five individuals. For equities matters, the panel must be composed of at least one director and one member or individual associated with an equities member organization. For options matters, the appeals panel must be composed of at least one director and one member or individual associated with an options member organization. See Rule 476(f).

Rule 476(h) concerns legal representation. Under the rule, a person subject to the Exchange's jurisdiction has the right to be represented by legal counsel or other representative in any hearing or review held under Rule 476 and in any investigation before any committee, officer, or employee of the Exchange. A Hearing Officer may impose a fine or any other appropriate sanction on any party or the party's representative for improper conduct in connection with a matter before the Hearing Board, and may, if appropriate, exclude any participant, including any party, witness, attorney or representative from a hearing on the basis of such conduct.

Under Rule 476(i), a member or principal executive of the Exchange who is associated with a member organization is liable to the same discipline and penalties for any act or omission of such member organization as for the member or principal executive's own personal act or omission. The Hearing Panel that considers the charges against such member, or principal executive, or the Exchange Board of Directors upon any review thereof, may relieve him from the penalty therefor or may remit or reduce such penalty on such terms and conditions as the Hearing Panel or the Exchange Board of Directors, with the advice of the CFR, deems fair and equitable.

Rule 476(j) governs suspensions. When a member is suspended under Rule 476, such member is deprived during the term of the member's suspension of all rights and privileges of membership. The expulsion of a member terminates all membership rights and privileges.

Rule 476(k) addresses non-payment of fines and other sums due to the Exchange. Under this rule, if any approved person or registered or non-registered employee fails to pay any fine within 45 days after the same is payable, such individual may, after written notice mailed to such individual at either the member's office or last place of residence as reflected in Exchange records, be summarily suspended from association in any capacity with a member organization or have the member's approval withdrawn until such fine is paid. The rule further provides that any member, member organization or principal executive that fails to pay a fine or any other sums due to the Exchange within 45 days is reported by the Exchange Treasurer to the Chairman of the Exchange Board of Directors and, after written notice mailed to such member, member organization or principal executive of

such arrearages, may be suspended by the Exchange Board of Directors until payment is made.

An individual or organization may be proceeded against for any offense other than that for which such individual or organization was suspended. In addition, the suspension or expulsion of a member or principal executive under the provisions of this rule creates a vacancy in any office or position held by the member or principal executive. Similarly, current Rule 309—Equities provides that any member, member organization or principal executive that fails to pay a fee or any other sums due to the Exchange (excluding a fine) within 45 days after the same are payable shall be reported to the Chief Financial Officer of the Exchange or designee who, after notice has been given to such member, member organization or principal executive of such arrearages, may suspend access to some or all of the facilities of the Exchange until payment is made. Written suspension notices under both Rules 309—Equities and 476(k) are immediately effective upon such notice and the rules provide no further process; upon payment of the fine or amount due, the suspension is lifted.

Under Rule 476(l), the CEO may not require a review by the Exchange Board of Directors under Rule 476 and is recused from deliberations and actions of the Board with respect to such matters.

Rule 476.10 sets forth the Exchange's Sanctions Guidelines with respect to certain options-related violations.¹⁶

Current Rule 476A—Imposition of Fines for Minor Violations of Rules

Under Rule 476A(a), in lieu of commencing a disciplinary proceeding under Rule 476, the Exchange may impose a fine not to exceed \$5,000 on any member, member organization, principal executive, approved person, or registered or non-registered employee of a member or member organization for violation of the rules listed in Rule 476A. Any fine imposed pursuant to this rule and not contested is not publicly reported, except as may be required by SEC Rule 19d-1 and as may be required by any other regulatory authority.

Under Rule 476A(b), the person against whom a minor rule violation fine is imposed is served with a written statement, signed by an authorized officer or employee of the Exchange on behalf of the Division or Department of the Exchange taking the action, setting forth (i) the rule or rules alleged to have

been violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each such violation; and (iv) the date by which such determination becomes final and such fine becomes due and payable to the Exchange, or such determination must be contested as provided in Rule 476A(d). Such date may not be less than 25 days after the date of service of the written statement.

Under Rule 476A(c), if the person against whom a minor rule violation fine is imposed pays the fine, such payment is deemed to be a waiver by such person of such person's right to a disciplinary proceeding under Rule 476 and any review of the matter by a Hearing Panel or the Exchange Board of Directors.

Under Rule 476A(d), any person against whom a minor rule violation is imposed may contest the Exchange's determination by timely filing a written response meeting the requirements of an answer as provided in Rule 476(d), at which point the matter becomes a disciplinary proceeding subject to the provisions of Rule 476. In any such disciplinary proceeding, if the Hearing Panel determines that the person is guilty of the rule violation(s) charged, the Hearing Panel is free to impose any one or more of the disciplinary sanctions provided in Rule 476 and determine whether the rule violation(s) is minor in nature. NYSE Regulation, the person charged, any member of the Exchange Board of Directors, any member of the CFR, and any Executive Floor Governor may require a review by the Board of any determination by the Hearing Panel by proceeding in the manner described in Rule 476.

Under Rule 476A(e), the Exchange must prepare and announce to its members and member organizations from time to time a listing of the Exchange rules as to which the Exchange may impose minor rule violation fines. Such listing also indicates the specific dollar amount that may be imposed as a fine or may indicate the minimum and maximum dollar amounts that may be imposed by the Exchange with respect to any such violation. If the Exchange determines that any violation is not minor in nature, the Exchange can proceed under Rule 476 rather than under Rule 476A.

The remainder of Rule 476A sets forth the lists of rule violations that may be treated as minor rule violations and fines, which may not exceed \$5,000. Part 1A sets forth a list of equities rule violations and fines applicable thereto, and Part 1C sets forth a list of options rule violations and fines applicable

¹⁶ See note 14, *supra*.

thereto. Part 1D addresses certain late reports.

Current Rule 477—Retention of Jurisdiction and Failure To Cooperate

Under Rule 477(a), if, prior to termination, or during the period of one year immediately following the receipt by the Exchange of written notice of the termination, of a person's status as a member, member organization, principal executive, approved person, or registered or non-registered employee of a member or member organization, the Exchange serves (as provided in Rule 476(d)) a written notice on such person that it is making inquiry into, or serves a Charge Memorandum on such person with respect to, any matter or matters occurring prior to the termination of such person's status, the Exchange may thereafter require such person to comply with any requests of the Exchange to appear, testify, submit books, records, papers, or tangible objects, respond to written requests and attend hearings in every respect in conformance with the Rules of the Exchange in the same manner and to the same extent as if such person had remained a member, member organization, principal executive, approved person, or registered or non-registered employee of a member or member organization.

Under Rule 477(b), prior to termination, or during the period of one year immediately following the receipt by the Exchange of written notice of the termination, of a person's status as a member, member organization, principal executive, approved person, or registered or non-registered employee of a member or member organization, the Exchange may, through the exercise of its jurisdiction, as described in Rule 477(a), require such person to comply with any requests of an organization or association included in Rule 476(a)(11) to appear, testify, submit books, records, papers, or tangible objects, respond to written requests and attend hearings in every respect in conformance with the Exchange rules in the same manner and to the same extent as if such person had remained a member, member organization, principal executive, approved person, or registered or non-registered employee of a member or member organization with respect to any matter or matters occurring prior to the termination of such person's status.

Under Rule 477(c), if a former member, member organization, principal executive, approved person, or registered or non-registered employee of a member or member organization, provided such notice or Charge Memorandum is or has been served, is adjudged guilty in a proceeding under

Rule 476 of having refused or failed to comply with any such requirement, such person may be barred permanently, or for such period of time as may be determined, or until such time as the Exchange has completed its investigation into the matter or matters specified in such notice or Charge Memorandum, has determined a penalty, if any, to be imposed, and until the penalty, if any, has been carried out.

Under Rule 477(d), following the termination of a person's status as a member, member organization, principal executive, approved person, or registered or non-registered employee of a member or member organization, provided such notice or Charge Memorandum is or has been served, such person may also be charged with having committed, prior to termination, any other offense with which such person might have been charged had such status not been terminated. Any such charges shall be brought and determined in accordance with the provisions set forth in Rule 476.

Proposed Rule Change

The Exchange proposes to adopt new Rule 8000 and 9000 Series, under new Section 9B of the Office Rules titled "Disciplinary Rules."¹⁷ These proposed new rules would be identical to the NYSE Rule 8000 and 9000 Series¹⁸ except that the Exchange would:

- Retain its currently applicable list of minor rule violations and accompanying fine levels in proposed Rules 9216(b) and 9217, rather than adopt the text of NYSE's minor rule violation plan;¹⁹
- retain its options-related Sanctions Guidelines in Rule 476.10, with certain updates, and continue to apply them in sanctions imposed under the proposed

Rule 9000 Series (NYSE does not have sanctions guidelines);²⁰

- retain recently adopted provisions in Rule 476(f) relating to appeals panels; and
- make certain technical and conforming changes, including changes to reflect the Exchange's equities and options membership.²¹

The Exchange also proposes to harmonize its rules for non-payment of fees or other sums due to the Exchange, other than fines or monetary sanctions, with the NYSE's rule by adopting new Rule 41. In particular, the Exchange proposes to amend current Rule 476(k) to delete the phrase "or any other sums due to the Exchange," and thereby limit Rule 476(k) to fines. The Exchange also proposes to delete current Rule 309—Equities, which authorizes the Exchange's Chief Financial Officer to address non-payment of amounts due to the Exchange other than fines and monetary sanctions. The Exchange proposes to adopt a new Rule 41 in the General Rules that will mirror the text of Rule 309—Equities, except that proposed Rule 41 would reference proposed Rule 8320 and would apply to the Exchange's options and equities markets. Proposed Rule 41 would also specifically state that failure to pay any fine levied in connection with a disciplinary action shall be governed by Rule 476(k) or Rule 8320, as applicable. By adopting this new rule text, the Exchange would have a single rule applicable to both its equities and options markets that is consistent with the counterpart rule of its NYSE affiliate.

The new Rule 8000–9000 Series and new Rule 41 would apply to the Exchange's equities and options markets.²²

Transition

The Exchange intends to announce the operative date of the new rules at least 30 days in advance in an

²⁰ See note 14, *supra*.

²¹ These technical and conforming changes are to reference the Exchange hearing board, rather than the NYSE hearing board, in proposed Rule 9232; substitute the correct cross-references in proposed Rules 8130, 9120(n), 9610(a), and 9810(a); define the term "Board of Directors" in proposed Rule 9120(b); and include the terms "member," "member organization," "ATP Holder," "covered person," and "person" defined in the proposed rule change or elsewhere in the NYSE MKT rules where appropriate in the following proposed rules so as to reflect the Exchange's equities and options membership: 8110, 8130, 8210, 8211, 8310, 8311, 8320, 9001, 9110, 9120, 9216, 9232, 9268, 9310, 9521, 9522, 9551, 9552, 9554, 9555, 9556, 9558, 9559, 9610, and 9810.

²² Rule references have been added to Rule 0—Equities to make clear that these proposed rules would apply to equities transactions on the Exchange.

¹⁷ Section 9A would be renamed "Legacy Disciplinary Rules" to distinguish the two sections.

¹⁸ The NYSE Rule 8000 and 9000 Series was based on the FINRA Rule 8000 and 9000 Series. See 2013 Approval Order, 78 FR at 15394. Like the NYSE Rule 8000 and 9000 Series, the proposed rule change would provide for investigative and enforcement functions to be performed by personnel and departments reporting to the Chief Regulatory Officer ("CRO") and by FINRA personnel and departments. See NYSE Reintegration Facilitation Filing, 80 FR at 72462. As discussed below, the proposed rule change also reflects modifications proposed in the NYSE Reintegration Facilitation Filing that the CRO rather than FINRA's Office of Disciplinary Affairs ("ODA") would be responsible for: (i) Authorizing issuance of a complaint; (ii) accepting or rejecting acceptance, waiver, and consent letters and minor rule violation plan letters; and (iii) accepting or rejecting offers of settlement that are determined to be uncontested before a hearing on the merits has begun.

¹⁹ As discussed below, the Exchange would also make certain technical and conforming changes to its rules relating to minor rule violations. See text accompanying notes 50 and 51, *infra*.

Information Memorandum. To further facilitate an orderly transition from the current rules to the new rules, the Exchange proposes that certain matters already initiated under the current rules would be completed under such rules. The proposed transition is similar to the transition proposed when the NYSE adopted disciplinary rules based on the FINRA Rule 8000 and 9000 Series in 2013.²³

Specifically, the Exchange proposes that current Rule 475 would continue to apply to proceedings for which a written notice had been issued prior to the effective date of the new rules. Current Rules 476 and 476A would continue to apply with respect to a proceeding for which a Charge Memorandum had been filed with the Hearing Board under Rule 476(d) prior to the effective date of the new rules. Current Rule 476 also would continue to apply to a matter for which a written Stipulation and Consent had been submitted to a Hearing Officer prior to the effective date of the new rules. Current Rules 475, 476, or 476A would continue to apply until any such proceeding was final. In all other cases, the proposed Rule 8000 and 9000 Series, as described below, would apply.

Until the effective date, the Exchange could issue a written notice of suspension for non-payment of a fine or other sum due to the Exchange under current Rule 476(k), 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 or monetary sanction under proposed Rule 8320.

As noted above, current Rule 476(a)(1)–(11) also contains substantive elements in addition to procedural elements. Specifically, Rule 476(a)(1)–(11) contains a list of offenses for which the Exchange can take disciplinary action. The proposed rule change would not alter this substantive aspect of Rule 476(a). The Exchange could continue to take disciplinary action against a member organization or other person subject to its jurisdiction for committing any of these substantive violations; following the transition described above, the Exchange would bring disciplinary cases for such offenses under the proposed Rule 9000 Series.

The Sanctions Guidelines in Rule 476.10 relating to options rule violations would continue to apply to proceedings under both Rule 476 and the Rule 9000 Series. The Exchange proposes to

amend Rule 476.10 to update certain cross-references to options rules.

Similarly, the retention of jurisdiction provisions of Rule 477 would continue to apply to any member or member organization that resigned or had its membership canceled or revoked and any person whose status as a person subject to the Exchange's jurisdiction was terminated or whose registration was revoked or canceled if such member organization or person had been served with a Charge Memorandum or written notice of inquiry pursuant to Rule 477 prior to the effective date of the new rules. As described above, current Rule 477 generally provides that the Exchange retains jurisdiction for one year after such status is terminated and such jurisdiction continues if during that one-year period the Exchange has provided written notice that it is making inquiry into matters that arose prior to termination. In all other cases, the retention of jurisdiction provisions of proposed Rule 8130 would apply, which would be substantially the same as the counterpart NYSE rule. Under the proposed rule change, as described below, the Exchange would retain jurisdiction to file a complaint against any entity or individual subject to its jurisdiction for two years after such status was terminated, and the proposed Rule 8000 Series and Rule 9000 Series generally would apply.²⁴

The Exchange proposes to add italicized language to Rules 475, 476, 476A and 477 describing the proposed applicability and transition of each rule as described herein.

When the transition is complete and there are no longer any member organizations or persons who would be subject to Rules 475, 476, 476A, and 477, the Exchange intends to submit a proposed rule change that would delete

²⁴ In light of the proposed rule changes with respect to retention of jurisdiction and non-payment of monies due to the Exchange, the Exchange proposes to delete Rule 353A(b) of the Office Rules because it is no longer necessary. The rule provides that every ATP Holder and any successor-in-interest thereto, and each ATP Holder whose ATP is terminated due to expulsion, suspension without reinstatement, death, declaration of incompetency, dissolution, winding up, or other cessation of business, must be current in all filings and payments of dues, fees and charges relating to that ATP, including, without limitation, filing fees and charges required by the Commission and the Securities Investor Protection Corporation. The rule further provides that if any ATP Holder, or any successor-in-interest thereto, fails to make all such filings, or to pay all such dues, fees and charges, the Secretary of the Exchange retains such jurisdiction over such former ATP Holder to require such filings and collect such outstanding dues, fines and charges until such time as they have been filed and/or paid. The Exchange believes that it will retain sufficient authority over ATP Holders under the proposed rule change to address such situations.

any investigative and disciplinary provisions that are no longer needed. Other provisions would be retained and moved to an appropriate place in the Exchange's rules.

Terms and Definitions Used Throughout the Proposed Rule 8000 and 9000 Series

To continue the current coverage of the NYSE MKT disciplinary rules and conform to the NYSE rules' terminology, the proposed rule change would use the terms "member," "member organization" and "covered person" to describe the persons to which the proposed Rule 8000 and 9000 Series apply. The term "covered person," referenced in proposed Rule 8120(b) and defined in proposed Rule 9120(g), would include a member, principal executive, approved person, registered or non-registered employee of a member organization or an ATP Holder,²⁵ or other person (excluding a member organization) subject to the jurisdiction of the Exchange.²⁶ By defining and utilizing the term "covered person" in this manner, the Exchange would effect no substantive change in the scope of persons subject to the Exchange's disciplinary rules.²⁷

²⁵ Current Rule 476(a) contains a reference to a registered or non-registered employee of a member. Under Rule 2(a)—Equities, however, a "member" is a natural person associated with a member organization; thus, equities members do not have employees. Such persons would be employees of the member organization and thus covered by the proposed definition of "covered person." An "ATP Holder," on the other hand, may be a natural person and may have registered or non-registered employees. See Rule 900.2NY(5). Therefore, to reflect the fact that equities members do not have employees but options members may, the Exchange proposes to use the phrase "associated with a member organization or ATP Holder" in the proposed definition of "covered person." In addition, the Exchange proposes to use the term "ATP Holder," which is defined in Rule 900.2NY(5), where appropriate in the proposed rules. As discussed below in connection with the proposed Rule 9520 Series, which governs eligibility proceedings for persons subject to statutory disqualifications, references to ATP Holders in the context of proposed Rules 9520 through 9527 would apply to those options members that have employees.

²⁶ References to "member" and "member organization" as those terms are used in the rules of the Exchange include ATP Holders. See Rules 18, 24 & 900.2NY(5). As such, ATP Holders would be covered by the proposed terminology.

²⁷ The Exchange notes that the term "allied member," which historically referred to certain general partners, principal executives, or control persons of a member organization, has been replaced in the Exchange's rules with the term "principal executive." See Securities Exchange Act Release Nos. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10) and 69822 (June 21, 2013), 78 FR 38769 (June 27, 2013) (SR–NYSEMKT–2013–58). Former allied members are referenced in proposed Rule 9232 because they are eligible to serve on the Exchange hearing board.

²³ See 2013 Approval Order, 78 FR at 15395.

Proposed Rule 8000 Series

Proposed Rule 8001 would include the effective date of the proposed rule change for the Rule 8000 Series, noting the exception for the retention of jurisdiction dates in proposed Rule 8130 and the transition from current Rule 476(k) to proposed Rule 8320, as described above. The text of NYSE Rules 8110 through 8330 would be adopted as Rules 8110 through 8330.²⁸

Proposed Rule 8110 would require an NYSE MKT member or member organization to provide access to the Exchange's rules to its customers. Although there is no comparable requirement in the current rules, the Exchange currently makes available its rules on the Exchange's Web site.²⁹ Proposed Rule 8110 is the same as NYSE Rule 8110 except for the inclusion of "member" to reflect the Exchange's membership.

Proposed Rule 8120 would provide cross-references to definitions of the terms "Adjudicator," "covered person" and "Regulatory Staff" in proposed Rule 9120. Similarly, NYSE Rule 8120 cross-references the same three definitions. Proposed Rule 8120 is simply technical in nature, and is the same as the NYSE Rule.

Proposed Rule 8130 would set forth retention of jurisdiction provisions that are substantially the same as NYSE Rule 8130, except for the following conforming changes: "Member" would be added to paragraph (d); the cross-references in paragraph (b)(1) would be conformed to NYSE MKT's rules; and "ATP Holder"³⁰ would be added to paragraphs (a), (b) and (c). Under the proposed rule change, the Exchange would retain jurisdiction to file a complaint against an entity or individual for two years after such person's status as a member organization or covered person is terminated. This differs from current Rule 477, which provides that the Exchange retains jurisdiction after the termination of status as long as a Charge Memorandum or written notice of inquiry is served within one year after termination of such status. The Exchange believes that the period under the proposed rule is appropriate because it would harmonize the Exchange's rule with NYSE's rule and would provide a fixed time period for a complaint to be

brought, which provides repose to respondents while still providing Exchange staff with sufficient time to determine if a complaint should be brought.

Proposed Rule 8210 would set forth procedures for the provision of information and testimony and the inspection and copying of books by the Exchange, as amended by the NYSE in 2013.³¹ Proposed Rule 8210 is the same as NYSE Rule 8210 except that references to "member" and "ATP Holder" would be added where appropriate to reflect the Exchange's membership.

Proposed Rule 8210(a) would require a member organization or covered person to provide information and testimony and permit the inspection of books, records, and accounts that are in such member organization's or covered person's possession, custody or control for the purpose of an investigation, complaint, examination, or proceeding authorized by the Exchange's rules. As noted above, under proposed Rule 8130, the Exchange would retain jurisdiction over a member organization or covered person to file a complaint or otherwise initiate a proceeding for two years after such member organization's or covered person's status is terminated³² and as such can continue to obtain information and testimony during such period and thereafter if a complaint or proceeding is timely filed. Currently the Exchange also requires persons subject to its jurisdiction to provide books and records and appear and testify upon request under current Rules 475(e), 476(a)(11), and 477(a) and (b), and in Rule 31 in the General Rules. In addition, as noted above, the Exchange retains jurisdiction after termination of a registration as long as a Charge Memorandum or written notice of inquiry has been served within one year following termination of such status. The Exchange believes the proposed rule is appropriate because it would harmonize the Exchange's rules with respect to jurisdiction and obtaining books and records from member organizations and covered persons with the NYSE's rules.

The Exchange also proposes new rule text in Rule 8210(a), recently proposed by NYSE, providing that in performing functions under the disciplinary code, the CRO and Regulatory Staff would function independently of the commercial interests of the Exchange

and the commercial interests of the members and member organizations.³³ This requirement is consistent with longstanding policies and practices at the Exchange. The proposed provision would also be consistent with rules currently in effect for the equities and options markets of the Exchange's affiliate NYSE Arca, Inc., and would reflect the Exchange's commitment to performing its regulatory functions under its disciplinary rules in an independent and impartial manner.³⁴

Proposed Rule 8210(b) would authorize Exchange staff to enter into regulatory cooperation agreements with a domestic federal agency or subdivision thereof or a foreign regulator. Current Rule 27—Equities permits the Exchange to enter into agreements with domestic or foreign SROs or associations, contract markets and registered futures associations, but does not specify domestic federal agencies or subdivisions thereof or foreign regulators; because the scope of current Rule 27—Equities is different, the Exchange would retain it along with proposed Rule 8210(b).³⁵ Similarly, current Commentary .02 of Rule 31 in the General Rules provides that the Exchange may enter into agreements with domestic and foreign SROs providing for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement and other regulatory purposes. Because current Rule 31.02 differs in scope from proposed Rule 8210(b), the Exchange would retain it along with the proposed rule.³⁶

The remainder of proposed Rule 8210 would set forth certain procedures for investigations. Proposed Rule 8210(c) would require member organizations and covered persons to comply with information requests under the Rule.

³³ See NYSE Reintegration Facilitation Filing, 80 FR at 51337. The inclusion of "members and member organizations" would conform the proposed rule to the Exchange's membership.

³⁴ See NYSE Arca Equities Rule 10.2(a); NYSE Arca Options Rule 10.2(a).

³⁵ Rule 27—Equities also cross-references Rule 476(a)(11), which enumerates certain violations, including the violation of refusing or failing to comply with a request of the Exchange, or a domestic or foreign SRO or association, contract market, or registered futures association with which the Exchange has entered into an agreement or to furnish information to or to appear or testify before the Exchange or such other organization or association. The proposed rule change would not alter this substantive aspect of Rule 476(a)(11) and as such the cross-reference in current Rule 27—Equities would not be amended.

³⁶ As discussed below, the rest of Rule 31, which concerns requests for books and records and testimony as well as extensions of time to comply, would be deleted and Rule 31 would be re-named "Regulatory Cooperation."

²⁸ NYSE does not have a Rule 8212, 8213, or 8312. In order to maintain consistency with NYSE's rule numbering, the Exchange proposes to designate proposed Rules 8212, 8213, and 8312 as "Reserved."

²⁹ The Exchange's rules are available at <http://wallstreet.cch.com/MKT/Rules/>.

³⁰ See notes 24–26, *supra*, and accompanying text.

³¹ See Securities Exchange Act Release No. 69963 (July 10, 2013), 78 FR 42573 (July 16, 2013) (SR–NYSE–2013–49).

³² This would include individual members since the definition of "covered person" in proposed Rule 9120 includes "members."

This requirement is substantially the same as current Rules 475(e), 476(a)(11), and 477(a) and (b), as noted above.

Proposed Rule 8210(d) would provide that a notice under this Rule would be deemed received by the member organization 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 member organization or the last known residential address of the covered person as reflected in the Central Registration Depository ("CRD"). With respect to a person currently associated with a member organization or ATP Holder 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 member organization or ATP Holder as reflected in the CRD. With respect to a person subject to the Exchange's jurisdiction who was formerly associated with a member organization or ATP Holder in an unregistered capacity, a notice under this Rule would be deemed received by the person upon personal service, as set forth in Rule 9134(a)(1).

If the Adjudicator or Exchange staff responsible for mailing or otherwise transmitting the notice to the member organization or covered person had actual knowledge that the address in the 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 member organization or the last known residential address of the covered person as reflected in the CRD; and (2) any other more current address of the member organization or covered person known to the Adjudicator or Exchange staff responsible for mailing or otherwise transmitting the notice. Current Rules 475(e), 476(a)(11), and 477(a) and (b), and Rule 31 in the General Rules, which require persons subject to the Exchange's jurisdiction to provide books and records and appear and testify upon the Exchange's request, do not specify the address to which a notice of such request must be directed. The additional specificity in proposed Rule 8210(d) would afford member organizations and covered persons additional procedural protections in that respect.

If the Adjudicator or Exchange staff responsible for mailing or otherwise transmitting the notice to the member organization or covered person knew that the member organization or covered person was represented by counsel regarding the investigation, complaint,

examination, or proceeding that was 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 the member organization or covered person, and any notice served upon counsel would be deemed received by the member organization or covered person.

Proposed Rule 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 members or member organizations. Proposed Rule 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 get a copy of the person's documentary evidence or the transcript of the person's testimony under certain circumstances. Finally, proposed Rule 8210(g) would require any member organization 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.

Proposed Supplementary Material 8210.01 would provide that the rule requires member organizations and covered persons to provide Exchange staff and Adjudicators with requested books, records and accounts. In specifying the books, records and accounts "of such member organization or covered person," paragraph (a) of the rule would refer to books, records and accounts that the broker-dealer or its associated persons make [sic] or keep [sic] relating to its operation as a broker-dealer or relating to the person's association with the member organization or ATP Holder. This would include 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 would not ordinarily include books and records that were in the possession, custody or control of a member organization or covered person, but whose bona fide ownership was held by an independent third party and the records were unrelated to the business of the member organization or covered person. The rule would require, however, that a member organization 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 member organization or covered person controlled or had a right to demand them. The Exchange's current rules do not have comparable provisions.

Proposed Rule 8211 would set forth the procedures for the automated submission of trading data requested by the Exchange (commonly referred to as "blue sheet" data) for transactions on the Exchange. The proposed Rule is the same as its NYSE counterpart except for the inclusion of "ATP Holder."

The procedures set forth in proposed Rule 8211 are substantially the same as current Rule 956.1NY and Rule 410A—Equities. Because FINRA performs surveillance functions based on the information gathered as a result of these rules, the Exchange believes that the procedures for the automated submission of trading data should be harmonized with the FINRA and NYSE rules. Therefore, the Exchange proposes to delete current Rule 956.1NY and Rule 410A—Equities and adopt proposed Rule 8211 instead, which is identical to NYSE Rule 8211.³⁷

Proposed Rule 8310 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. The sanctions also are substantially the same as the permitted sanctions set forth in current Rule 476(a)(11), which are expulsion; suspension; limitation as to activities, functions, and operations, including the suspension or cancellation of a registration in, or assignment of, one or more stocks; fine; censure; suspension or bar from being associated with any member or member organization; 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

³⁷ The Exchange is not proposing to adopt FINRA Rule 8213, which provides for the automated submission of trading data for non-exchange listed securities, and has marked it as "Reserved." Because the Exchange does not have regulatory responsibility for trading in non-Exchange listed securities, it is not necessary for the Exchange to incorporate FINRA Rule 8213 into its rules. Moreover, the Exchange recently deleted Rule 410B—Equities, which required the reporting of off-Exchange transactions in Exchange-listed securities that are not reported to the Consolidated Tape, as duplicative of existing regulatory reporting requirements. See Securities Exchange Act Release No. 76982 (January 28, 2016) (SR-NYSEMKT-2015-80).

range of sanctions is the same due to the inclusion in both rules of the general category “any other fitting sanction.”

Proposed Rule 8310 would also allow the Exchange to impose a temporary or permanent cease and desist order against a member organization or covered person. This new authority, not currently available under the Exchange’s rules, is described in further detail below in the section concerning the proposed Rule 9800 Series. Proposed Rule 8310 is the same as NYSE Rule 8310 except for the inclusion of references to “member” and “ATP Holders.”

Proposed Rule 8311 would provide that if the Commission or the Exchange imposed a suspension, revocation, cancellation or bar on a covered person, a member organization or ATP Holder may not permit such person to remain associated, and, in the case of a suspension, may not pay any remuneration that results from any securities transaction. The proposed rule is similar in result to current Rule 476(j), which provides that a member will be deprived of all rights and privileges of membership during a suspension and that an expulsion of a member terminates all rights and privileges arising out of the membership. However, the proposed rule is broader because it applies to all covered persons subject to a suspension, revocation, cancellation or bar and more explicitly prohibits the payment of compensation in the case of a suspension. Except for references to ATP Holders where appropriate, the proposed Rule is the same as NYSE Rule 8311.

Proposed Rule 8313 would provide that the Exchange will publish all final disciplinary decisions issued under the proposed Rule 9000 Series, other than minor rule violations, on its Web site.³⁸ This is the Exchange’s longstanding practice, although it does not have a current rule with respect to it. The Exchange believes that its current practice is fair and non-discriminatory and as such proposes to continue it. The proposed Rule is identical to the NYSE Rule.

Proposed Rule 8320(a) would provide that all fines and other monetary sanctions shall be paid to the Treasurer of the Exchange. Such monies could not be used for commercial purposes.³⁹

Rather, the Exchange uses fine monies for regulatory purposes.⁴⁰

Proposed Rule 8320(b) and (c) would permit the Exchange, after seven days’ notice in writing, to suspend or expel a member or member organization from membership or revoke the registration of a covered person for failure to pay a fine. The text of the proposed rule is the same as the text of the NYSE’s rule except for the inclusion of “member” in subpart (b) to reflect the Exchange’s membership.

As noted above, under current Rule 476(k), a person may be summarily suspended for failing to pay a fine within a 45-day notice period; a membership cancellation or bar also could be imposed in a regular disciplinary proceeding for non-payment of a fine. 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 the NYSE explained in proposing its Rule 8320, a 30-day period, along with the seven days’ notice provided under NYSE Rule 8320, provides respondents with an adequate amount of time to pay a fine and avoid any further sanction by the Exchange.⁴¹ The Exchange proposes to follow the same reasoning for its Rule 8320. For clarity regarding the transition, proposed Rule 8001 would provide that the Exchange may issue a written notice of suspension for non-payment of a fine under Rule 476(k) until the effective date of the proposed rule change, and thereafter proposed Rule 8320 would apply. In addition, 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 Rule 476 for which a decision was issued on or after the transition date.

Proposed Rule 8330 would provide that a disciplined member organization or covered person may be assessed the costs of a proceeding. There is no comparable requirement in the current rules, although the Exchange may assess costs as a “fitting sanction” under current Rule 476(a)(11). The proposed Rule is the same as the text of the NYSE Rule.

www.nyse.com/publicdocs/nyse/regulation/nyse-mkt/Seventh_Amended_and_Restated_Operating_Agreement_of_NYSE_MKT_LLC.pdf.

⁴⁰ See Securities Exchange Act Release No. 58673 (September 29, 2008), 73 FR 57707, 57717 (October 3, 2008) (SR–NYSE–2008–60 and SR–Amex–2008–62) (approving merger whereby the Exchange’s predecessor, the American Stock Exchange LLC, a subsidiary of The Amex Membership Corporation, became a subsidiary of NYSE Euronext).

⁴¹ See 2013 Notice, 78 FR at 5222.

Proposed Rule 9000 Series

As noted above, the text of the Rule 9000 Series would be based on the text of the NYSE Rule 9000 Series, with certain changes noted below.

Proposed Rules 9001 Through 9120

Proposed Rule 9001 would set forth the effective date of the rule, noting the transitional provisions described above. The text of proposed Rule 9001 would be based on the proposed introductory text of Rule 476, except that the transition with respect to proposed Rule 8320 would be reflected in proposed Rule 8001 as described above.

Proposed Rule 9110 would state the types of proceedings to which the proposed Rule 9000 Series would apply (each of which is described below) and the rights, duties, and obligations of member organizations and covered persons, and would set forth the defined terms and cross-references. The Exchange also proposes to adopt rule text in Rule 9110(a), providing that in performing functions under the disciplinary code, the CRO and Regulatory Staff would function independently of the commercial interests of the Exchange and the commercial interests of the members and member organizations. As discussed above, this requirement is already being met and is consistent with longstanding policies and practices at the Exchange, and the proposed provision would also be consistent with rules currently in effect for the equities and options markets of the Exchange’s affiliate.⁴² The Exchange does not have a comparable rule. Except for the inclusion of “member,” the proposed Rule is the same as NYSE Rule 9110.

Proposed Rule 9120 would set forth definitions. The definitions are identical to those in NYSE Rule 9120, except that the term “Board of Directors” would be defined in paragraph (b), rather than including a cross-reference to another rule; the term “covered person” in proposed paragraph (g) would include a reference to ATP Holders; the cross-reference in the definition of “Exchange” in proposed paragraph (n) would be conformed to NYSE MKT’s rules; and the definition of “Party” in proposed paragraph (w) would include a reference to “ATP Holder” to conform to the proposed Rule 9520 Series. The Exchange also proposes to include definitions recently added to NYSE Rule 9120, including defined terms “Enforcement” and “Regulatory

⁴² See notes 33 and 34, *supra*, and accompanying text.

³⁸ Consistent with current practice, a determination in a statutory disqualification proceeding under the proposed Rule 9520 Series would not be considered a disciplinary decision and thus would not be subject to publication.

³⁹ See Article IV, Section 4.05 of the Seventh Amended and Restated Operating Agreement of NYSE MKT LLC, available at <https://>

Staff.”⁴³ More specifically, the Exchange proposes the following:

- The Exchange proposes to add definitions of “Enforcement,” referring to any department reporting to the CRO of the Exchange with responsibility for investigating or imposing sanctions on a member organization or covered person, in addition to FINRA’s departments of Enforcement and Market Regulation; and “Regulatory Staff,” referring to any officer or employee reporting, directly or indirectly, to the CRO of the Exchange, in addition to FINRA staff acting on behalf of the Exchange in connection with the Rule 8000 and 9000 Series.⁴⁴

- The Exchange proposes to include definitions of “Interested Staff” and “Party” in proposed Rules 9120(t) and 9120(w), which include the terms “Regulatory Staff” and “Enforcement,” respectively, and are identical to the definitions in the NYSE Rules.

- The Exchange proposes to number the definitions in Rule 9120 to correspond with the NYSE Rules.

Proposed Rules 9130 Through 9138

Proposed Rules 9130 through 9138 would govern the service of a complaint or other procedural documents under the rules. The proposed Rules are the same as NYSE Rules 9130 through 9138.

Proposed Rule 9131 would set forth the requirements for serving a complaint or document initiating a proceeding. Proposed Rule 9132 would cover the service of orders, notices, and decisions by an Adjudicator. Proposed Rule 9133 would govern the service of papers other than complaints, orders, notices, or decisions. Proposed Rule 9134 would describe the methods of service and the procedures for service. Proposed Rule 9135 would set forth the procedure for filing papers with an Adjudicator. Proposed Rule 9136 would govern the form of papers filed in connection with any proceeding under the proposed Rule 9200 and 9300 Series. Proposed Rule 9137 would state the requirements for and the effect of a signature in connection with the filing of papers. Finally, proposed Rule 9138 would establish the computation of time.

By comparison, current Rule 476(d), which governs service of process, is generally less detailed and, as noted

above, provides that service is deemed effective by personal service of the Charge Memorandum, or by leaving the same either at the respondent’s last known office address during business hours or the respondent’s last place of residence as reflected in Exchange records, or upon mailing same to the respondent at such office address or place of residence.

Under proposed Rule 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 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.

The Exchange’s current rules do not explicitly permit service of a Charge Memorandum or other document on a respondent’s counsel or other authorized representative. The proposed rule change would accommodate respondents who have retained counsel and have authorized them to accept service. The proposed rule change also would harmonize the Exchange’s rules with many states’ Rules of Professional Conduct for attorneys, which generally require that, once a person retains an attorney, unless the attorney specifically provides otherwise, all communications be directed to such attorney.⁴⁵

The Exchange believes that these more detailed procedures for service of process would increase the likelihood of successful service of process while providing appropriate due process protections to its member organizations and covered persons.

Proposed Rules 9140 Through 9148

Proposed Rules 9140 through 9148 would contain various rules relating to the conduct of disciplinary proceedings. The proposed Rules are the same as NYSE Rules 9140 through 9148.

Proposed Rule 9141 would govern appearances in a proceeding, notices of appearance, and representation. Proposed Rule 9141 would permit a respondent to represent himself or be represented by an attorney, just as is permitted under current Rule 476(h). Current Rule 476(h) is more general, in that it permits a respondent to be represented by an attorney or other representative, while proposed Rule 9141 is more specific in that it permits a respondent to be represented by an attorney admitted to practice in the United States, permits a partnership to be represented by a partner, and permits a corporation, trust, or association to be represented by an officer of such entity. Proposed Rule 9141 also requires an attorney or representative to file a notice of appearance, which is not required under current Exchange rules.

In addition, proposed Rule 9141, in conformance with a recent NYSE amendment and based on FINRA’s

⁴³ See NYSE Reintegration Facilitation Filing Approval Order, 80 FR at 72461. The Exchange also proposes to incorporate those defined terms in proposed Rules 9131, 9146, 9211, 9212, 9213, 9215, 9216, 9251, 9253, 9264, 9269, 9270, 9551, 9552, 9554, 9556, 9810, 9820, and 9830.

⁴⁴ The proposed definition of “Regulatory Staff” provides that for purposes of the Rule 8000 Series and Rule 9000 Series (except for Rule 9557), the term “Exchange staff” shall have the same meaning as “Regulatory Staff.”

⁴⁵ See, e.g., American Bar Association Model Rule of Professional Conduct 4.2 (Communication with Person Represented by Counsel) (“ABA Rule 4.2”). ABA Rule 4.2 provides that “[i]n representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.” Many states have rules regarding communication with a person represented by counsel that are based on ABA Rule 4.2.

counterpart rule,⁴⁶ would provide that 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 any proceeding under the Rule 9000 Series. The rule text is broader than FINRA's counterpart rule in that it covers not only former FINRA staff but also former Regulatory Staff that reported to the CRO, and covers both officers and employees. The Exchange believes that once Regulatory Staff reporting to the CRO directly perform market surveillance, investigation and enforcement functions following termination of the Intercompany RSA, such a prohibition would help prevent potential conflicts or appearance of conflicts of interest. Current Rule 476 does not address appearances by former staff.

Proposed Rule 9142 would require an attorney or representative to file a motion to withdraw. There is no current comparable Exchange rule.

Proposed Rule 9143(a) would prohibit certain ex parte communications. Under proposed Rule 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 9143(c), upon receipt of a prohibited communication made or knowingly caused to be made by any Party, any counsel to or representative of 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 9143(d), in a disciplinary proceeding governed by the Rule 9200 Series and the Rule 9300 Series, the prohibitions of the Rule would apply beginning with the authorization of a complaint as provided in Rule 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 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 plan letter. There is no current comparable rule.

Proposed Rule 9144 would establish the separation of functions for Interested Staff and Adjudicators and provide for waivers. There is no current comparable rule.

Proposed Rule 9145 would provide that formal rules of evidence would not apply in any proceeding brought under the proposed Rule 9000 Series. NYSE MKT does not have a current comparable rule that explicitly makes such a statement, although in practice the result is the same—formal rules of evidence do not apply to current NYSE MKT disciplinary proceedings.

Proposed Rule 9146 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 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 9146 also would permit a Party to move for a protective order. There is no current comparable rule that contains such detail. Current Rule 476(c) simply provides that the Chief Hearing Officer or a Hearing Officer may resolve any substantive legal motions. The Exchange believes that the more detailed provisions of the proposed rule would provide additional clarity to all Parties to a proceeding.

Proposed Rule 9147 would provide that Adjudicators may rule on procedural matters. The proposed rule is similar to current Rule 476(c), which provides that the Chief Hearing Officer or a Hearing Officer may resolve any procedural matters. However, the Exchange's current rules do not explicitly provide for the Exchange

Board of Directors (who are included in the proposed definition of "Adjudicator") ruling on procedural matters.

Finally, proposed Rule 9148 would generally prohibit interlocutory review, except as provided in proposed Rule 9280 for contemptuous conduct. Similarly, current Rule 476(c) provides that there is no interlocutory appeal to the Exchange Board of Directors.

Proposed Rule 9150

Proposed Rule 9150 would provide that a representative can be excluded by an Adjudicator for improper or unethical conduct. The proposed rule also is substantially the same as current Rule 476(h), which provides that the Hearing Board can exclude a representative for improper conduct in a proceeding, and is the same as NYSE Rule 9150.

Proposed Rule 9160

Proposed Rule 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 Exchange Board of Directors, or a Director. Current Rule 22—Equities similarly prohibits a person from participating in an adjudication or consideration of a matter if he or she has a personal interest, and would apply during the transition period to proceedings under the current rules. The Exchange believes that the broader text of the proposed rule could help to increase the fairness of its proceedings and also cover matters involving the Exchange's options market. Proposed Rules 9160(b), (c), and (d) are designated as "Reserved" to maintain consistency with NYSE's rule numbering. The proposed Rule is the same as the NYSE Rule.

Proposed Rules 9200 Through 9212

Proposed Rule 9200 would cover disciplinary proceedings. Proposed Rule 9211 would permit Enforcement to request the authorization of the CRO to issue a complaint against a member organization or covered person, thereby commencing a disciplinary proceeding. The proposed Rule is the same as NYSE Rule 9211. The complaint would replace the Charge Memorandum currently used under Rule 476(d), as described above, which requires that the specific charges against the respondent in the form of a written statement be

⁴⁶ See NYSE Reintegration Facilitation Filing Notice, 80 FR at 51337; Approval Order, 80 FR at 72462.

signed by an authorized officer or employee of the Exchange, or an authorized employee of another self-regulatory organization.

Proposed Rule 9212 would set forth the requirements of the complaint, amendments to the complaint, withdrawal of the complaint, and service of the complaint. The proposed rule would also permit the Chief Hearing Officer to select one Floor-Based Panelist, who would be a person who is, or, if retired, was, active on the Floor of the Exchange, to serve on a Hearing Panel if the complaint alleges at least one cause of action involving activities on the Floor of the Exchange. The proposed rule change would be consistent with the Exchange's practice under current Rule 476(b), which provides that in any disciplinary proceeding involving activities on the Floor of the Exchange, no more than one of the persons serving on the three-person Hearing Panel may be, or, if retired, may have been, active on the Floor of the Exchange. Proposed Rule 9212 is the same as the counterpart NYSE Rule.

Under the proposed rule change, the form of the complaint also would be more prescribed than under current Rule 476. Current Rule 476 also does not address the amendment or withdrawal of complaints.

Proposed Rules 9213 Through 9215

Proposed Rule 9213 would provide for the appointment of a Hearing Officer and Panelists by the Chief Hearing Officer. Current Rule 476(b) is similar in that it provides for the appointment of a Chief Hearing Officer by the Exchange Board of Directors and the utilization of three-person Hearing Panels led by a Hearing Officer.

Proposed Rule 9214 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. There is no rule comparable to proposed Rule 9214 for severing or consolidating proceedings. Under current Rule 476(c), the Chief Hearing Officer or a Hearing Officer resolves all procedural matters and substantive legal motions.

Proposed Rule 9215 would set forth requirements for answering a complaint, including form, service, notice, content, defenses, amendments, default, and timing. An answer to a Charge Memorandum under current Rule 476(d) and an answer to a complaint under the proposed rule change have the same 25-day response deadline; however, proposed Rule 9215 would

explicitly allow for an extension of time to answer an amended complaint.

Proposed Rules 9213 through 9215 are the same as NYSE Rules 9213 through 9215.

Proposed Rules 9216 and 9217

Proposed Rule 9216 would establish the acceptance, waiver, and consent ("AWC") procedures by which a respondent, prior to the issuance of a complaint, may 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.⁴⁷ The proposed rule also would establish procedures for executing a minor rule violation plan letter.⁴⁸

Enforcement could prepare and request that a member organization or covered person execute an AWC letter if Enforcement had reason to believe a violation had occurred and the member organization or covered person did not dispute the violation. The CRO would be authorized to accept or reject an AWC letter that has been executed by a member organization or covered person. If the AWC letter were accepted by the CRO, it would be deemed final and would constitute the complaint, answer, and decision in the matter 25 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 proposed Rule 9310(a)(1)(B). Such review is consistent with the call for review process in connection with a Stipulation and Consent under current Rule 476(g) and the process set forth in the NYSE Rules.⁴⁹ The Exchange also believes that allowing AWC letters to be called for review by the Exchange Board of Directors provides an additional, appropriate check and balance to the settlement process. If the AWC letter were rejected by the CRO, the member organization or covered person who executed the letter would be notified in writing and the letter would be deemed withdrawn.

While the AWC process has some similarity to the Exchange's current Stipulation and Consent procedure in

Rule 476(g) in that it provides a settlement mechanism, there are certain key differences. Under current Rule 476(g), a Hearing Officer must act on a Stipulation and Consent submitted by the parties and may choose to convene a Hearing Panel. No Hearing Officer would be involved in the process under the proposed rule.

The Exchange also proposes to adopt the NYSE's process for minor rule violations while retaining the specific fine levels and list of rules included in the Exchange's current minor rule violation plan, with certain technical and conforming amendments. Under the proposed rule, the CRO, on behalf of the SRO Board, would be authorized to accept or reject a minor rule violation plan letter. If the minor rule violation plan letter were accepted by the CRO, it would be deemed final. Proposed Rule 9216(b)(4) would further provide that any fine imposed pursuant to proposed Rule 9216(b) and not contested would not be publicly reported, except as may be required by Rule 19d-1 under the Exchange Act, and as may be required by any other regulatory authority. If the letter 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 member organization or covered person would not be prejudiced by the execution of the minor rule violation plan letter, 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.

Unlike current Rule 476A, which is described above, the proposed rule would not permit a respondent to contest a minor rule violation letter by filing an answer and converting it into a regular disciplinary proceeding, nor would the proposed rule permit any person to require a review by the Board of any Hearing Panel determination in such a proceeding. Rather, under the proposed rule, if the respondent rejects the minor rule violation letter, then a complaint must be served and filed under proposed Rule 9211 in order to begin a disciplinary proceeding, and the minor rule violation letter may not be introduced into evidence. The Exchange believes that the proposed rule provides similar and sufficient procedural protections to respondents.

Proposed Rule 9217 would set forth the list of rules under which a member organization or covered person may be subject to a fine under a minor rule violation plan as described in proposed Rule 9216(b). The Exchange would

⁴⁷ Proposed Rule 9270 would address settlement procedures after the issuance of a complaint.

⁴⁸ As described in proposed Rules 9216(b) and 9217, a minor rule violation plan letter is a means by which a fine (not to exceed \$5,000) and/or a censure may be imposed on a member organization or covered person with respect to certain specifically enumerated rules, provided that there is reason to believe a violation has occurred and the member organization or covered person does not dispute the violation.

⁴⁹ See NYSE Reintegration Facilitation Filing Approval Order, 80 FR at 72460.

retain the list of rules currently set forth in its own minor rule violation plan (found in Parts 1A, 1C, and 1D of current Rule 476A), and also insert them, with certain technical and conforming changes, into proposed Rule 9217, rather than adopt the list of rules in NYSE's plan.⁵⁰

The technical and conforming changes relating to minor rule violations are as follows. The list of equities rules violations would be supplemented with references to proposed Rules 8210 and 8211. In particular, references to the failure to submit books and records or to furnish information on the date or within the time period that the Exchange requires under Rule 476(a)(11) would be supplemented with a reference to proposed Rule 8210. References to the submission of trading data under Rule 410A—Equities would be supplemented with a reference to proposed Rule 8211.

The list of options rules violations and accompanying fine levels chart would be similarly updated. Failure to submit trade data to the Exchange in a timely manner (item (ii)(1)) would be supplemented by references to proposed Rule 8211 in both places. Failure to furnish in a timely manner books, records or other requested information or testimony in connection with an examination of financial responsibility and/or operational conditions under Rule 31 (item (ii)(2)) would be supplemented in both places with a reference to proposed Rule 8210. Delaying, impeding or failing to cooperate in an Exchange investigation under Rule Section 9A (item (ii)(5)) would be supplemented in both places with references to proposed Rule 8210. Finally, the Exchange proposes to replace the reference to Rule 476A in the first paragraph under the heading “List of Reports Required to be Filed with the Exchange by ATP Holders and Filing Deadlines” relating to the Exchange's ability to impose a \$100 per day fine on any ATP Holder failing to file an enumerated report with a reference to Rule 9216(b).

The current list of minor rules includes a reference to Rule 504(b)(6)—Equities, which was deleted in August 2012;⁵¹ as such, the Exchange proposes to delete the rule from the list in Rule 476A and not include it in proposed Rule 9217. The current list of NYSE

MKT minor rules also includes references to certain rules that have been removed from the rules as part of the FINRA rule harmonization process, including previous Rules 312(h)—Equities, 382(a)—Equities, 352(b) and (c)—Equities, 392—Equities, and 445(4)—Equities, as well as rules the Exchange is proposing to delete in the current rule filing, such as Rule 410A—Equities. The Exchange proposes to maintain the references to these former rules in its current list of minor rules in proposed Rule 9217. By doing so, the Exchange could continue to resolve violations of them that occurred prior to the harmonization via a minor rule violation letter.⁵² For example, guarantees against loss were covered by Rule 352—Equities until December 2009, when Rule 2150—Equities was adopted.⁵³ The Exchange could resolve a guarantee against loss violation that occurred in November 2009 when Rule 352—Equities was effective, and Rule 2150—Equities was not effective, via a minor rule violation plan letter under proposed Rule 9217. The Exchange will determine at a later time when it is appropriate to remove these previous rule references from the list of minor rules.

Proposed Rules 9220 Through 9222

Proposed Rules 9220 and 9222 would describe how a respondent can request a hearing, the notice of a hearing, and timing considerations. The proposed rules are the same as NYSE Rules 9220 through 9222. Proposed Rule 9221 provides that a Hearing Officer generally must provide at least 28 days' notice of the hearing. Current Rule 476 does not have comparable provisions relating to how a hearing can be ordered and time for notices; rather, current Rule 476(b) states that all proceedings under the Rule, except as to matters that are resolved by a Hearing Officer when so authorized, are conducted at a Hearing in accordance with the provisions of Rule 476.

Proposed Rules 9230 Through 9235

Proposed Rules 9231 and 9232 would govern how a Hearing Panel, Extended Hearing Panel, Replacement Hearing Officer, Panelists, Replacement Panelists, and Floor-Based Panelists are appointed and their composition and criteria for selection. Proposed Rules

9231 and 9232 are the same as the counterpart NYSE rules, except for the substitution of “Exchange” for “NYSE” before “hearing board” and the use of “ATP Holders” in proposed Rule 9232 to reflect the Exchange's membership.

Under the proposed rule change, the Exchange would use FINRA's Chief Hearing Officer and Hearing Officers from FINRA's Office of Hearing Officers, rather than have the Exchange Board of Directors appoint such persons as it does under current Rule 476(b). To harmonize the Exchange's rules with the hearing process under NYSE rules, the Exchange believes that it is reasonable to utilize FINRA's Office of Hearing Officers as described in the proposed rule change.

The Exchange would continue to draw Panelists appointed from an Exchange hearing board. The hearing board would be composed of members of the Exchange who are not members of the Exchange Board of Directors and registered employees and non-registered employees of member organizations or ATP Holders, as well as former members, allied members, or registered and non-registered employees of member organizations or ATP Holders who have retired from the securities industry.⁵⁴ As is the case under current Rule 476(b), Panelists would be required to be persons of integrity and judgment. The proposed rule would provide that the hearing board would be appointed by the Exchange Board of Directors. Under current Rule 476(b), the Hearing Board is selected by the Chairman of the Exchange Board of Directors, subject to the approval of the Board of Directors. The Exchange believes that because the approval of the Exchange Board of Directors is required for appointment of the hearing board, it is not necessary to specify that the Chairman of the Exchange Board shall appoint the hearing board subject to such approval.⁵⁵

There would be one change in hearing board eligibility in the proposed rule as compared to the current rule. Currently, the Exchange requires that a Panelist cannot have been retired from the securities industry for more than five years. In order to have the largest number of potential retired Panelists available following the proposed rule change, the Exchange proposes to drop

⁵⁰ The proposed rule also would retain the Exchange's maximum fine for minor rule violations which, under current Rule 476A, is \$5,000. NYSE's maximum fine for minor rule violations is \$2,500. See NYSE Rule 9216(b).

⁵¹ See Securities Exchange Act Release No. 67740 (August 28, 2012), 77 FR 53952 (September 4, 2012) (SR-NYSEMKT-2012-37).

⁵² This rationale for maintaining references to former rules in the list of minor rule violations was noted in Securities Exchange Act Release No. 62940 (September 20, 2010), 75 FR 58452 (September 24, 2010) (SR-NYSE-2010-66).

⁵³ See Securities Exchange Act Release No. 61157 (December 11, 2009), 74 FR 67939 (December 21, 2009) (SR-NYSEAmex-2009-88).

⁵⁴ As noted above, the Exchange no longer has allied members, but former allied members would continue to be eligible to be appointed to the Hearing Board, and the text of proposed Rule 9232 reflects this. See note 27, *supra*.

⁵⁵ The proposed rule is based on NYSE's recent amendment to NYSE Rule 9232. See NYSE Reintegration Facilitation Filing Approval Order, 80 FR at 72464.

the five-year restriction. The Exchange believes that there are well-qualified persons, in particular retirees, who continue to stay abreast of industry developments and rules after more than five years of retirement and that such persons would be valuable additions to the hearing board.

In addition, as noted above, the Exchange proposes to permit the Chief Hearing Officer to select one Floor-Based Panelist to serve on a Hearing Panel if the complaint alleges at least one cause of action involving activities on the Floor of the Exchange, consistent with the Exchange's practice under current Rule 476(b).

Proposed Rule 9232 would include Panelist selection criteria, which are 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. Rule 476(b) currently does not include these criteria.

Proposed Rules 9233 and 9234 would establish the processes for recusal and disqualification of Hearing Officers, Hearing Panels, or Extended Hearing Panels. Current Rule 22—Equities similarly prohibits a person from participating in an adjudication if he or she has a personal interest but does not specifically provide for recusals and disqualifications in the manner in which the comparable NYSE rule does. The options market does not have a comparable rule. Proposed Rules 9233 and 9234 are the same as the NYSE rules.

Proposed Rule 9235 would set forth the Hearing Officer's duties and authority in detail. The proposed rule change is similar to current Rule 476(c), which gives the Hearing Officer general authority in procedural and evidentiary matters. The proposed rule is the same as NYSE Rule 9235.

Proposed Rules 9240 Through 9242

Proposed Rules 9241 and 9242 would govern the substantive and procedural requirements for pre-hearing conferences and pre-hearing submissions. In addition, proposed Rule 9242, in conformance with the current NYSE rule based on FINRA's counterpart rule, would provide that 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 under the Rule 9000 Series.⁵⁶ Nothing in this Rule would prohibit former Regulatory Staff from testifying as a witness on behalf of the Exchange or FINRA. The rule text in proposed Rule 9242(b) is broader than FINRA's counterpart rule in that it covers not only former FINRA staff but also former Regulatory Staff that reported to the CRO, and covers both officers and employees. Given the Exchange's resumption of certain regulatory functions earlier this year, the Exchange believes that a prohibition on former Regulatory Staff providing expert testimony would help prevent potential conflicts or appearance of conflicts of interest. The Exchange also believes that, consistent with FINRA Rule 9242(b), permitting a former Regulatory Staff member to testify as a witness on behalf of the Exchange does not pose potential conflicts of interest.

As stated above, current Rule 476(c) gives Hearing Officers general authority in procedural matters, but there are no specific provisions in the current rules relating to pre-hearing conferences and submissions, nor do the current rules address expert testimony by former staff.

Proposed Rules 9250 Through 9253

Proposed Rules 9250 through 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. The proposed rules are the same as NYSE Rules 9250 through 9253.

Proposed Rule 9251 would generally 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 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 9310, the Exchange Board of Directors, 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.

Current Rule 476(c) contains provisions that address the same subject. As described above, under that rule the Chief Hearing Officer, or any Hearing Officer designated by the Chief Hearing Officer, may require the Exchange to permit a respondent to inspect and copy documents or records in the possession of the Exchange that are material to the preparation of the defense or are intended for use by the Exchange as evidence in chief at the hearing; however, the rule does not authorize the discovery or inspection of reports, memoranda, or other internal Exchange documents prepared by the Exchange in connection with the proceeding. Under the proposed rule, there would be no materiality standard. The Exchange believes that eliminating the materiality standard will ease administration of the rule while still providing appropriate protections for internal Exchange documents.

In addition, under current Rule 476(c), the respondent may be required to provide discovery of non-privileged documents and records to the Exchange. There is no explicit counterpart in the proposed NYSE MKT or current NYSE rules, but the Exchange notes that proposed Rule 8210 may always be used to obtain non-privileged documents from a respondent. Thus, in that respect, there is no substantive difference in the result under the current or proposed rules.

Under proposed Rule 9252, a respondent could request that the Exchange invoke proposed Rule 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. Current Rule 476 provides that a respondent may be required to provide discovery of non-privileged documents to the Exchange.

⁵⁶ See *id.*, 80 FR at 51338.

Under proposed Rule 9253, a respondent could file a motion to obtain certain witness statements. The Exchange's current rules do not contain such a provision.

Proposed Rules 9260 Through 9269

Proposed Rules 9260 through 9269 would govern hearings and decisions. The proposed rules are the same as the counterpart NYSE rules except for the inclusion of "ATP Holder" and "member" in Rule 9268.

Proposed Rule 9261 would generally require the Parties to submit a list of documentary evidence and witnesses no later than 10 days before the hearing. The Exchange's current rules do not contain such a provision.

Proposed Rule 9262 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 such a provision.

Proposed Rule 9263 would authorize the Hearing Officer to exclude irrelevant, immaterial, or unduly repetitious or prejudicial evidence and a Party to object; excluded evidence would be attached to the record as a supplemental document. Under current Rule 476(c), the Chief Hearing Officer or a Hearing Officer resolves all evidentiary issues. There is no explicit provision in the Exchange's current rules for excluded evidence to be attached to the record.

Proposed Rule 9264 would allow Parties to file a motion for summary disposition under certain circumstances and would describe the procedures for filing and ruling on such a motion. Under current Rule 476(c), the Chief Hearing Officer or a Hearing Officer resolves all procedural matters, but the Rule does not specifically address motions for summary disposition. In practice, however, Hearing Panels accept and rule on motions for summary disposition.

Proposed Rule 9265 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 be permitted to seek a correction of the transcript from the Hearing Officer. Current Rule 476(e) provides generally that the Exchange must keep a record of hearings.

Proposed Rule 9266 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. Under current Rule 476(c), the Chief Hearing Officer or a Hearing Officer resolves all procedural matters,

but the rule does not specifically address such post-hearing activities.

Proposed Rule 9267(a) would detail the required contents of the hearing record and Rule 9267(b) would describe treatment of supplemental documents attached to the record. The Exchange's current rules do not contain such a provision.

Proposed Rule 9268 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. Other than a reference to "ATP Holder" in subparagraph (d), the proposed Rule is the same as NYSE Rule 9268.

The Exchange notes that it has a member organization affiliate.⁵⁷ As such, in proposed Rule 9268(e)(2), the Exchange proposes to include text providing that a disciplinary decision concerning an Exchange member or member organization that is an affiliate of the Exchange would not be subject to review under proposed Rule 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 of Directors is appropriate, but rather such affiliate should be permitted to appeal directly to the SEC. The Exchange notes that NASDAQ, which also has an affiliate, has a rule that is substantially the same as the Exchange's proposed rule and NYSE's current rule.⁵⁸ Because the Exchange's affiliates will still have a right to appeal to the SEC, the Exchange believes that the proposed rule is not unfairly discriminatory.

Finally, proposed Rule 9269 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. A default decision would become the final disciplinary action of the Exchange if a request for review by the Exchange Board of Directors is not filed within 25 days after the date the decision is served on the Parties. The proposed rule is the same as NYSE Rule 9269.

⁵⁷ The Exchange has one member organization, Archipelago Securities LLC, that is an affiliate of the Exchange and that is used for inbound and outbound routing of certain orders. See Rule 1, Rule 17(c)—Equities & Rule 993NY.

⁵⁸ See NASDAQ Rule 9268(e)(2); NYSE Rule 9268(e)(2).

Current Rule 476(d) provides a similar mechanism for default decisions as the proposed rule change. As described above, under the current rule, if the respondent has failed to file an Answer, the Exchange, by motion, accompanied by proof of notice to the respondent, may request a determination of guilt by default, and may recommend a penalty to be imposed. If the respondent opposes the motion, the Hearing Officer, on a determination that the respondent had adequate reason to fail to file an Answer, may adjourn the hearing date and direct the respondent to promptly file an Answer. If the default motion is unopposed, or the respondent did not have adequate reason to fail to file an Answer, or the respondent failed to file an Answer after being given an opportunity to do so, the Hearing Officer, on a determination that the respondent has had notice of the charges and that the Exchange has jurisdiction in the matter, may find guilt and determine a penalty. Unlike the proposed rule, the current rule does not contain a provision for setting aside a default decision that has been rendered.

Proposed Rule 9270

Proposed Rule 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 would be different from the Stipulation and Consent procedure under current Rule 476(g), which is described above. The proposed rule would be the same as NYSE Rule 9270, except as described below.

Under proposed Rule 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 the Hearing Officer determined otherwise. The proposed rule differs from current Rule 476(g), which requires that a Stipulation and Consent be agreed to by both the respondent and Exchange staff.

Under proposed Rule 9270(b), a respondent would be prohibited from making a frivolous settlement offer or one that was inconsistent with the seriousness of the violations. Current Rule 476(g) does not contain a similar provision.

Proposed Rule 9270(c) would set forth the required content of the proposal, which would include a statement consenting to findings of fact and violations and a proposed sanction. The proposed rule would be the same as NYSE's rule, except that, like FINRA Rule 9270(c)(5), the proposed rule would also require that the proposed

sanction be consistent with the Exchange's sanctions guidelines, if applicable, or, if inconsistent with the sanction guidelines, include a detailed statement supporting the proposed sanction. The NYSE does not have sanctions guidelines, so this requirement was not included in NYSE's rules.⁵⁹ As noted above, the Exchange's Sanctions Guidelines apply only to matters involving violations of the options rules. In connection with matters not covered by the Sanctions Guidelines, the CRO, Hearing Panel or Extended Hearing Panel, as applicable, would consider relevant Exchange precedent or such other precedent as it deemed appropriate in determining whether to accept a settlement offer. Current Rule 476(g) similarly requires that a Stipulation and Consent contain proposed findings of fact, violations, and a specified penalty.

Proposed Rule 9270(d) would provide that submission of a settlement offer waives a respondent's right to a hearing, the right to claim bias or ex parte communication violations, and the right to review by the Exchange Board of Directors, the Commission, or the courts. This differs from current Rule 476(g), which allows either party to request a hearing on a Stipulation and Consent or a Hearing Officer to convene a hearing on a Stipulation and Consent in certain circumstances.

Proposed Rule 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 9200 Series. The contested offer of settlement would not be transmitted to the Office of Hearing Officers, the 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. The Exchange has determined that if the Parties cannot reach agreement on the offer of settlement, then the matter should proceed under the proposed Rule 9200 Series. The Exchange believes that its proposed rule would encourage respondents to make reasonable offers of settlement that will be acceptable to Enforcement and is consistent with the Exchange's current process under Rule 476(g), which does not contemplate contested settlement offers but rather requires that both the respondent and Exchange staff agree on the Stipulation and Consent.

Proposed Rule 9270(f) and (h) would address uncontested offers of settlement. Under the proposed rule, an offer of settlement would be uncontested if Enforcement does not oppose it. 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.⁶⁰ If they did not, the offer would be deemed withdrawn and the matter would proceed under the proposed Rule 9200 Series and the settlement offer would not be part of the record. As described below, if the offer of settlement were accepted by the CRO, Hearing Panel or Extended Hearing Panel, it would become final 25 days after being sent, together with an order of acceptance, to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is required pursuant to proposed Rule 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 of Directors. The Exchange believes that this review mechanism provides an additional, appropriate check and balance to the proposed settlement process.

While the offer of settlement process has some similarity to the Exchange's current Stipulation and Consent procedure in Rule 476(g) in that it provides a settlement mechanism, there are certain key differences. Under current Rule 476(g), a Hearing Officer must act on a Stipulation and Consent submitted by the parties and may choose to convene a Hearing Panel. Under the proposed rule change, as under NYSE Rule 9270, a Hearing Officer would be required to act on an offer of settlement only if a hearing on the merits had already begun. In addition, under Rule 476(g), all determinations and penalties imposed in connection with a Stipulation and Consent are final and conclusive 25 days after notice has been served upon the respondent. As discussed below in connection with proposed Rule 9310(a)(1)(B), an offer of settlement issued before a hearing on the merits has begun would become final 25 days

after being sent to each Director and member of the Committee for Review, if not called for review by the Exchange Board of Directors.

Proposed Rule 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 Rule 476(g) does not have a similar provision.

Proposed Rule 9270(j) would provide that a respondent may not be prejudiced by a rejected offer of settlement nor may such an offer of settlement be introduced into evidence. The current rules do not have a similar provision.

Proposed Rule 9280

Proposed Rule 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 sets forth a process for reviewing such exclusions. The Exchange proposes to have the Chief Hearing Officer review exclusions. The Exchange believes that respondents and their attorneys and representatives will have adequate procedural protections with a review by the Chief Hearing Officer. Current Rule 476 does not have similar procedures for contemptuous conduct generally, but Rule 476(h) does allow for a fine or sanction for improper conduct before a Hearing Board. The proposed Rule is the same as NYSE Rule 9280.

Proposed Rule 9290

Under proposed Rule 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 9810 or a temporary cease and desist order, hearings would be required to be held and decisions rendered at the earliest possible time. The Exchange currently does not have a similar rule. The proposed rule is the same as NYSE Rule 9290.

Proposed Rules 9300 and 9310

The Exchange's appellate and call for review processes would be set forth in the Rule 9300 Series, specifically proposed Rule 9310. The text is substantially similar to current Rule 476(f), (g) and (l), with certain differences that are described below. The text of proposed Rule 9310 is the same as NYSE Rule 9310, except as described below.

Under proposed Rule 9310(a)(1)(A), any Party, any Director, and any member of the Committee for Review could require a review by the Exchange

⁶⁰In determining whether to accept a settlement offer, the CRO, Hearing Panel or Extended Hearing Panel, as applicable, would consider Exchange precedent or such other precedent as it deemed appropriate, in addition to considering the Sanctions Guidelines, if applicable.

⁵⁹ See 2013 Notice, 78 FR at 5229.

Board of Directors of any determination or penalty, or both, imposed by a Hearing Panel or Extended Hearing Panel under the proposed Rule 9200 Series, except that none of the aforementioned persons could request a review by the Exchange Board of Directors of a decision concerning an Exchange member or member organization that is an affiliate. Under the proposed rule, a request for review would 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 was served upon the respondent. The Secretary of the Exchange would give notice of any such request for review to the Parties.

Proposed Rule 9310(a)(1)(B) would govern the call for review process in connection with AWC letters and offers of settlement determined to be uncontested before a hearing on the merits has begun. Under the proposed rule, any Director and any member of the Committee for Review could require a review by the Exchange Board of Directors of any determination or penalty, or both, imposed in connection with an AWC letter under Rule 9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 9270(f), except that none of those persons could request a review by the Exchange Board of Directors of a determination or penalty concerning an Exchange member or member organization that is an affiliate of the Exchange. A request for review pursuant to proposed paragraph (a)(1)(B)(i) would be made by filing with the Secretary of the Exchange a written request stating the basis and reasons for such review, within 25 days after the AWC letter or offer of settlement has been sent to each Director and each member of the CFR. The Secretary of the Exchange would give notice of any such request for review to the Parties.

In addition, the Exchange proposes that any party could require a review by the Exchange Board of Directors of any rejection by the CRO of an AWC letter under Rule 9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 9270(f), except that no party could request Board review of a rejection of an AWC letter or offer of settlement concerning an Exchange member or member organization that is an affiliate of the Exchange. Under subparagraph (B)(ii) of proposed Rule 9310(a)(1), such a request for review would 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 9216(a)(3) or Rule 9270(h) that an AWC letter or uncontested offer of settlement or order of acceptance is not accepted by the CRO. The Exchange proposes that the Secretary of the Exchange would give notice of any such request for review to the parties.

The text of proposed Rule 9310(a)(1) differs from Rule 476 in order to align it with terms used in the remainder of the proposed Rule 9000 Series. The call for review process described in proposed Rule 9310(a)(1)(A) is consistent with the process described in Rule 476(f) and (g) regarding review of a determination or penalty imposed by a Hearing Panel. The call for review process described in Rule 9310(a)(1)(B) for AWC letters and offers of settlement before a hearing on the merits has begun differs from Rule 476 because it describes a process for reviewing determinations and penalties imposed without involvement of a Hearing Officer or Hearing Panel. No such process exists under the Exchange's current rules because Rule 476(g) provides that a Hearing Officer must act on a Stipulation and Consent submitted by the parties and may choose to convene a Hearing Panel.

The Exchange believes that allowing AWC letters and offers of settlement accepted by the CRO to be called for review by the Exchange Board of Directors, together with the proposed rule permitting parties to request Board review of a determination to reject an uncontested offer of settlement, provides an additional, appropriate check and balance to the settlement process. Allowing for such review would provide an additional layer of review for determinations made by the CRO. It would also permit all AWC letters and offers of settlement to be subject to review if requested by a Director or a member of the Committee for Review. The Exchange believes that the 25-day period in proposed Rule 9310(a)(1)(B) is reasonable and sufficient. The proposed 25-day period is consistent with the 25-day period for Board review of a Stipulation and Consent (or rejection thereof) set forth in current Rule 476(g). The proposed rule change is also consistent with the period applicable to review of a determination or penalty imposed by a Hearing Panel or Extended Hearing Panel in NYSE Rule 9310(a)(1). Similarly, the proposed rule change is consistent with the 25-day period for requesting review of a default decision under proposed Rule 9269(d).

Under proposed Rule 9310(a)(2), the Secretary of the Exchange would direct the Office of Hearing Officers, in connection with any review under paragraph (a)(1)(A), to complete and transmit a record of the disciplinary proceeding in accordance with Rule 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 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 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, would certify that the record transmitted to the Secretary of the Exchange was complete. Current Rule 476(f) does not contain such requirements.

Under proposed Rule 9310(b), any review by the Exchange Board of Directors would be based on oral arguments and written briefs and limited to consideration of the record before the Hearing Panel or Extended Hearing Panel. Proposed Rule 9310(b) also incorporates Rule 476(f)'s provision relating to appeals panels.⁶¹ Specifically, under proposed Rule 9310(b), the CFR may, but is not required to, appoint an appeals panel to conduct a review under this subsection and make a recommendation to the CFR. An appeals panel appointed by the CFR would consist of at least three and no more than five individuals. An appeals panel appointed by the CFR for equities matters would be composed of at least one director and one member or individual associated with an equities member organization. An appeals panel appointed by the CFR for options matters would be composed of at least one director and one member or individual associated with an options member organization. NYSE Rule 9310(b) does not contain a similar provision relating to appeals panels.

Upon review, and with the advice of the CFR, the Exchange Board of Directors, by the affirmative vote of a majority of the Exchange Board of Directors then in office, could sustain any determination or penalty imposed, 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 Exchange Board of Directors otherwise specifically directed, the determination and penalty,

⁶¹ See note 15, *supra*.

if any, of the Exchange Board of Directors after review would be final and conclusive, subject to the provisions for review under the Act. The proposed rule is substantially the same as provided in current Rule 476(f), other than conforming and technical changes to align it with terms used in the remainder of the proposed Rule 9000 Series.

Under proposed Rule 9310(c), notwithstanding the foregoing, if either Party upon review applied to the Exchange Board of Directors for leave to adduce additional evidence, and showed to the satisfaction of the Exchange Board of Directors 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 of Directors could remand the case for further proceedings, in whatever manner and on whatever conditions the Exchange Board of Directors considered appropriate. The proposed rule is substantially the same as provided in current Rule 476(f), other than conforming and technical changes to align it with terms used in the remainder of the proposed Rule 9000 Series.

Under proposed Rule 9310(d), notwithstanding any other provisions of the proposed Rule 9000 Series, the CEO could not require a review by the Exchange Board of Directors under this Rule and would be recused from deliberations and actions of the Exchange Board of Directors with respect to such matters. The proposed rule is substantially the same as provided in current Rule 476(l), other than conforming and technical changes to align it with terms used in the remainder of the proposed Rule 9000 Series.

Proposed Rules 9500 Through 9527

The proposed Rule 9520 Series would govern eligibility proceedings for persons subject to statutory disqualifications that are not FINRA members. The Exchange does not currently have any rules governing this subject matter and proposes to adopt the NYSE Rule 9520 Series.⁶² The Exchange intends for the scope of the proposed Rule 9520 Series to be the same as the

NYSE Rule 9520 Series, and as such, intends to issue a notice to that effect.

Proposed Rule 9521 would add certain definitions relating to eligibility proceedings that are not currently part of the Exchange's rules, including definitions of "Application," "disqualified member organization," "disqualified person," and "sponsoring member organization." Proposed Rule 9521 is the same as NYSE Rule 9521 except that it includes "ATP Holder" in subparagraph (a) describing the rule's purpose and in the definition of "disqualified member organization" in subparagraph (b)(2). As noted previously, the references to ATP Holders in the proposed Rule 9520 Series relate solely to options members that have employees and not ATP Holders without employees or those associated with an options member organization.

Proposed Rule 9522 would govern the initiation of an eligibility proceeding by the Exchange and the obligation for a member organization or covered person to file an application to initiate an eligibility proceeding if it has been subject to certain disqualifications. Further, under the proposed rule, FINRA's Department of Member Regulation could approve a written request for relief from the eligibility requirements under certain circumstances. Once again, the proposed Rule is the same as its NYSE counterpart except for references to "ATP Holder" to reflect the Exchange's membership.

Proposed Rule 9523 would allow the Department of Member Regulation to recommend a supervisory plan to which the disqualified member organization, sponsoring member organization, and/or disqualified person, as the case may be, may 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, or prohibited ex parte communications. If such a supervisory plan were rejected, proposed Rule 9524 would allow a request for review by the applicant to the Exchange Board of Directors. Proposed Rule 9524 is the same as the NYSE Rule. Proposed Rule 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. Proposed Rule 9527 is the same as the NYSE Rule. To maintain consistency with NYSE's rule numbering, proposed Rules 9525 and 9526 would be designated "Reserved."

Proposed Rules 9550 Through 9559

Proposed Rules 9551 through 9559 would govern expedited proceedings.⁶³

Under proposed Rule 9551, Regulatory Staff could issue a written notice requiring a member or member organization⁶⁴ to file communications with the Exchange's Advertising Regulation Department at least 10 days prior to use if the staff determined that the member or member organization had departed from the standards of Rule 2210—Equities or Rule 991.⁶⁵ The notice would state the specific grounds and include the factual basis for the action as well as the effective date. The member or member organization could file a written request for a hearing with the Office of Hearing Officers pursuant to proposed Rule 9559. A member or member organization 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 8310(a) and 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 member or member organization subject to a pre-use filing requirement also could file a written request for modification or termination of the requirement. The Exchange currently uses FINRA Rule 9551 and 9559, which are the same, to carry out these procedures.

Proposed Rule 9552 would establish procedures in the event that a member organization 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 9552, the member organization or covered person could be suspended if corrective action were not taken within 21 days after service of notice. A member organization or covered person served with a notice could request a hearing within the 21-day period. A member organization or covered person subject to a suspension could file a written request for termination of the suspension on the ground of full compliance. A member organization or covered person suspended under the

⁶² The NYSE Rule 9520 Series was based on the FINRA Rule 9520 Series, and the scope of the NYSE Rule 9520 Series was intended to be the same as FINRA Rule 9520 Series. See 2013 Approval Order, 78 FR at 15399. FINRA has been processing statutory disqualification applications on behalf of the Exchange since 2009. See Securities Exchange Act Release No. 60409 (July 30, 2009), 74 FR 39353 (August 6, 2009) (File No. 4-587).

⁶³ Proposed Rule 9553 would be designated "Reserved" to maintain consistency with NYSE's rule numbering.

⁶⁴ See notes 25 and 26, *supra*.

⁶⁵ Proposed Rule 9551 is the same as NYSE Rule 9551 except for the inclusion of references to Exchange rules, and the inclusion of "member" before "member organization" to reflect the Exchange's membership.

proposed rule change 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.⁶⁶

There is no provision for such an expedited proceeding under the Exchange's current rules. Under current Rule 476(a)(11), a member organization or covered person is subject to a regular, as opposed to expedited, disciplinary proceeding for failure to submit books and records or provide testimony upon request of the Exchange and for failure to update a Form BD. Proposed Rule 9552 is the same as its NYSE counterpart except for references to "ATP Holder" to reflect the Exchange's membership.

Proposed Rule 9554, relating to failures to comply with an arbitration award or related settlement or an Exchange order of restitution or Exchange settlement agreement providing for restitution, would contain similar procedures and consequences as proposed Rule 9552. Under proposed Rule 9554, if a member organization or covered person failed 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 member organization 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 member organization or ATP Holder. Under current Rule 600(c)—Equities and Rule 624 of the Exchange's Arbitration Rules applicable to options members, the failure to honor an arbitration award subjects a member organization, member, or registered person to a regular disciplinary proceeding under Rule 476. Proposed Rule 9554 is also the same as its NYSE counterpart except for references to "ATP Holder."

Proposed Rule 9555 would govern the failure to meet the eligibility or

qualification standards or prerequisites for access to services offered by the Exchange. Under proposed Rule 9555, if a member organization 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 member organization 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 member organization or ATP Holder.

Similarly, if a member organization or covered person did not meet the prerequisites for access to services offered by the Exchange or a member or member organization thereof or could not be permitted to continue to have access to services offered by the Exchange or a member or member organization thereof with safety to investors, creditors, members or member organizations, or the Exchange, Exchange staff could provide written notice to such member organization or covered person limiting or prohibiting access to services offered by the Exchange or a member or member organization thereof. The limitation, prohibition, suspension, cancellation, or bar referenced in the notice would become effective 14 days after service of the notice unless the member organization or covered person requested a hearing during that time, except that the effective date for a notice of a limitation or prohibition on access to services would be upon service of the notice. As described above, under Rule 475(a), the Exchange currently may prohibit or limit access to services offered by the Exchange or any member or member organization thereof if the Exchange has provided 15 days' prior written notice of, and an opportunity to be heard upon, the specific grounds for such prohibition or limitation, and provides a written decision. Proposed Rule 9555 is the same as its NYSE counterpart except for references to "member" and "ATP Holder" as appropriate to reflect the Exchange's membership.

Proposed Rule 9556 would provide procedures and consequences for a failure to comply with temporary and permanent cease and desist orders, which would be authorized by proposed Rule 9810. The Exchange currently does not issue temporary or permanent cease and desist orders and, as such, there is no counterpart in the Exchange's current rules. The proposed rule is the same as its NYSE counterpart except for references to "ATP Holder."

Proposed Rule 9557 would allow the Exchange to issue a notice directing a member or member organization to comply with the provisions of Rule 470 (Capital Requirements for Members and Member Organizations), Rule 471 (Business Expansion Restrictions and Business Reduction Requirements), Rule 4110—Equities (Capital Compliance), 4120—Equities (Regulatory Notification and Business Curtailment), or 4130—Equities (Regulation of Activities of Section 15C Member Organizations Experiencing Financial and/or Operational Difficulties) or otherwise directing it to restrict its business activities. The notice would be immediately effective, except that a timely request for a hearing would stay the effective date for 10 business days (unless the Exchange's CRO determined otherwise) or until an order was issued by the Office of Hearing Officers, whichever was earlier. The notice could be withdrawn upon a showing that all the requirements were met. Currently, if a member organization fails to comply with Rule 4110—Equities, 4120—Equities, or 4130—Equities (which are substantially the same as FINRA Rules 4110, 4120, and 4130), the Exchange issues a notice pursuant to FINRA Rule 9557. Summary suspensions are also authorized pursuant to Rule 475(b), as described above, for any equities or options member or member organization that is in such financial or operating difficulty that the member or member organization cannot be permitted to continue to do business with safety to investors, creditors, other members or member organizations, or the Exchange. The proposed rule is the same as its NYSE counterpart except for the inclusion of references to "member" to reflect the Exchange's membership.

Proposed Rule 9558 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. Such notice would be immediately effective. Such summary proceedings are currently authorized under Rule 475(b), under which the Exchange has authority to summarily suspend a member organization that is expelled or suspended by another SRO or a covered person that is barred or suspended by an SRO or limit or prohibit any person with respect to access to Exchange services in certain circumstances; while this rule also provides for notice and an opportunity for a hearing, it does not set forth a specific time limit for requesting a hearing. The proposed rule is the same

⁶⁶ 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 9552, the proposed rule is substantially the same as FINRA's counterpart rule, 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)) & 55597A (April 6, 2007) (denying motion for reconsideration).

as its NYSE counterpart except for references to “ATP Holder.”

Proposed Rule 9559 would set forth uniform hearing procedures for all expedited proceedings under the proposed Rule 9550 Series. Currently, the Exchange does not have a rule comparable to FINRA Rule 9559. The proposed rule is the same as its NYSE counterpart except for references to “ATP Holder.”

Proposed Rule 9600 Series

The Exchange proposes to adopt a new Rule 9600 Series, which would set forth procedures by which a member or member organization could seek exemptive relief from current Rule 341.05 of Section 4 of the Office Rules and Rule 345.15—Equities (examination requirements); Rule 2210—Equities (communications with the public pre-filing requirements); Rule 3170—Equities (tape recording of registered persons by certain firms); Rule 4311—Equities (carrying agreements); Rule 4360—Equities (fidelity bonds); and proposed Rule 8211 (submission of electronic trading data). Under proposed Rule 9610, a member or member organization seeking exemptive relief would be required to file a written application with the appropriate department or staff of the Exchange and provide a copy of the application to the CRO. Under proposed Rule 9620, after considering the application, Exchange staff would be required to issue a written decision setting forth its findings and conclusions. The decision would be served on the Applicant pursuant to proposed Rules 9132 and 9134. Under proposed Rule 9630, 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 calendar days after service of the decision. Under proposed Rule 9630(e), the CRO would affirm, modify, or reverse the decision issued under proposed Rule 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 9132 and 9134, would be effective upon service, and would constitute final action of the Exchange.

Currently, Rule 410A(d)—Equities permits a member or member organization to seek an exception from the data format elements for submitting electronic trading data for transactions effected on the Exchange, but the Rule does not set forth specific procedures for doing so. Similarly, current Rule 345.15—Equities and Rule 341.05 of Section 4 of the Office Rules and Rule 4311—Equities permit exemptions but

do not set forth specific procedures. Current Rules 2210—Equities and 4360—Equities reference FINRA’s exemptive process; these rules would be amended to delete the reference to the FINRA Rule 9600 Series as the Exchange would now have its own such provisions.

The proposed Rule 9600 Series is the same as the NYSE Rule 9600 Series, except for the list of rules providing exemptive relief and references to “member” and “ATP Holder” to reflect the Exchange’s membership.

Proposed Rule 9700 Series

The Rule 9700 Series would be marked “Reserved” to maintain consistency with NYSE’s rule numbering conventions. In adopting FINRA’s Rule 9000 Series in 2013, the NYSE did not adopt FINRA’s Rule 9700 Series, which provides redress for persons aggrieved by the operations of any automated quotation, execution, or communication system owned or operated by FINRA, as inapplicable to the NYSE. For the same reasons, the Exchange does not propose to adopt the FINRA Rule 9700 Series. The Exchange notes that under current Rule 18—Equities, if a member organization suffers a loss related to an Exchange system failure, it can submit a claim pursuant to the procedures of that rule.⁶⁷ ATP Holders can submit similar claims for damages arising out of the use of the NYSE Amex Options trading platform under Rule 905NY, subject to the limitations set forth in that rule.

Proposed Rule 9800 Series

The Exchange proposes to adopt a new Rule 9800 Series to set forth procedures for issuing temporary cease and desist orders. The Exchange does not currently have a comparable rule.

Under proposed Rule 9810, with the prior written authorization of the Exchange’s CRO or such other senior officers as the CRO may designate, Enforcement could initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Act, SEC Rules 10b–5 and 15g–1 through 15g–9, Rule 476(a)(6) or Rule 2010—Equities (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or is based on violations of Section 17(a) of the Securities Act of 1933) or Rule 476(a)(5) or Rule 2020—Equities. Proposed Rule 9820 would govern the appointment of a Hearing Officer and Panelists.

Under proposed Rule 9830, 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 Hearing Officer with the consent of the Parties for good cause shown. Proposed Rule 9830 would govern how the hearing was conducted.

Under proposed Rule 9840, 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 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. Under proposed Rule 9850, 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 10 days after receipt of the request. Proposed Rule 9860 would authorize the initiation of a suspension or cancellation of a respondent’s association or membership under proposed Rule 9556 if the respondent violated a temporary cease and desist order.

Finally, proposed Rule 9870 would provide that temporary cease and desist orders issued under the proposed Rule 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.⁶⁸

The proposed Rule 9800 Series is the same as the NYSE Rule 9800 Series,

⁶⁸ FINRA recently amended its Rule 9800 Series to lower the evidentiary standard for finding a violation to “a showing of likelihood of success on the merits.” FINRA also amended Rule Series 9100, 9200, 9300, and 9550 to adopt a new expedited proceeding for failure to comply with a temporary cease and desist order or a permanent cease and desist order; to harmonize the provisions governing how documents are served in temporary cease and desist proceedings and related expedited proceedings; to clarify the process for issuing permanent cease and desist orders; to ease FINRA’s administrative burden in temporary cease and desist proceedings; and to make conforming changes. See Securities Exchange Act Release No. 75629 (Aug. 6, 2015), 80 FR 48379 (August 12, 2015) (SR-FINRA-2015-019). The Exchange is not proposing to incorporate similar amendments into its proposed Rule Series 9100, 9200, 9300, 9550, and 9800 at this time.

⁶⁷ The NYSE referenced its counterpart rule, NYSE Rule 18, in the 2013 NYSE Disciplinary Rule Filing. See 2013 Approval Order, 78 FR at 15400.

except that proposed Rule 9810(a) references violations of Exchange rules rather than violations of similar NYSE rules.

Technical and Conforming Changes

The Exchange proposes the following technical and conforming changes.

General Rules

Rule 0 in the Definitions under the General and Floor Rules would be amended so that it correctly cross-references the current and proposed disciplinary rule sets.

Rule 31 of the General Rules and Supplementary Material .01 would be deleted. This rule contains text that concerns requests for books and records and testimony that is duplicative of current Rule 476(a)(11) and proposed Rule 8210. Supplementary Material .02 relating to regulatory cooperation is not duplicative of proposed Rule 8210(b) and would be retained. Rule 31 would be renamed "Regulatory Cooperation."

Rule 40 of the General Rules, which concerns denial of an ATP, would be deleted. It is a legacy rule that is duplicative of current Rule 475 and would be covered by proposed Rule 9558.

Contracts in Securities Rules

Rule 781, which concerns insolvency, cross-references current Rule 475, so a cross-reference to proposed Rule 9558 would be added.

Equities Rules Rule 0—Equities and Rule 500—Equities would be amended so that they correctly cross-reference the current and proposed disciplinary rule sets.

Rule 2A—Equities would be amended to specify that the list of disciplinary sanctions currently set forth in that rule would apply to proceedings under current Rules 475 and 476, and the list of disciplinary sanctions set forth in proposed Rule 8310(a) would apply to proceedings initiated under the proposed Rule 9000 Series.

Rule 36—Equities would be amended to include a reference to proposed Rule 9558, which relates to summary proceedings for actions authorized by Section 6(d)(3) of the Act.

Rule 103B—Equities, which sets forth certain security allocation and reallocation procedures when a Designated Market Maker unit loses its registration in a specialty stock due to disciplinary proceedings, would be amended to include references to the proposed Rule 8000 Series and Rule 9000 Series.

Rule 308—Equities, which sets forth procedures for member and member organization acceptability proceedings,

would be amended to reference the Chief Hearing Officer as defined in proposed Rule 9120, and delete the reference to a Chief Hearing Officer designated under legacy Rule 476(b).

The text of Rule 309—Equities would be deleted and the rule marked "Reserved" because new Rule 41 would replace it, as described above.

Rule 345A—Equities would be amended to delete a reference to recently deleted Rule 346(f)—Equities and replace it with a reference to Rule 342(e) of the Office Rules.⁶⁹

Rule 410A—Equities, concerning electronic trading data, would be deleted as described above.

Rule 600—Equities would be amended to include references to the disciplinary proceedings of the proposed Rule 8000 Series and Rule 9000 Series for failure to honor an arbitration award.

As the Exchange proposes to adopt Rules 9551 and 9559 and the Rule 9600

⁶⁹ Rule 346(f)—Equities provided that unless otherwise permitted by the Exchange, no member, member organization, approved person, employee or any person directly or indirectly controlling, controlled by or under common control with a member or member organization shall have associated with him or it any person who is known, or in the exercise of reasonable care should be known, to be subject to any "statutory disqualification" defined in Section 3(a)(39) of the Exchange Act. See 15 U.S.C. 78c(a)(39). Rule 346—Equities was based on NYSE Rule 346 (Limitations—Employment and Association with Members and Member Organizations). FINRA deleted Incorporated NYSE Rule 346 in 2010 after adopting NASD Rule 3030 (Outside Business Activities of an Associated Person) as FINRA Rule 3270 (Outside Business Activities of Registered Persons). See Securities Exchange Act Release No. 62762 (August 23, 2010), 75 FR 53362 (August 31, 2010) (order approving SR-FINRA-2009-042). FINRA deleted NYSE Rule 346(f) as redundant given that FINRA had amended its definition of disqualification in its By-Laws to align with the Exchange Act definition, thereby incorporating additional categories of statutory disqualification, including certain affiliated relationships. See *id.*, 75 FR at 53363.

The Exchange deleted Rule 346(f)—Equities in its entirety and adopted a new Rule 3270—Equities (Outside Business Activities of Registered Persons), to correspond with rule changes filed by FINRA. See Securities Exchange Act Release No. 64130 (March 28, 2011), 76 FR 18283 (April 1, 2011) (SR-NYSEAmex-2011-17). Rule 3270—Equities, however, does not contain a provision comparable to Rule 346(f)—Equities and in fact makes no mention of statutory disqualification. The comparable provision to Rule 346(f)—Equities in the Exchange's rules can be found in Rule 342(e) of the Office Rules, which provides that no member, member organization, allied member, approved person, employee, or any person directly or indirectly controlling, controlled by or under common control with a member or member organization shall have associated with him or it any person who is known, or in the exercise of reasonable care should be known, to be subject to any "statutory disqualification" defined in Section 3(a)(39) of the Exchange Act. The Exchange accordingly proposes to replace the reference to Rule 346(f)—Equities in Rule 345A—Equities with a reference to Rule 342(e).

Series, Rule 2210—Equities would be amended to revise the cross-references to "FINRA," "FINRA Rules 9551 and 9559," and the "FINRA Rule 9600 Series." These cross-references were adopted as part of a prior harmonization of Rule 2210—Equities with FINRA's rules and would be obsolete.⁷⁰

Rule 3170—Equities, concerning tape recording of registered persons by certain firms, would be amended to add a reference to the proposed Rule 9600 Series, pursuant to which exemptive relief may be sought.

Rules 4110—Equities, 4120—Equities, and 4130—Equities would be amended to revise a cross-reference to FINRA Rule 9557 as the Exchange proposes to adopt Rule 9557. Rule 4110—Equities would also be corrected to add the missing paragraph designation for paragraph (e) of the rule.

Rule 4360—Equities would be amended to provide that any request for an exemption would be processed under the proposed Rule 9600 Series rather than FINRA rules.

Options Rules

Rules 972, 902NY, 921NY, 923NY, 927.1NY, 927.2NY, 931NY, 955NY and 957NY contain cross-references to the current disciplinary rules. Corresponding references to the proposed disciplinary rules would be added.

Rule 991 would be amended to revise cross-references to FINRA Rules 9551 and 9559 as the Exchange proposes to adopt Rules 9551 and 9559.⁷¹

Finally, as noted above, Rule 956.1NY, which concerns electronic trading data, would be deleted and marked "Reserved."

Certain Current Exchange Rules Not Included in Proposed Rule Text

Certain aspects of current Exchange rules described above would not be included in the proposed Rule 8000–9000 Series, because either the Exchange does not believe they are necessary or the authority is implicit in the proposed rule change.

First, under current Rule 475(f), any person suspended under Rule 475 may, at any time, be reinstated by the Exchange Board of Directors. The Exchange does not believe that it would continue to be appropriate for the Exchange Board of Directors to have the authority to overturn a suspension imposed by another Adjudicator in light of the detailed procedural rules,

⁷⁰ See Securities Exchange Act Release No. 70963 (November 29, 2013), 78 FR 73223 (December 5, 2013) (SR-NYSEMKT-2013-95).

⁷¹ See *id.*

comprehensive protections to respondents, and continued availability of the Exchange's appeals process under the proposed rule change.

Second, under current Rules 475(g) and 476(k), any person suspended under such rules may be disciplined in accordance with the Exchange's rules for any offense committed before or after the suspension. The Exchange believes that such authority is implicit in proposed Rule 9211 and need not be expressed in the proposed rule change.

Under current Rules 475(h) and 476(j) and (k), a suspended person is deprived during the term of the suspension of all rights and privileges of membership, and any suspension of a member or principal executive creates a vacancy in any office or position held by such member or principal executive. The Exchange believes that this is implicit in the concept of a suspension and need not be expressed in the proposed rule change.

Under current Rule 476(i), a member or principal executive of the Exchange who is associated with a member organization is liable to the same discipline and penalties for any act or omission of such member organization as for the member or principal executive's own personal act or omission. The Hearing Panel that considers the charges may relieve him from the penalty therefor or may adjust the penalty on such terms and conditions as the Hearing Panel or the Exchange Board of Directors deems fair and equitable. The Exchange believes that this authority is contained in the proposed rule change because complaints may be brought against both member organizations and covered persons and are subject to review by the Hearing Panel and the Exchange Board of Directors.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷² in general, and furthers the objectives of Section 6(b)(5) of the Act,⁷³ in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 change furthers the objectives of Section 6(b)(7) of the Act,⁷⁴ in particular, in that it

provides fair procedures for the disciplining of members and persons associated with members,⁷⁵ the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof.

The proposed changes will provide greater harmonization between Exchange, NYSE, and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for common members. As previously noted, the proposed rule text is substantially the same as the NYSE's rule text. 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.

Certain key aspects of the Exchange's disciplinary proceedings would be retained. In particular, the Exchange would retain its current selection process for Hearing Panelists. The Exchange believes that it is necessary to do so in order to provide a fair procedure to its member organizations and covered persons, some of which are not subject to NYSE or FINRA jurisdiction. As such, the Exchange's Hearing Panelists cannot be drawn solely from a pool of NYSE or FINRA members and associated persons but rather must include NYSE MKT-only member organizations and persons with experience in NYSE MKT Floor matters in order for the Exchange's members to have a fair representation in its affairs. For the same reasons, the Exchange also believes that its Board of Directors remains the appropriate body for appeals or reviews of initial disciplinary decisions because its Board of Directors includes fair representation candidates from its membership.

The Exchange further 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 both from certain aspects of the Exchange's current Stipulation and Consent process and FINRA's current settlement processes, the Exchange believes that the proposed rule change nonetheless provides adequate procedural protections to all parties and promotes efficiency.

The Exchange would retain its list of minor rule violations, which have already been approved by the Commission,⁷⁶ with certain technical and conforming amendments, while adopting NYSE's and FINRA's process for imposing minor rule violation fines, which also have already been approved by the Commission.⁷⁷

Finally, the Exchange believes that its proposed transition plan would allow for a more orderly and less burdensome transition for the Exchange's members and member organizations. 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.

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 rather it is designed to (i) provide greater harmonization among Exchange, NYSE, 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.

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.

⁷⁶ The most recent amendments to the Exchange's minor rule violation plan were approved in Securities Exchange Act Release No. 66809 (April 13, 2012), 77 FR 23532 (April 19, 2012) (SR-NYSEAmex-2012-10).

⁷⁷ See NYSE Rule 9216(b) and FINRA Rule 9216(b).

⁷² 15 U.S.C. 78f(b).

⁷³ 15 U.S.C. 78f(b)(5).

⁷⁴ 15 U.S.C. 78f(b)(7).

⁷⁵ Under the Exchange's equities rules, the equivalent to the term "member" in this context is "member organization." See notes 25–26, *supra*, and accompanying text.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act⁷⁸ and Rule 19b-4(f)(6) thereunder.⁷⁹

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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 email to rule-comments@sec.gov. Please include File No. SR-NYSEMKT-2016-30 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 No. SR-NYSEMKT-2016-30. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/>

[rules/sro.shtml](#)). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site 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 such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NYSEMKT-2016-30, and should be submitted on or before March 24, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁸⁰

Robert W. Errett,
Deputy Secretary.

[FR Doc. 2016-04633 Filed 3-2-16; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-77242; File No. SR-EDGX-2016-12]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees as They Apply to the Equity Options Platform

February 26, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on February 18, 2016, EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the

Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. 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 filed a proposal to amend the fee schedule applicable to Members⁵ and non-members of the Exchange pursuant to EDGX Rules 15.1(a) and (c) ("Fee Schedule").

The text of the proposed rule change is available at the Exchange's Web site at www.batstrading.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

The Exchange's current approach to routing fees is to set forth in a simple manner certain sub-categories of fees that approximate the cost of routing to other options exchanges based on the cost of transaction fees assessed by each venue as well as costs to the Exchange for routing (*i.e.*, clearing fees, connectivity and other infrastructure costs, membership fees, etc.) (collectively, "Routing Costs"). The Exchange then monitors the fees charged as compared to the costs of its routing services and adjusts its routing fees and/or sub-categories to ensure that the Exchange's fees do indeed result in

⁷⁸ 15 U.S.C. 78s(b)(3)(A).

⁷⁹ 17 CFR 240.19b-4(f)(6). As required under Rule 19b-4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

⁸⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The term "Member" is defined as "any registered broker or dealer that has been admitted to membership in the Exchange." See Exchange Rule 1.5(n).