CONTACT PERSON FOR MORE INFORMATION: Philip J. Lemanski, Acting Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901–8500.

Dated: January 15, 2013.

Philip J. Lemanski,

Acting Executive Director, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.

[FR Doc. 2013–01182 Filed 1–23–13; 8:45 am]

BILLING CODE 6820–FN–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts Advisory Panel Meeting

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that one meeting of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC, 20506 as follows (ending time is approximate):

Media Arts (application review): By teleconference. This meeting will be closed.

DATES: February 12, 2013; 2:00 p.m. to 3:00 p.m. EST.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506; *plowitzk@arts.gov* or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Dated: January 18, 2013.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2013–01391 Filed 1–23–13; 8:45 am]

BILLING CODE 7537–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATES AND TIMES: Thursday, February 7, 2013, at 10:00 a.m.; and Friday, February 8, at 8:30 a.m. and 10:30 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW., in the Benjamin Franklin Room.

STATUS: Thursday, February 7 at 10:00 a.m.—Closed; Friday, February 8 at 8:30 a.m.—Open; and at 10:30 a.m.—Closed.

MATTERS TO BE CONSIDERED:

Thursday, February 7, at 10:00 a.m. (Closed)

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

Friday, February 8 at 8:30 a.m. (Open)

1. Approval of Minutes of Previous Meetings.
2. Remarks of the Chairman of the Board.
3. Remarks of the Postmaster General and CEO.
4. Appointment of Committee Members and Committee Reports.
5. Quarterly Report on Financial Performance.
6. Quarterly Report on Service Performance.
7. Tentative Agenda for the April 9, 2013, meeting in Washington, DC

Friday, February 8 at 10:30 a.m. (Closed—If Needed)

1. Continuation of Wednesday's closed session agenda.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2013–01482 Filed 1–22–13; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68678; File No. SR–NYSE–2013–02]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Adopting Investigation, Disciplinary, Sanction, and Other Procedural Rules That Are Modeled on the Rules of the Financial Industry Regulatory Authority and To Make Certain Conforming and Technical Changes

January 16, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 4, 2013, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt investigation, disciplinary, sanction, and other procedural rules that are modeled on the rules of the Financial Industry Regulatory Authority (''FINRA'') and to make 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

1. Purpose

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

Background and General Description of Proposed Rule Change

On July 30, 2007, the National Association of Securities Dealers, Inc. (''NASD''), the Exchange, and NYSE Regulation, Inc. (''NYSER'') consolidated their member firm regulation operations into a combined organization, FINRA, and entered into a plan to allocate to FINRA regulatory responsibility for common rules and common members (''17d–2 Agreement'').[4] The 17d–2 Agreement was entered into in accordance with the requirements of Rule 17d–2 of the Securities and Exchange Commission (''SEC'' or ''Commission''),[5] which permits self-regulatory organizations (''SROs'') to allocate regulatory responsibilities with respect to common members and common rules. In 2007, the parties also entered into a Regulatory Services Agreement (''RSA''), whereby FINRA was retained to perform certain regulatory services on behalf of NYSER for non-common rules. On June 14, 2010, the Exchange, NYSER, and FINRA amended the RSA and retained FINRA to perform the market surveillance and enforcement functions that had previously been performed by NYSER up to that point.[6] Accordingly, since June 14, 2010, FINRA has been performing all enforcement-related regulatory services on behalf of NYSER, including disciplinary proceedings relating to NYSE-only rules or against both dual members and non-FINRA members.

To facilitate FINRA's performance of these enforcement functions under the RSA and to further harmonize the rules of FINRA and NYSE generally, NYSE is proposing to adopt the text of the FINRA Rule 8000 Series and Rule 9000 Series, which set [sic] forth rules for conducting investigations and enforcement actions, with certain modifications that are described below.

The Exchange notes that most of its member organizations are members of FINRA and as such are already subject to the FINRA Rule 8000 Series and Rule 9000 Series. Those member organizations that are not members of FINRA are members of The NASDAQ Stock Market (''NASDAQ''), which has similar disciplinary rules to FINRA and thus are also already subject to such rules. Thus, all Exchange members, by virtue of their membership either in FINRA or NASDAQ, are already subject to the FINRA rules described herein.[7]

Current NYSE Rules 475–477

This section sets forth a summary of NYSE's current disciplinary rules.[8] These rules include NYSE Rule 475, which describes summary disciplinary proceedings; NYSE Rule 476, which describes initial disciplinary proceedings and appeals; NYSE Rule 476A, which addresses the imposition of minor rule violation sanctions; and NYSE Rule 477, which addresses retention of jurisdiction by the Exchange.

Current NYSE Rule 475—Summary Proceedings

NYSE 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 NYSE 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.

NYSE 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

[4] *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).

[5] 17 CFR 240.17d–2.

[6] *See* Securities Exchange Act Release No. 62355 (June 22, 2010), 75 FR 36729 (June 28, 2010) (SR–NYSE–2010–46).

[7] For that reason, the Exchange has included in this filing a general description of current FINRA rules because its members are already subject to and expected to be familiar with them. The Exchange describes in more detail how its proposed rules would differ from FINRA rules and the Exchange's current rules. To further highlight the precise difference between certain of the Exchange's proposed rules and FINRA's current rules, the Exchange has attached as Exhibit 3 a blackline comparing the FINRA Rule 8000–9000 Series as of December 31, 2012 against the Exchange's proposed Rule 8000–9000 Series. The Exchange notes that FINRA has received approval for, but not yet implemented, certain changes to its rules (for example, SR–FINRA–2009–060, which amends FINRA Rule 8210) or may propose further changes to its rules in the future. The Exchange will review each such rule change and determine if a conforming amendment should be made to the NYSE rules.

[8] Where current or proposed NYSE rules or FINRA rules use capitalized terms, descriptions of such rules herein follow those capitalization conventions.

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 of NYSER to which is delegated the authority to review disciplinary decisions on behalf of the Exchange Board of Directors (''NYSER Committee For Review''), and any Executive Floor Governor and either the Division of the Exchange initiating the proceedings 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 may affirm, modify, or reverse any such determination, or remand the matter to the Hearing Officer for further proceedings.

Under NYSE 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 NYSE 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 to appear or testify before or cause any such employee to appear or testify before the Exchange.

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

Under NYSE 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 NYSE 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 allied member creates a vacancy in any office or position held by such member or allied member.

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

Under NYSE Rule 475(j), any member of the Exchange Board of Directors, any member of the NYSER Committee for Review, any Executive Floor Governor, the Division of the Exchange initiating the proceedings, 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 thereof within 10 days following such determination. The Exchange Board of Directors shall have the power to affirm, modify, or reverse any such determination, or remand the matter for further proceedings.

Current Rule 476—Disciplinary Proceedings

NYSE 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 NYSE Rule 476(a), if such a person is adjudged guilty of certain offenses in a proceeding under NYSE Rule 476, then a Hearing Panel or Hearing Officer 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 NYSE Rule 476(a)(1)–(11) includes, for example, violating an Exchange rule or the Act, making a material misstatement, or engaging in manipulation.

NYSE Rule 476(b) describes the role of Hearing Panels and Hearing Officers. Under NYSE Rule 476(b), all proceedings under NYSE 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 (''Chairman''), 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 allied members of the Exchange who are not members of the Exchange Board of Directors, and registered and non-registered employees of members and member organizations, and such other persons as the Chairman deems necessary. Former members, allied members, 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 [sic] 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, allied member, 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.

NYSE Rule 476(c) governs procedural matters and the conduct of the hearing. Under NYSE 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 Division of the Exchange initiating the proceeding 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.

NYSE Rule 476(d) governs Charge Memorandums, Answers, and motions. Under NYSE Rule 476(d), except as otherwise provided in NYSE 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 on behalf of the Division of the Exchange bringing the charges. 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 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 Division of the Exchange bringing the charges. 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 has failed to file an Answer, the Division of the Exchange bringing the charges, 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 Division of 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 Division of the Exchange bringing the charges and the respondent may 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.

NYSE 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 served upon the respondent and the Division of the Exchange that brought the charges.

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.

NYSE Rule 476(f) concerns appeals to the Exchange Board of Directors. Under NYSE Rule 476(f), the Division of the Exchange that brought the charges, the respondent, and any member of the Exchange Board of Directors, any member of the NYSER Committee for Review, and any Executive Floor Governor 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 Division of the Exchange that brought the charges and any respondent affected thereby.

Any review by the Exchange Board of Directors is based on oral arguments and written briefs and is limited to consideration of the record before the Hearing Panel or Hearing Officer. Upon review, 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, as it deems appropriate. Unless the Exchange Board of Directors otherwise specifically directs, the determination and penalty, if any, of the Exchange Board of Directors after review is final and conclusive, subject to the provisions for review under the Act.

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

NYSE Rule 476(g) sets forth an alternative Stipulation and Consent procedure that may be used in lieu of the procedures set forth in NYSE Rule 476(d). Under NYSE 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. 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 NYSE 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 NYSE 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, any member of the NYSER Committee for Review, and any Executive Floor Governor 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 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 Division of the Exchange involved in the proceeding and any respondent affected thereby.

Any review by the Exchange Board of Directors consists of oral arguments and written briefs and is limited to consideration of the record before the Hearing Panel or Hearing Officer. Upon review, 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.

NYSE 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 NYSE Rule 476(i), a member or allied member 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 allied member's own personal act or omission. The Hearing Panel that considers the charges against such member, or allied member, 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 deems fair and equitable.

NYSE 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.

NYSE 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 allied member 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 allied member 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 allied member under the provisions of this rule creates a vacancy in any office or position held by the member or allied member. Similarly, current NYSE Rule 309 provides that any member, member organization or allied member that fails to pay a fee or any other sums due to the Exchange (excluding a fine) with 45 days after the same are payable shall be reported to the Chief Financial Officer of the Exchange or [sic] designee who, after notice has been given to such member, member organization or allied member 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 NYSE Rules 309 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 NYSE 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.

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

Under NYSE Rule 476A(a), in lieu of commencing a disciplinary proceeding under NYSE 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 the rules listed in NYSE 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 NYSE 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 NYSE Rule 476A(d). Such date may not be less than

25 days after the date of service of the written statement.

Under NYSE 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 NYSE Rule 476 and any review of the matter by a Hearing Panel or the Exchange Board of Directors.

Under NYSE 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 NYSE Rule 476(d), at which point the matter becomes a disciplinary proceeding subject to the provisions of NYSE 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 NYSE Rule 476 and determine whether the rule violation(s) is minor in nature. NYSER, the person charged, any member of the Exchange Board of Directors, any member of the NYSER Committee for Review, 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 NYSE Rule 476(f).

Under NYSE 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. The Exchange is free, whenever it determines that any violation is not minor in nature, to proceed under NYSE Rule 476 rather than under NYSE Rule 476A.

The remainder of NYSE Rule 476A sets forth the list of rule violations that may be treated as minor rule violations and fines, which may not exceed $5,000.

Current NYSE Rule 477—Retention of Jurisdiction and Failure To Cooperate

Under NYSE 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 NYSE 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 NYSE 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 NYSE Rule 477(a) above, require such person to comply with any requests of an organization or association included in NYSE 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 NYSE 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 NYSE 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 NYSE 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 NYSE Rule 476.

Proposed Rule Change

The Exchange proposes to adopt many of FINRA's rules that are set forth in FINRA Rule 8000 and 9000 Series with no modification [9] or with conforming and technical changes as described below. However, in certain key respects, the proposed NYSE rules would continue to differ from FINRA's rules. Specifically, as described in more detail below, NYSE proposes to (1) establish processes for settling disciplinary matters both before and after the issuance of a complaint that differ both from NYSE's current Stipulation and Consent process and FINRA's current settlement processes; (2) retain the NYSE selection process for Hearing Panelists, rather than use FINRA's Panelists; (3) retain the substance of NYSE's current appellate process; (4) use NYSE's Chief Regulatory Officer (''CRO'') rather than FINRA's General Counsel for certain procedural decisions in the proposed rules; and (5) retain the current NYSE list of minor rule violations, with certain technical and conforming amendments, while adopting FINRA's minor rule violation fine levels and FINRA's process for imposing them. A more detailed description of the proposed rules is set forth below.

Transition

Following approval of the proposed rule change, the Exchange intends to announce the effective date of the new rules at least 30 days in advance in an Information Memorandum to its members and member organizations. To further facilitate an orderly transition from the current rules to the new rules, the Exchange proposes that certain

[9] The following proposed NYSE Rules would be identical to the text of their counterpart FINRA Rules: 9131–9134, 9136–9138, 9142, 9148, 9213–9215, 9222, 9233–9241, 9261, 9263–9266, and 9290. *See infra* note 17 for a list of proposed rules with only conforming and technical amendments.

matters already initiated under the current rules would be completed under such rules.

Specifically, current NYSE Rule 475 would continue to apply with respect to a proceeding for which a written notice had been issued prior to the effective date of the new rules. Current NYSE 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 NYSE Rule 476(d) prior to the effective date of the new rules. Current NYSE Rule 476 also would continue to apply to a matter for which a written Stipulation and Consent has been submitted to a Hearing Officer prior to the effective date of the new rules. Current NYSE Rules 475, 476, or 476A would continue to apply until any such proceeding was final. In all other cases, the proposed NYSE Rule 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 NYSE 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 NYSE Rule 8320, which would be modeled on the counterpart FINRA rule that similarly provides for a summary suspension until such fine or monetary sanction is paid. With respect to non-payment of amounts other than fines and monetary sanctions, the Exchange proposes to delete the language in current NYSE Rule 476(k) regarding these matters because it is duplicative of the language in current NYSE Rule 309, which authorizes the Exchange's Chief Financial Officer to address non-payment of amounts due to the Exchange other than fines and monetary sanctions. Thus, following the effective date, NYSE Rule 309 would govern non-payment of sums owed to the Exchange other than fines and monetary sanctions. Current NYSE Rule 309 includes a cross-reference to NYSE Rule 476(k), which would be replaced with a reference to proposed NYSE Rule 8320.

As noted above, current NYSE Rule 476(a)(1)–(11) also contains substantive elements in addition to its procedural elements. Specifically, NYSE 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 NYSE Rule 9000 Series.

Similarly, the retention of jurisdiction provisions of NYSE Rule 477 would continue to apply to any 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 NYSE Rule 477 prior to the effective date of the new rules. As described above, current NYSE 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 NYSE Rule 8130 would apply, which would set forth retention of jurisdiction provisions modeled on Article IV, Section 6 and Article V, Section 4 of the FINRA Bylaws. Under the proposed rule change, as described below, the Exchange would retain jurisdiction to file a complaint against a member organization or person subject to its jurisdiction for two years after such status was terminated, and the proposed NYSE Rule 8000 Series and Rule 9000 Series generally would apply.

When the transition is complete and there are no longer any member organizations or persons who would be subject to NYSE Rules 475, 476, 476A, and 477, the Exchange intends to submit a proposed rule change that would delete such rules (except for the listed offenses under NYSE Rule 476(a)).

Terms and Definitions Used Throughout the Proposed NYSE Rule 8000 and 9000 Series Resulting in Technical Amendments to FINRA Text

To continue the current coverage of the NYSE disciplinary rules, the proposed rule change would use the terms ''member organization'' and ''covered person'' rather than ''member'' and ''person associated with a member,'' respectively, which terms are used throughout the FINRA Rule 8000 and 9000 Series. The term ''member'' has different meanings under FINRA and NYSE rules. Under FINRA Rule 0160(b)(9), ''member'' means an organization that is a member of FINRA; NYSE's equivalent term is ''member organization.'' [10] Under NYSE Rule 2(a), the term ''member'' means a natural person associated with a member organization who has been approved by the Exchange and designated by such member organization to effect transactions on the floor of the Exchange or any facility thereof.

The Exchange proposes to use the term ''covered person'' rather than the Act's definition of ''associated person'' or FINRA's definition of ''associated person'' so that the proposed rule change appropriately captures each of the individuals and entities other than member organizations that are currently subject to the Exchange's rules, thus preserving the Exchange's current scope of jurisdiction. These individuals and entities are members, principal executives, approved persons, and registered and non-registered employees of a member or member organization, and any other person subject to the Exchange's jurisdiction.[11] Each of these individuals and entities falls within the definition of ''associated person'' in Section 3(a)(18) of the Act.[12]

However, the definition in the Act is broader in scope that [sic] the individuals and entities currently subject to the Exchange's jurisdiction and for that reason the Exchange could not use the Act's definition for purposes of the proposed rule change. For example, the Act's definition of associated person includes any person under common control with a broker-dealer. However, the Exchange's scope of jurisdiction is not so broad. Specifically, the definition of approved person [13] does not include all affiliates;

[10] *See* NYSE Rule 2(b).

[11] *See* NYSE Rules 2A and 476. The Interpretation of NYSE Rule 345(a) has long permitted registered representatives associated with a member organization to assert the status of ''independent contractor,'' provided such designation does not in any way compromise such person's characterization and treatment as an ''employee'' of his or her associated member organization for purposes of the rules of the Exchange. *See* Information Memo 06–51. As such, independent contractors are deemed employees of member organizations and thus subject to the Exchange's jurisdiction.

[12] *See* 15 U.S.C. 78c(a)(18). Under Section 3(a)(18), ''associated person'' means any partner, officer, director, or branch manager of a broker-dealer (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a broker-dealer, or any employee of such broker-dealer, excluding for certain purposes any person whose functions are solely clerical or ministerial.

[13] Under NYSE Rule 2(c), ''approved person'' means a person, other than a member, principal executive or employee of a member organization, who controls a member organization, is engaged in a securities or kindred business that is controlled by a member or member organization, or is a U.S.

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rather, it includes only affiliates engaged in a securities or kindred business that is controlled by a member or member organization or a U.S. registered broker-dealer under common control with a member organization. The Exchange also could not use FINRA's definition of associated person in Article I(rr) of FINRA Bylaws [14] because it does not include the affiliates of a broker-dealer that are covered by the Exchange's definition of approved person; thus, the FINRA definition would be too narrow. As such, the Exchange proposes to use the new term ''covered person,'' referenced in proposed NYSE Rule 8120(b) and defined in proposed NYSE Rule 9120(g), which would include a member, principal executive, approved person, registered or non-registered employee of a member organization, or other person (excluding a member organization) subject to the jurisdiction of the Exchange.[15] By utilizing the term ''covered person,'' there would be no substantive change in the scope of persons subject to the Exchange's disciplinary rules.[16]

Where the term ''FINRA'' appears in FINRA's rule text, the term ''Exchange'' would be substituted in the proposed rule change. As noted in Exchange Rule 0, Exchange Rules that refer to NYSER, NYSER staff or departments, Exchange staff, and Exchange departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the RSA, as applicable.[17]

Proposed NYSE Rule 8000 Series

Proposed NYSE Rule 8001 would include the effective date of the proposed rule change for the NYSE Rule 8000 Series, noting the exception for the retention of jurisdiction dates in proposed NYSE Rule 8130 and the transition from current NYSE Rule 476(k) to proposed NYSE Rule 8320, as described above; FINRA does not have a Rule 8001. The text of FINRA Rules 8110 through 8330 would be adopted as NYSE Rules 8110 through 8330, with certain changes as described below.[18]

Proposed NYSE Rule 8110 would require an NYSE member organization to provide access to the Exchange's rules to its customers. The text of the proposed rule is substantially the same as the text in FINRA's counterpart rule with only conforming and technical amendments. Although there is no comparable requirement in the current NYSE Rules, the Exchange already meets the requirement because the Exchange's rules are available on the Exchange's Web site.[19]

As noted above, proposed NYSE Rule 8120 would provide cross-references to definitions of the terms ''Adjudicator'' and ''covered person'' in proposed NYSE Rule 9120. Similarly, FINRA Rule 8120 cross-references the definition of ''Adjudicator.'' Proposed Rule 8120 is simply technical in nature.

Proposed NYSE Rule 8130 would set forth retention of jurisdiction provisions modeled on Article IV, Section 6 and Article V, Section 4 of the FINRA Bylaws. The text of the proposed rule is substantially the same as the text in FINRA's Bylaws, except that it contains a provision in paragraph (d) for the transition period as described above. Under the proposed rule change, the Exchange would retain jurisdiction to file a complaint against a member organization or covered person for two years after such member organization's or covered person's status is terminated. This differs from current NYSE 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 longer period under the proposed rule is appropriate because it will harmonize the Exchange's rule with FINRA's rule and provide a fixed time period for a complaint to be brought, which provides repose [sic] to respondents while still providing Exchange staff with sufficient time to determine if a complaint should be brought.

Proposed NYSE Rule 8210 would set forth procedures for the provision of information and testimony and inspection and copying books by the Exchange. The proposed text of the rule is substantially the same as the text in FINRA's counterpart rule, with only technical and conforming amendments.

Proposed NYSE Rule 8210(a) would require a member organization and covered person to provide information and testimony and permit the inspection of books, records, and accounts for the purpose of an investigation, complaint, examination, or proceeding authorized by the Exchange's rules. As noted above, under proposed NYSE 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 terminated 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 NYSE Rules 475(e), 476(a)(11), and 477(a) and (b), and 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 after termination of such status. The Exchange believes the proposed rule is appropriate because it will harmonize the Exchange's rules with FINRA's rules with respect to jurisdiction and obtaining books and records from member organizations and covered persons.

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registered broker-dealer under common control with a member organization.

[14] FINRA's definition of ''associated person'' means (1) a natural person who is registered or has applied for registration under FINRA's Rules; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA; and (3) for purposes of FINRA Rule 8210, any other person listed in Schedule A of Form BD of a member. FINRA's definition also is narrower than the Act because it does not include, for example, entities under common control with a broker-dealer.

[15] Current NYSE Rule 476(a) refers to registered or non-registered employee of a member. Under current NYSE Rule 2(a), a member is a natural person associated with a member organization. A member does not have employees. Such persons would be employees of the member organization and thus covered by the proposed definition of covered person.

[16] 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 No. 58549 (September 15, 2008), 73 FR 54444 (September 19, 2008) (SR–NYSE–2008–80). As such, allied members are not included in the definition of covered person in the proposed rule change. The Exchange proposes conforming changes to NYSE Rules 309, 475, 619, 1301A, and 1301B to replace references to ''allied member'' with ''principal executive'' and to delete unnecessary parentheticals.

[17] Thus, where below the Exchange states that only conforming and technical changes have been made, the Exchange is referring to instances in which it changed ''member'' and ''associated person'' to ''member organization'' and ''covered person,'' respectively; changed cross-references to FINRA rules to cross-references to Exchange rules; and made other non-substantive changes. The following proposed NYSE Rules include only such conforming and technical amendments to their counterpart FINRA rule text: 8110, 8120, 8210, 8211, 8311, 8330, 9110, 9143, 9145, 9252, 9262, 9267, 9521, 9527, 9620, and 9870.

[18] FINRA does not have a Rule 8212. NYSE is not proposing to adopt FINRA Rule 8312, which describes FINRA's BrokerCheck disclosures. As such, to maintain consistency with FINRA's rule numbering, the Exchange has designated proposed NYSE Rules 8212 and 8312 as ''Reserved.''

[19] The NYSE Rules are available at *http://nyserules.nyse.com/NYSE/Rules/*.

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 NYSE Rule 27 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 NYSE Rule 27 is different, the Exchange would retain it along with proposed NYSE Rule 8210(b).[20]

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

Proposed NYSE Rule 8210(d) would provide that a notice under this Rule would be deemed received by the member organization or covered 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. 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 Central Registration Depository 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 Central Registration Depository; 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 NYSE Rules 475(e), 476(a)(11), and 477(a) and (b), 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 NYSE Rule 8210(d) would afford member organizations and covered persons additional procedural protections in that respect.

Proposed NYSE 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 member organizations. Proposed NYSE 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 NYSE 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 NYSE Rule 8211 would set forth the procedures for the automated submission for trading data requested by the Exchange (commonly referred to as ''blue sheets'') for transactions on the Exchange. These procedures are substantially the same as the procedures in FINRA's counterpart rule, with only conforming and technical amendments, and substantially the same as current NYSE Rule 410A. Because FINRA now performs all 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 rules, and therefore proposes to delete current NYSE Rule 410A and adopt proposed NYSE Rule 8211 instead.[21]

Proposed NYSE 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 text of the proposed rule is substantially the same as the text in FINRA's counterpart rule, with only conforming and technical amendments. The sanctions also are substantially the same as the permitted sanctions set forth in current NYSE 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 NYSE rules, the Exchange believes that in practice the range of sanctions is the same due to the inclusion in both rules of the general category ''any other fitting sanction.''

Proposed NYSE 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 NYSE rules, is described in further detail below in the section concerning the proposed NYSE Rule 9800 Series.

Proposed NYSE 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 may not permit such person to remain associated, and, in the case of a suspension, may not make any remuneration that results from any securities transaction. The text of the proposed rule is substantially the same as the text in FINRA's counterpart rule, with only conforming and technical amendments. The proposed rule is similar in result to current NYSE 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.

Proposed NYSE Rule 8313 would provide that the Exchange will publish all final disciplinary decisions issued under the proposed NYSE Rule 9000 Series, other than minor rule violations,

[20] Current NYSE Rule 27 also cross-references current NYSE Rule 476(a)(11), which enumerates certain violations, including the violation of refusing or failing to comply with a request of a domestic or foreign SRO or association, contract market, or registered futures associations 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 NYSE Rule 476(a)(11) and as such the cross-reference in current NYSE Rule 27 would not be amended.

[21] The Exchange is retaining NYSE Rule 410B, which concerns reports of listed securities transactions effected off the Exchange. As such, the Exchange is not adopting FINRA Rule 8213 and has marked it as ''Reserved.''

on its Web site.[22] This is the Exchange's long-standing practice, although it does not have a current rule with respect to it. By way of comparison, FINRA's Rule 8313 provides that disciplinary complaints and decisions that meet certain criteria will be either published or made available upon request. The Exchange believes that its current practice is fair and non-discriminatory and as such proposes to continue it.

Proposed NYSE Rule 8320(a) would provide that all fines and other monetary sanctions shall be paid to the Treasurer of the Exchange. Unlike FINRA Rule 8320(a), the Rule would not provide that such monies could be used for general corporate purposes. The Exchange uses fine monies for regulatory purposes subject to the approval of the NYSER Board.[23]

Proposed NYSE Rule 8320(b) and (c) would permit the Exchange, after seven days' notice in writing, to suspend or expel a 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 substantially the same as the text in FINRA's counterpart rule, with only conforming and technical amendments. As noted above, under current NYSE Rule 476(k), a member organization or covered 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. Although FINRA's rules do not specifically so provide, FINRA typically gives a Respondent at least 30 days to pay a fine after the conclusion of a proceeding. Thus, the Exchange believes that such period, along with the seven days notice provided under proposed NYSE Rule 8320, would provide Respondents with an adequate amount of time to pay a fine and avoid any further sanction by the Exchange. For clarity regarding the transition, proposed NYSE 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 NYSE Rule 8320 would apply.

Proposed NYSE Rule 8330 would provide that a disciplined member organization or covered person may be assessed the costs of a proceeding. The text of the proposed rule is substantially the same as the text in FINRA's counterpart rule, with only conforming and technical amendments. There is no comparable requirement in the current NYSE Rules, although the Exchange may assess costs as a ''fitting sanction'' under current NYSE Rule 476(a)(11).

Proposed NYSE Rule 9000 Series

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

The Exchange proposes to adopt the text of FINRA Rules 9110 through 9290 with certain changes as described below. Proposed NYSE Rule 9110 would state the types of proceedings to which the proposed NYSE 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 text of the proposed rule is substantially the same as the text in FINRA's counterpart rule, with only conforming and technical amendments. The Exchange does not have a comparable rule.

Proposed NYSE Rule 9120 would set forth definitions. Certain defined terms in FINRA Rule 9120 would be inapplicable in the Exchange's rules—''Counsel to the National Adjudicatory Council,'' ''District Committee,'' ''Extended Proceeding,'' ''Extended Proceeding Committee,'' ''FINRA Board,'' ''FINRA Regulation Board,'' ''General Counsel,'' ''Governor,'' ''Market Regulation Committee,'' ''Primary District Committee,'' ''Review Subcommittee,'' ''Statutory Disqualification Committee,'' and ''Subcommittee''—and therefore are not included in the proposed rule change. As described in more detail below, the Exchange proposes to continue to use its own Hearing Board for Panelists[24] and its current appellate process.[25] As such, the terms above are unnecessary in the proposed rule change.

The Exchange proposes to include certain definitions that are not included in FINRA's rule text: ''Board of Directors,'' ''Chief Regulatory Officer'' or ''CRO,'' ''covered person,'' ''Department of Market Regulation,'' ''Department of Member Regulation,'' ''Exchange,'' ''Floor-Based Panelist,'' ''Head of Market Regulation,'' and ''Office of Hearing Officers.'' These definitions appear in subsequent proposed rules, as described below, and are necessary for harmonization with the Exchange's rules.

The remaining definitions—''Adjudicator,'' ''Chief Hearing Officer,'' ''Code,'' ''Counsel to the Exchange Board of Directors,'' ''Department of Enforcement,'' ''Director,'' ''Document,'' ''Extended Hearing,'' ''Extended Hearing Panel,'' ''Head of Enforcement,'' ''Hearing Officer,'' ''Hearing Panel,'' ''Interested Staff,'' ''Office of Disciplinary Affairs,'' ''Panelist,'' ''Party,'' and ''Respondent''—are substantially the same as FINRA's definitions. To the extent the definitions differ, the differences are technical and conforming to reflect the Exchange's continued use of its Hearing Board and appellate processes and other differences noted below.

Proposed NYSE Rules 9130 Through 9138

Proposed NYSE Rules 9130 through 9138 would govern the service of a complaint or other procedural documents under the NYSE Rules. Proposed NYSE Rule 9131 would set forth the requirements for serving a complaint or document initiating a proceeding. Proposed NYSE Rule 9132 would cover the service of orders, notices, and decisions by an Adjudicator. Proposed NYSE Rule 9133 would govern the service of papers other than complaints, orders, notices, or decisions. Proposed NYSE Rule 9134 would describe the methods of service and the procedures for service. Proposed NYSE Rule 9135 would set forth the procedure for filing papers with an Adjudicator. Proposed NYSE Rule 9136 would govern the form of papers filed in connection with any proceeding under the proposed NYSE Rule 9200 and 9300 Series. Proposed NYSE Rule 9137 would state the requirements for and the effect of a signature in connection with the filing of papers. Finally, proposed NYSE Rule 9138 would establish the computation of time. The text of these proposed rules, other than proposed NYSE Rule 9135, is identical to FINRA's counterpart rules.[26]

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

[23] *See* Securities Exchange Act Release Nos. 55003 (December 22, 2006), 71 FR 78497 (December 29, 2006) (SR–NYSE–2006–109) and 55216 (January 31, 2007), 72 FR 5779 (February 7, 2007).

[24] *See* proposed NYSE Rule 9232.

[25] *See generally* proposed NYSE Rules 9310, 9524, and 9559.

[26] Proposed NYSE Rule 9135 differs from its FINRA counterpart because it deletes a reference to filing an appeal with FINRA's Office of Hearing Officer. As previously noted, the Exchange is retaining its current appeal process.

By comparison, current NYSE 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 NYSE Rule 9134, as under current FINRA Rule 9134, papers served on a natural person could be served at the natural person's residential address, as reflected in the Central Registration Depository (''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 the 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 the 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 NYSE 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. FINRA recently amended FINRA Rule 9131(a) to provide that when counsel for a Party or other person authorized to represent others agrees to accept service of a complaint, FINRA's Department of Enforcement or Department of Market Regulation may serve the complaint on counsel for a respondent or other person authorized to represent others under FINRA Rule 9141.[27] FINRA Rules 9132 and 9133 also provide that whenever service of an order, notice, decision, or other document (other than a complaint) is required to be made on a person represented by counsel or other authorized representative, then service must be made on such counsel or authorized representative. The proposed rule change would include these provisions and thereby 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.[28]

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 NYSE Rules 9140 Through 9148

Proposed NYSE Rules 9140 through 9148 would contain various rules relating to the conduct of disciplinary proceedings.

Proposed NYSE Rule 9141 would govern appearances in a proceeding, notice of appearances, and representation. The text of the proposed rule is the same as the text of FINRA's counterpart rule, except that the Exchange does not propose to adopt the text of FINRA Rule 9141(c), which provides that no former officer of FINRA shall, within one year after termination of employment with FINRA, make an appearance before an adjudicator on behalf of any other person under the Rule 9000 Series. The Exchange does not believe that it is necessary to bar its former employees from such appearances because its employees generally are not involved in the regulatory and disciplinary functions carried out by FINRA on behalf of the Exchange; as such, their appearance does not create the same type of conflict of interest. Thus, proposed NYSE Rule 9141(c) is marked ''Reserved.''

Proposed NYSE Rule 9141 would permit a Respondent to represent himself or be represented by an attorney, just as is permitted under current NYSE Rule 476(h). Current NYSE Rule 476(h) is more general, in that it permits a respondent to be represented by an attorney or other representative, while proposed NYSE Rule 9141 is more specific in that it permits a Respondent to be represented by a bar-admitted U.S. attorney, 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 NYSE Rule 9141 also requires an attorney or representative to file a notice of appearance, which is not required under current Exchange rules.

Proposed NYSE Rule 9142 would require an attorney or representative to file a motion to withdraw. The text of the proposed rule is the same as the text of FINRA's counterpart rule. There is no current comparable NYSE rule.

Proposed NYSE Rule 9143(a) would prohibit certain ex parte communications with an Adjudicator or Exchange employee. Under proposed NYSE 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.

[27] *See* Securities Exchange Act Release No. 66096 (January 4, 2012), 77 FR 1524 (January 10, 2012) (SR–FINRA–2011–044).

[28] *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.

Under proposed NYSE Rule 9143(c), upon receipt of a prohibited communication made or knowingly caused to be made by any Party, any counsel or representative to a Party, or any Interested Staff, the Exchange or an Adjudicator may order the Party responsible for the communication, or the Party who may benefit from the ex parte communication made, to show cause why the Party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by reason of such ex parte communication. All participants to 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 NYSE Rule 9143(d), in a disciplinary proceeding governed by the NYSE Rule 9200 Series and the NYSE Rule 9300 Series, the prohibitions of the Rule would apply beginning with the authorization of a complaint as provided in NYSE 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 NYSE 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. The text of the proposed rule is substantially the same as the text of FINRA's counterpart rule, with only conforming and technical changes. There is no current comparable NYSE rule.

Proposed NYSE Rule 9144 would establish the separation of functions for Interested Staff and Adjudicators and provide for waivers. The text of the proposed rule is modeled on the text of FINRA's counterpart rule, with conforming and technical changes and changes to reflect that the Exchange would retain its appellate process. There is no current comparable NYSE rule.

Proposed NYSE Rule 9145 would provide that formal rules of evidence would not apply in any proceeding brought under the proposed NYSE Rule 9000 Series. The text of the proposed rule is the same as the text of the FINRA counterpart rule, with only a conforming and technical change. The NYSE 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 disciplinary proceedings.

Proposed NYSE 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 NYSE Rule 9146 also would permit a Party to move for a protective order. The text of the proposed rule is modeled on the text of FINRA's counterpart rule, with conforming and technical changes and changes to reflect that the Exchange would retain its appellate process. There is no current comparable NYSE rule that contains such detail. Current NYSE 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 NYSE Rule 9147 would provide that Adjudicators may rule on procedural matters. The text of the proposed rule is the same as the text of the FINRA counterpart rule, except that certain text is amended to reflect that the Exchange would retain its appellate process. The proposed rule is similar to current NYSE 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 ruling on procedural matters.

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

Proposed NYSE Rule 9150

Proposed NYSE Rule 9150 would provide that a representative can be excluded by an Adjudicator for improper or unethical conduct. The text of the proposed rule is substantially the same as the text in FINRA's counterpart rule, except for conforming and technical amendments and an amendment to reflect the Exchange's retention of its appellate process. The proposed rule also is substantially the same as the text in current NYSE Rule 476(h), which provides that the Hearing Board can exclude a representative for improper conduct in a proceeding.

Proposed NYSE Rule 9160

Proposed NYSE 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 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. The text of the proposed rule is substantially the same as the text in FINRA's counterpart rule, except that it does not reference certain Adjudicators used by FINRA that the Exchange will not utilize in its proceedings (*e.g.,* a Review Subcommittee); as such, proposed NYSE Rules 9160(b) and (c) are designated as ''Reserved.'' [29] Current NYSE Rule 22 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 NYSE rules. The Exchange believes that the broader text of the proposed rule could help to increase the fairness of its proceedings.

Proposed NYSE Rules 9200 Through 9217

Proposed NYSE Rule 9200 would cover disciplinary proceedings. Proposed NYSE Rule 9211 would permit FINRA's Department of Enforcement and Department of Market Regulation to request the authorization of FINRA's Office of Disciplinary Affairs to issue a complaint against a member organization or covered person, thereby commencing a disciplinary proceeding. The text of the proposed rule is substantially the same as the text in FINRA's counterpart rule, with only conforming and technical changes. The complaint would replace the Charge Memorandum currently used by the Exchange under current NYSE Rule 476(d), as described above, which requires that the specific charges against the respondent in the form of a written statement be signed by an authorized officer or employee of the Exchange on

[29] FINRA Rule 9160(d) is designated as ''Reserved.'' To maintain consistency with FINRA's rule numbering, the Exchange has also designated its counterpart rule as ''Reserved.''

behalf of the Division of the Exchange bringing the charges.

Proposed NYSE Rule 9212 would set forth the requirements of the complaint, amendments to the complaint, withdrawal of the complaint, and service of the complaint. The text of the proposed rule is modeled on the text in FINRA's counterpart rule, except that FINRA Rule 9212(a)(2) permits the Department of Enforcement or Department of Market Regulation to propose that the Chief Hearing Officer select one Panelist from the Market Regulation Committee if certain trading-related violations, described in FINRA Rule 9120(u), are alleged in the complaint. The Exchange proposes instead to 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. Each subsequent reference in the FINRA rules to a Market Regulation Committee Panelist would be substituted with a reference to a Floor-Based Panelist in the proposed NYSE Rules.[30] The proposed rule change would be consistent with the Exchange's practice under current NYSE 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.

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

Proposed NYSE Rule 9213 would provide for the appointment of a Hearing Officer and Panelists by the Chief Hearing Officer. The text of the proposed rule is the same as FINRA Rule 9213. Current NYSE 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 NYSE 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. The text of the proposed rule is the same as FINRA Rule 9214. There is no NYSE rule comparable to proposed NYSE Rule 9214 for severing or consolidating proceedings. Under current NYSE Rule 476(c), the Chief Hearing Officer or a Hearing Officer resolves all procedural matters and substantive legal motions.

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

Proposed NYSE 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.[31] It also would establish procedures for executing a minor rule violation plan letter. The text of the proposed rule is similar to the text of FINRA Rule 9216, except that the Office of Disciplinary Affairs, on behalf of the Exchange Board of Directors, would be authorized to accept or reject an AWC or minor rule violation plan letter. If the AWC or minor rule violation plan letter were accepted by the Office of Disciplinary Affairs, it would be deemed final. If the letter were rejected by the Office of Disciplinary Affairs, 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 AWC or 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.

Under FINRA's rule, the Review Subcommittee or Office of Disciplinary Affairs may accept such AWC or letter or refer it to FINRA's National Adjudicatory Council (''NAC'') for acceptance or rejection, or the Review Subcommittee may reject such AWC or letter or refer it to the NAC for acceptance or rejection. Because the Exchange does not propose to use a Review Subcommittee or the NAC, procedures and references relating to these entities would not be included.

While the AWC process has some similarity to the Exchange's current Stipulation and Consent procedure in NYSE Rule 476(g) in that it provides a settlement mechanism, there are certain key differences. Under current NYSE 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. Furthermore, any member of the Exchange Board of Directors, any member of the NYSER Committee for Review, and any Executive Floor Governor 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. In addition, the Respondent or the Division which entered into the written consent may require a review by the Exchange Board of Directors of any rejection of a Stipulation and Consent by the Hearing Panel. There would be no appeals or reviews of AWCs by the Exchange Board of Directors under the proposed rule change.

Although by adopting proposed NYSE Rule 9216 the Exchange would be changing the type of review associated with settlement procedures, the Exchange believes that the proposed process provides appropriate controls to assure consistency and protect against aberrant settlement. Specifically, FINRA's Office of Disciplinary Affairs, which is an independent body from FINRA's Department of Enforcement,[32] would be reviewing all proposed AWCs or minor rule violation plan letters. Accordingly, FINRA's Office of Disciplinary Affairs would serve the role currently being performed by a Hearing Officer under NYSE rules to review a proposed settlement. The Exchange believes that when both Parties to a proceeding agree to a settlement, a review by the Office of Disciplinary Affairs would be sufficient and it is not necessary to bring such matters to the Exchange Board of Directors level. The call for review process under current NYSE Rule 476(g) for a Stipulation and Consent in practice is rarely exercised, and the Exchange believes that the Office of Disciplinary

[30] *See* proposed NYSE Rules 9221(a)(3), 9231(b) and (c), and 9232. The term ''Floor-Based Panelist'' would be defined in proposed NYSE Rule 9120(p).

[31] Proposed NYSE Rule 9270 would address settlement procedures after the issuance of a complaint.

[32] *See* FINRA Regulatory Notice 09–17.

Affairs can serve a similar function and provide objectivity and an appropriate check and balance to the settlement process, and thus it is not necessary to continue the current Hearing Officer and call for review processes.

The Exchange also proposes to adopt aspects of FINRA's process and fine levels for minor rule violations while retaining the specific list of rules included in the Exchange's current minor rule violation plan, with certain technical and conforming amendments. Proposed NYSE Rule 9216(b) would be similar to FINRA Rule 9216(b), with technical amendments and amendments to make it consistent with proposed NYSE Rule 9216(a) in that the Office of Disciplinary Affairs could accept or reject the minor rule violation letter. While FINRA Rule 9216(b) provides that a member or associated person that executes a minor rule violation letter waives any right to claim bias or prejudgment of FINRA's General Counsel, the National Adjudicatory Council, or any member of the National Adjudicatory Council, the Exchange's proposed Rule would provide that a member organization or covered person could not claim bias or prejudgment by CRO, the Exchange Board of Directors, Counsel to the Exchange Board of Directors, or any Director in order to conform with the Exchange's proposed rules. Unlike current NYSE 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 convert it into a regular disciplinary proceeding. Rather, under the proposed rule, if the Respondent rejects the minor rule violation letter, then a complaint must be filed under proposed NYSE Rule 9211, 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.

FINRA's maximum fine for minor rule violations under FINRA Rule 9216(b) is $2,500. Currently, the Exchange's maximum fine for minor rule violations under current NYSE Rule 476A(a) is $5,000. The Exchange believes that it is appropriate to lower the maximum fine amount to achieve harmony with FINRA rules. Like FINRA, the Exchange would still be able to pursue a fine greater than $2,500 in a regular disciplinary proceeding or an AWC under the proposed NYSE Rule 9000 Series as appropriate.

Finally, proposed NYSE 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 NYSE Rule 9216(b). The Exchange would retain the list of rules currently set forth in its own minor rule violation plan (and found in current NYSE Rule 476A) with certain technical and conforming changes under proposed NYSE Rule 9217, rather than adopt the list of rules in FINRA's plan. The technical and conforming changes are as follows. First, the NYSE's current list of minor rules includes a reference to the record retention provisions in NYSE Rule 472(c); the reference would be corrected to refer to NYSE Rule 472(d). Second, the reference to the submission of blue sheets under NYSE Rule 410A would be supplemented with a reference to proposed NYSE Rule 8211. Third, the reference to the submission of books and records under NYSE Rule 476(a)(11) would be supplemented with a reference to proposed NYSE Rule 8210. Finally, there is a reference to NYSE Rule 1000–1005. NYSE Rule 1005 was deleted from the NYSE rules in 2006 and as such the Exchange proposes to change the reference to NYSE Rule 1000–1004.[33]

The current list of NYSE minor rules includes references to certain rules that have been more recently removed from the NYSE rules as part of the FINRA rule harmonization process, including previous NYSE Rules 312(h), 382(a), 352(b) and (c), 392, and 445(4). The Exchange proposes to maintain the references to these former rules in its current list of minor rules in proposed NYSE 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.[34] For example, guarantees against loss were covered by NYSE Rule 352 until December 2009, when NYSE Rule 2150 was adopted.[35] The Exchange could resolve a guarantee against loss violation that occurred in November 2009 when NYSE Rule 352 was effective, and NYSE Rule 2150 was not effective, via a minor rule violation plan letter under proposed NYSE 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 NYSE Rules 9220 Through 9222

Proposed NYSE Rules 9221 and 9222 would describe how a Respondent can request a hearing, the notice of a hearing, and timing considerations. The text of the proposed rules is the same as that in FINRA's counterpart rules, except that it permits a Respondent to request a Floor-Based Panelist rather than a Market Regulation Committee Panelist. Proposed Rule 9221 provides that a Hearing Officer generally must provide at least 28 days notice of the hearing. Current NYSE Rule 476 does not have comparable provisions relating to how a hearing can be ordered and time for notices; rather, current NYSE Rule 476(b) states that all proceedings under the Rule, except as to matters which are resolved by a Hearing Officer when so authorized, are conducted at a Hearing in accordance with the provisions of NYSE Rule 476.

Proposed NYSE Rules 9230 Through 9235

Proposed NYSE 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.

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 today under current NYSE Rule 476(b). Because such positions are staff positions, the Exchange believes that it is reasonable to utilize FINRA staff, just as it is doing with respect to other proposed rules.

The proposed rules also differ from the counterpart FINRA rules in that the Exchange would not use FINRA's pool of Panelists but would instead continue to draw Panelists appointed from an Exchange Hearing Board. As it is today, the Hearing Board would be appointed annually by the Chairman and 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 members and member organizations, as well as former members, allied members, or registered and non-registered employees of members and member organizations who have retired from the securities industry.[36] As is the case under current

[33] *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR–NYSE–2004–05).

[34] This rationale for maintaining references to prior 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).

[35] *See* Securities Exchange Act Release No. 61158 (December 11, 2009), 74 FR 67942 (December 21, 2009) (SR–NYSE–2009–123).

[36] As noted above, the Exchange no longer has allied members, but former allied members would continue to be eligible to be appointed to the

NYSE Rule 476(b), Panelists would be required to be persons of integrity and judgment. 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 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, while FINRA's rules permit the Chief Hearing Officer to select one Panelist from the Market Regulation Committee if certain trading-related violations are alleged in the complaint, the Exchange proposes instead 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 NYSE Rule 476(b).

Proposed Rule 9232 would also include certain Panelist selection criteria that are included in FINRA Rule 9232. These criteria 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. NYSE Rule 476(b) currently does not include these criteria.

Proposed NYSE Rules 9233 and 9234 would establish the processes for recusal and disqualification of Hearing Officers, Hearing Panels, or Extended Hearing Panels. The text of the proposed rules is identical to the text in FINRA's counterpart rules. Current NYSE Rule 22 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 FINRA rule does.

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

Proposed NYSE Rules 9240 Through 9242

Proposed NYSE Rules 9241 and 9242 would govern the substantive and procedural requirements for pre-hearing conferences and pre-hearing submissions. The text of the proposed rules is identical to FINRA's counterpart rules, except that the Exchange does not propose to adopt the text of FINRA Rule 9242(b), which provides that no former officer of FINRA may, within one year after termination of employment with FINRA, appear as an expert witness in a proceeding under the Rule 9000 Series except on behalf of FINRA. The Exchange does not believe that it is necessary to bar its former employees from such appearances because its employees generally are not involved in the regulatory and disciplinary functions carried out by FINRA on behalf of the Exchange; as such, their appearance does not create the same type of conflict of interest. As such, proposed NYSE Rule 9242(b) is marked "Reserved." As stated above, current NYSE Rule 476(c) gives Hearing Officers general authority in procedural matters, but there are no specific provisions in the current NYSE rules relating to pre-hearing conferences and submissions.

Proposed NYSE Rules 9250 Through 9253

Proposed NYSE Rules 9250 through 9253 would address discovery, including the requirements and limitations relating to the inspection and copy of documents in the possession of Exchange staff, requests for information and limitations on such requests, and the production of witness statements and any harmless error relating to the production of such witness statements.

Proposed NYSE Rule 9251 would generally require the Department of Enforcement or Department of Market Regulation 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 NYSE 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 the Department of Enforcement or the Department of Market Regulation, 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 NYSE 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 text of the proposed rule is substantially the same as FINRA's counterpart rule, except for conforming and technical changes and changes to reflect the Exchange's retention of its current appeals process, and the addition of the Exchange's consideration of its own precedent with respect to determining harmless error. 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 NYSE 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 Division of the Exchange initiating the proceeding 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 NYSE 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 or current FINRA rules, but the Exchange notes that proposed

Hearing Board, and the text of proposed NYSE Rule 9232 reflects that. *See supra* note 16.

NYSE 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 NYSE 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. The text of the proposed rule is substantially the same as that in FINRA's counterpart rule, with only technical amendments. Current NYSE Rule 476 provides that a respondent may be required to provide discovery of non-privileged documents to the Exchange.

Under proposed NYSE Rule 9253, a Respondent could file a motion to obtain certain witness statements. The text of the proposed rule is substantially the same as FINRA's counterpart rule, except for conforming and technical changes and changes to reflect the Exchange's retention of its current appeals process. The Exchange's current rules do not contain such a provision.

Proposed NYSE Rules 9260 Through 9269

Proposed NYSE Rules 9260 through 9269 would govern hearings and decisions.

Proposed NYSE 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 text of the proposed rule is identical to the counterpart FINRA rule. The Exchange's current rules do not contain such a provision.

Proposed NYSE Rule 9262 would require persons subject to the Exchange's jurisdiction to testify under oath or affirmation at a hearing. The proposed rule is substantially the same as FINRA's counterpart rule, with only conforming and technical changes. The Exchange's current rules do not contain such a provision.

Proposed NYSE 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 part of the record. The text of the proposed rule is identical to the text of FINRA Rule 9263. Under current NYSE 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 included in the record.

Proposed NYSE 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 motion. The text of the proposed rule is identical to the text of FINRA Rule 9264. Under current NYSE 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, the NYSE Hearing Panels accept and rule on motions for summary disposition.

Proposed NYSE 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. The text of the proposed rule is identical to the text of FINRA Rule 9265. Current NYSE Rule 476(e) provides generally that the Exchange must keep a record of hearings.

Proposed NYSE Rule 9266 would authorize the Hearing Officer to require a post-hearing brief or proposed finding of facts and conclusions of law and would outline the form and timing for such submissions. The text of the proposed rule is identical to the text of FINRA Rule 9266. Under current NYSE 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 NYSE Rule 9267 would detail the required contents of the hearing record and the treatment of any supplemental documents attached to the record. The text of the proposed rule is substantially the same as the text of FINRA Rule 9267, except for conforming and technical changes. The Exchange's current rules do not contain such a provision.

Proposed NYSE 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. The text of the proposed rule is similar to FINRA Rule 9268, except for conforming and technical changes and changes to reflect the Exchange's retention of its appeal process, and except for an additional provision to address the fact that the Exchange has member affiliates.[37] As such, in proposed NYSE Rule 9268, the Exchange proposes to include text providing that a disciplinary decision concerning a member that is an affiliate of the Exchange would not be subject to review under proposed NYSE 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 a member affiliate, has a rule that is substantially the same as the Exchange's proposed rule.[38] Because the Exchange's member affiliates will still have a right to appeal to the SEC, the Exchange believes that the proposed rule is not unfairly discriminatory.

Finally, proposed NYSE 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. The text of the proposed rule is similar to FINRA Rule 9268, except for conforming and technical changes and changes to reflect the Exchange's retention of its appeal process.

Current NYSE 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 Division of the Exchange bringing the charges, 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

[37] The Exchange has one member, Archipelago Securities, Inc., that is an affiliate of the Exchange that is used for inbound and outbound routing of certain orders. *See* NYSE Rule 17(c). The Exchange also has a joint venture with BIDS Holding, LP, an affiliate of which, BIDS Trading L.P., is a member of the Exchange. *See* NYSE Rule 2B.01.

[38] *See* NASDAQ Rule 9268(e)(2).

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 NYSE Rule 9270

Proposed NYSE 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 both FINRA Rule 9270 and the Stipulation and Consent procedure under current NYSE Rule 476(g), which is described above.

Under proposed NYSE 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 is identical to FINRA's counterpart rule. The proposed rule differs from current NYSE Rule 476(g), which requires that a Stipulation and Consent be agreed to by both the respondent and Exchange staff.

Under proposed NYSE 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. The proposed rule is identical to FINRA's counterpart rule. Current NYSE Rule 476(g) does not contain a similar provision.

Proposed NYSE 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 substantially the same as FINRA's rule, except for conforming and technical changes and except that it would not require that the proposed sanction be consistent with FINRA's Sanction Guidelines because the Exchange currently does not have Sanction Guidelines and does not propose to follow FINRA's because they are tailored to FINRA's rules, not the Exchange's rules. The Exchange notes that other SROs, such as BATS Exchange, Inc. and Direct Edge, also do not publish sanction guidelines. Current Rule 476(g) similarly requires that a Stipulation and Consent contain proposed findings of facts, violations, and a specified penalty.

Proposed NYSE Rule 9270(d) would provide that submission of a settlement offer waives a Respondent's right to a hearing, to claim bias or ex parte communication violations, and the right to review by the Exchange Board of Directors, the Commission, or the courts. This differs from current NYSE 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; in addition, current NYSE Rule 476(g) allows the Exchange Board of Directors to call for review a determination or penalty imposed by a Hearing Panel or Hearing Officer. The Exchange does not believe that it is necessary to preserve the hearing process or call for review in instances where the parties have agreed upon a resolution of the matter and such resolution has been subject to a review by the Office of Disciplinary Affairs, which is independent of the parties. The text of the rule would differ from FINRA's counterpart rule to reflect the Exchange's retention of its appellate process and its designation of its CRO, rather than FINRA's General Counsel, to determine certain procedural matters. In addition, the text of the rule would differ from FINRA's counterpart in that it would delete references to General Counsel, the National Adjudicatory Council, or any member of the National Adjudicatory Council with respect to waiving claims of bias and replace them with references to the CRO, the Exchange Board of Directors, Counsel to the Exchange Board of Directors, or any Director to conform those provisions to the Exchange's proposed rules.

Proposed Rule 9270(e) would address contested settlement offers. Under the proposed rule, if a Respondent made an offer of settlement and the Department of Enforcement or the Department of Market Regulation opposed it, the offer of settlement would be contested and thereby deemed rejected, and thus the proceeding would continue to completion under the proposed NYSE Rule 9200 Series. The contested offer of settlement would not be transmitted to the Office of Hearing Officers, Office of Disciplinary Affairs, 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 proposed rule differs from FINRA's counterpart rule, FINRA Rule 9270(f), which permits a Hearing Panel or Extended Hearing Panel and the NAC to act on contested offers of settlement. 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 the Department of Enforcement or Department of Market Regulation and is consistent with its current process under NYSE Rule 476(g), which does not contemplate contested settlement offers but rather requires that both the respondent and the Exchange staff agree on the Stipulation and Consent.

Proposed NYSE Rule 9270(f) and (h) would address uncontested settlement offers. Under the proposed rule, if a hearing on the merits had not begun, the Office of Disciplinary Affairs 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.[39] If they did not, the offer would be deemed withdrawn and the matter would proceed under the proposed NYSE Rule 9200 Series and the settlement offer would not be part of the record. The proposed text is modeled in part on FINRA's counterpart rules, FINRA Rule 9270(e) and (h), but differs in certain key respects. Under FINRA's rules, the NAC ultimately must accept the offer of settlement. Because the Exchange is retaining its appellate process and not utilizing the NAC, the Exchange does not propose to replicate this aspect of FINRA's rules. As discussed above, the Exchange believes that it is unnecessary to have a second level of review of an uncontested settlement offer that is accepted by the Office of Disciplinary Affairs, Hearing Panel, or Extended Hearing Panel, as applicable, because all parties are in agreement with respect to the resolution of the matter.

Proposed NYSE 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. The text of the proposed rule is identical to FINRA's counterpart rule. Current NYSE Rule 476(c) does not have a similar provision.

Proposed NYSE Rule 9270(j) would provide that a Respondent may not be prejudiced by a rejected offer of settlement nor may it be introduced into evidence. The text of the proposed rule is substantially the same as FINRA Rule 9270(j), except that it references the Office of Disciplinary Affairs and does not include references to the NAC and Review Subcommittee, which the Exchange does not propose to utilize. The current NYSE rules do not have a similar provision.

[39] Because the Exchange does not have sanction guidelines, the Office of Disciplinary Affairs, Hearing Panel, or Extended Hearing Panel, as applicable, would consider Exchange precedent or such other precedent as it deemed appropriate in determining whether to accept the settlement offer.

Proposed NYSE Rule 9280

Proposed NYSE 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 text of the proposed rule is substantially the same as that in FINRA's counterpart rule, except that rather than having the NAC review exclusions, the Exchange proposes to have the Chief Hearing Officer review exclusions. The Exchange does not believe that it is necessary for the Exchange Board of Directors to conduct such reviews, and they do not do so under the Exchange's current rules. The Exchange believes that Respondents and their attorneys and representatives will have adequate procedural protections with a review by the Chief Hearing Officer. Current NYSE Rule 476 does not have similar procedures for contemptuous conduct generally, but NYSE Rule 476(h) does allow for a fine or sanction for improper conduct before a Hearing Board.

Proposed NYSE Rule 9290

The Exchange proposes to adopt the text of FINRA Rule 9290 for expedited disciplinary proceedings. Under proposed NYSE 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 NYSE 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 text of the proposed rule is identical to FINRA Rule 9290. The Exchange currently does not have a similar rule.

Proposed NYSE Rules 9300 Through 9310

The Exchange is not proposing to adopt FINRA's appellate and call for review processes as set forth in the FINRA Rule 9300 Series. Rather, the text of current NYSE Rule 476(f) and (l) as described above would be moved to proposed NYSE Rule 9310, with certain technical and substantive changes that are described below.

Under proposed NYSE Rule 9310(a)(1), any Party, any Director, and any member of the NYSER Committee for Review could require a review by the Exchange Board of Directors of any determination or penalty, or both, imposed by a Hearing Panel or Extended Hearing Panel under the proposed NYSE Rule 9200 Series, except that neither Party could request a review by the Exchange Board of Directors of a decision concerning an Exchange member that is an affiliate. 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.

The proposed rule differs from the current rule in one substantive respect. It would eliminate the authority of an Executive Floor Governor to require a review of a disciplinary decision. The Exchange believes that such authority is no longer necessary because the Exchange has moved away from a Floor-only trading model, and the Exchange's roster of member organizations includes those without any Floor presence. Accordingly, the Executive Floor Governors no longer represent the full community of market participants who may be subject to disciplinary action. The text also contains certain conforming and technical changes to align it with terms used in the remainder of the proposed NYSE Rule 9000 Series.

Under proposed NYSE Rule 9310(a)(2), the Secretary of the Exchange would direct the Office of Hearing Officers to complete and transmit a record of the disciplinary proceeding in accordance with NYSE 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 NYSE Rule 476(f) does not contain such requirements; the text is modeled on FINRA Rule 9321.

Under proposed NYSE 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. Upon review, 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, may modify or reverse any such determination, and may increase, decrease or eliminate any such penalty, or impose any penalty permitted under the Exchange's rules, as it deems appropriate. Unless the Exchange Board of Directors otherwise specifically directed, the determination and penalty, 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 NYSE Rule 476(f), other than conforming and technical changes to align it with terms used in the remainder of the proposed NYSE Rule 9000 Series.

Under proposed NYSE 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 NYSE Rule 476(f), other than conforming and technical changes to align it with terms used in the remainder of the proposed NYSE Rule 9000 Series.

Under proposed NYSE Rule 9310(d), notwithstanding any other provisions of the proposed NYSE 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 NYSE Rule 476(l), other than conforming and technical changes to align it with terms used in the remainder of the proposed NYSE Rule 9000 Series.

Proposed NYSE Rules 9500 Through 9527

The proposed NYSE Rule 9500 Series would relate to all other proceedings under the Exchange Rules.

The proposed NYSE 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.[40] The Exchange intends for the scope of the proposed NYSE Rule 9520 Series to be the same as FINRA Rule 9520 Series, and as such intends to issue a notice similar to FINRA Regulatory Notice 09–19.

Proposed NYSE Rule 9521 would add certain definitions relating to eligibility proceedings that are not currently part of the NYSE's rules, including ''Application,'' ''disqualified member organization,'' ''disqualified person,'' and ''sponsoring member organization.'' Proposed NYSE Rule 9522 would govern the initiation of an eligibility proceeding by the Exchange and the obligation for a member organization to file an application to initiate an eligibility proceeding if it has been subject to certain disqualifications. Further, under the proposed rule, the Department of Member Regulation could approve a written request for relief from the eligibility requirements under certain circumstances. Proposed NYSE 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 NYSE Rule 9524 would allow a request for review by the applicant to the Exchange Board of Directors. Proposed NYSE 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.

The text of the proposed rule change is similar to that in FINRA's counterpart rules, except for conforming and technical changes and except as follows. First, under proposed NYSE Rule 9523, if the disqualified member organization, sponsoring member organization, and/or disqualified person executed a letter consenting to a supervisory plan, it would be submitted to the Exchange's CRO. Under FINRA's rule, the letter is submitted to FINRA Office of General Counsel, which submits it to the Chairman of the Statutory Disqualification Committee, acting on behalf of the NAC; the Chairman may accept or reject the plan or refer it to the NAC for action. The Exchange does not propose to utilize the NAC or the Statutory Disqualification Committee Chairman for this purpose. The Exchange believes that its CRO is independent of the Department of Member Regulation and as such can provide an appropriate review. The CRO is performing this same function today when the CRO reviews statutory disqualification decisions reached by FINRA. In addition, under FINRA's rule, the waiver of bias or prejudgment is with respect to the Department of Member Regulation, the FINRA General Counsel, the NAC and any member thereof, while under proposed NYSE Rule 9523, the waiver would be with respect to the Department of Member Regulation, the CRO, the Exchange Board of Directors, or any member thereof to conform to the Exchange's proposed rules.

Second, under proposed NYSE Rule 9524, if the CRO rejects the plan, the member organization or applicant may request a review by the Exchange Board of Directors. This differs from FINRA's process, which provides for a hearing before the NAC and further consideration by the FINRA Board of Directors. Because the Exchange does not propose to utilize the NAC, the Exchange proposes instead that any appeal be heard by the Exchange Board of Directors. FINRA Rule 9525 also allows for discretionary review by the FINRA Board and the Exchange does not propose to adopt a comparable rule.[41] The Exchange Board of Directors historically has not exercised such discretion with respect to statutory disqualification matters and the Exchange believes that the CRO's role in the process will provide sufficient oversight and independence. Third, the Exchange does not propose to adopt the text of FINRA Rule 9526, which provides for expedited proceedings by the FINRA Board of Governors in certain instances. The Exchange believes that its proposed rules for review can be carried out in a timely manner and would sufficiently protect investors. The Exchange historically has not provided an expedited statutory disqualification review. As such, to maintain consistency with FINRA's rule numbering, proposed NYSE Rules 9525 and 9526 would be designated ''Reserved.'' Proposed NYSE Rule 9527 contains only a technical change to FINRA's rule text.

Proposed NYSE Rules 9550 Through 9559

Proposed NYSE Rules 9550 through 9559 would govern expedited proceedings.

The Exchange does not believe that it is necessary to adopt the text of FINRA Rule 9551, which concerns failure to comply with the advertising and sales literature requirements in NASD Rule 2210. All NYSE member organizations that circulate advertising or sales literature are by definition doing business with the public, and therefore must be members of FINRA and are already subject to FINRA Rules 2210 and 9551. In addition, under the SEC Rule 17d–2 agreement, FINRA is allocated responsibility for NYSE Rule 472, NYSE's counterpart to NASD Rule 2210.[42] As such, proposed NYSE Rule 9551 would be designated ''Reserved'' to maintain consistency with FINRA's rule numbering.

Proposed NYSE 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 NYSE 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 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.[43]

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[40] FINRA has been processing statutory disqualification applications on behalf of the Exchange since 2007. *See supra* notes 4 and 6.

[41] Proposed NYSE Rule 9559(q), which provides for calls for review by the Exchange Board of Directors of proposed decisions by a Hearing Officer or Hearing Panel rendered under the proposed NYSE Rule 9550 Series, does not apply to the proposed NYSE Rule 9520 Series because the statutory disqualification proceedings provide for staff determinations rather than adjudicatory decisions by a Hearing Officer or Hearing Panel.

[42] *See supra* note 4.

[43] 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 NYSE 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))

Continued

The text of the proposed rule change is substantially the same as that in FINRA's counterpart rule, except for conforming and technical changes and except that it does not include the text of FINRA Rule 9552(i), which requires a notice to FINRA's membership of final action under the rule. The Exchange does not propose to include a notice requirement because it would be duplicative of proposed NYSE Rule 8313.

There is no provision for such an expedited proceeding under the NYSE's current rules. Under current NYSE 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.

The Exchange does not propose to adopt the text of FINRA Rule 9553, which concerns failure to pay fees, dues, assessments or other charges. As described above, the Exchange proposes to adopt the text of FINRA Rule 8320, which addresses the non-payment of fines and monetary sanctions and would continue to use NYSE Rule 309 for non-payment of all other amounts due to the Exchange. Accordingly, proposed NYSE Rule 9553 would be designated ''Reserved'' to maintain consistency with FINRA's rule numbering.

Proposed NYSE Rule 9554 would contain similar procedures and consequences as proposed NYSE Rule 9552 relating to a failure to comply with an arbitration award or related settlement or an Exchange order of restitution or Exchange settlement agreement providing for restitution. Under proposed NYSE 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, Exchange staff could provide written notice to such covered person or member organization 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. The text of the proposed rule change is substantially the same as that in FINRA's counterpart rule, except for technical and conforming changes, and except that it does not include the text of FINRA Rule 9554(h), which requires a notice to FINRA's membership of final action under the Rule, because it would be duplicative of proposed NYSE Rule 8313. Under current NYSE Rule 600A(c), the failure to honor an arbitration award subjects a member organization, member, or registered person to a regular disciplinary proceeding under NYSE Rule 476.

Proposed NYSE 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 NYSE 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 covered person or member organization 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. Similarly, if a member organization or covered person did not meet the prerequisites for access to services offered by the Exchange or a member organization thereof or could not be permitted to continue to have access to services offered by the Exchange or a member organization thereof with safety to investors, creditors, members, or the Exchange, 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 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. The text of the proposed rule change is substantially the same as that in FINRA's counterpart rule, except for conforming and technical changes and except that it does not include the text of FINRA Rule 9555(h), which requires a notice of final action under the Rule, because it would be duplicative of proposed NYSE Rule 8313.

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 NYSE 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 NYSE Rule 9810. The text of proposed NYSE Rule 9556 is the same as FINRA Rule 9556, except in the following respects. First, the text contains conforming and technical changes. Second, under FINRA's rule, FINRA's CEO authorizes proceedings under FINRA Rule 9556; under the Exchange's proposed rule, the Exchange's CRO would have such authority. Third, FINRA's rule permits service of process by facsimile; the Exchange does not believe that this alternative service method is necessary and the service methods permitted under proposed NYSE Rule 9134 (which are identical to FINRA Rule 9134) would be sufficient. Finally, the Exchange does not propose to include a notice to its membership of decisions under the rule, as FINRA does, because it would be duplicative of proposed NYSE Rule 8313. 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.

Proposed NYSE Rule 9557 would allow the Exchange to issue a notice directing a member organization to comply with the provisions of NYSE Rule 4110 (Capital Compliance), 4120 (Regulatory Notification and Business Curtailment), or 4130 (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.

The text of the proposed rule change is substantially the same as that in FINRA Rule 9557, except in the following respects. First, the text contains conforming and technical changes. Second, under FINRA's rule, FINRA's CEO exercises authority with respect to stays under the rule; under the Exchange's proposed rule, the Exchange's CRO would have such authority. Third, FINRA's rule permits service of process by facsimile; the Exchange does not believe that this alternative service method is necessary

and 55597A (April 6, 2007) (denying motion for reconsideration).

for the reasons stated above. Finally, the Exchange does not propose to include a notice to its membership of decisions under the rule, as FINRA does, because it would be duplicative of proposed NYSE Rule 8313.

Currently, if a member organization fails to comply with NYSE Rule 4110, 4120, or 4130 (which are substantially the same as FINRA Rules 4110, 4120, and 4130), the Exchange issues a notice, for FINRA members, pursuant to FINRA Rule 9557, and for member organizations that are not FINRA members, pursuant to NYSE Rule 475(b), which authorizes summary suspensions, as described above.

Proposed NYSE Rule 9558 would allow the Exchange's CRO to provide written authorization to the 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. The text of the proposed rule change is substantially the same as that in FINRA Rule 9558, except as follows. First, the text contains conforming and technical changes. Second, under FINRA's rule, FINRA's CEO authorizes such proceedings. Third, FINRA's rule permits service of process by facsimile; the Exchange does not believe that this alternative service method is necessary for the reasons stated above. Finally, the Exchange does not propose to include a notice to its membership of decisions under the rule, as FINRA does, because it would be duplicative of proposed NYSE Rule 8313. Such summary proceedings are currently authorized under NYSE 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.

Proposed NYSE Rule 9559 would set forth uniform hearing procedures for all expedited proceedings under the proposed NYSE Rule 9550 Series. Proposed NYSE Rule 9559 differs from FINRA Rule 9559 as follows. First, any call for review would be conducted by the Exchange's Board of Directors rather than FINRA's NAC. Second, the Exchange would not utilize current or former members of the FINRA Financial Responsibility Committee for proceedings initiated under proposed NYSE Rule 9557, as FINRA does under its counterpart rule. The Exchange would use the same pool of Hearing Panelists from the Hearing Board as it uses for other proceedings. Third, any instance in FINRA's rule that authorized FINRA's CEO to act would instead authorize the Exchange's CRO to act. Fourth, the Exchange does not propose to adopt the text of FINRA Rule 9559(r), which provides for the publication of decisions under the Rule, because it would be duplicative of proposed NYSE Rule 8313. Fifth, the Exchange does not propose to adopt the text of FINRA Rule 9559(q)(1) that sets forth 14-day and 21-day call for review periods because a call for review period would be described in proposed NYSE Rule 9310. Proposed NYSE Rule 9559(q)(1) will instead state that calls for review would be conducted in accordance with proposed NYSE Rule 9310, which, consistent with the time period in current NYSE Rule 476(f), would provide for a 25-day call for review period. Finally, the proposed text contains conforming and technical changes. Currently, the Exchange does not have a rule comparable to FINRA Rule 9559.

Proposed NYSE Rule 9600 Series

The Exchange proposes to adopt a new NYSE Rule 9600 Series, which would set forth procedures by which a member organization could seek exemptive relief from current NYSE Rules 4311(carrying agreements) and 4360 (fidelity bonds) and proposed NYSE Rule 8211 (submission of electronic blue sheet data). Under proposed NYSE Rule 9610, a 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 NYSE Rule 9620, after considering the application, the Exchange staff would be required to issue a written decision setting forth its findings and conclusions. The decision would be served on the Applicant pursuant to proposed NYSE Rules 9132 and 9134. Under proposed NYSE 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 NYSE Rule 9630(e), the CRO would affirm, modify, or reverse the decision issued under proposed NYSE 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 NYSE Rules 9132 and 9134, would be effective upon service, and would constitute final action of the Exchange.

The rule text would be modeled on FINRA's Rule 9600 Series; the Exchange's proposed rules primarily differ from FINRA's in that they contain technical and conforming changes and that the Exchange's CRO, rather than FINRA's Office of General Counsel, would receive the request and any notice of appeal, and the CRO, rather than FINRA's NAC, would carry out the proposed appellate process.[44] Currently, NYSE Rule 410A(d) permits a member organization to seek an exception from the data format elements for submitting electronic blue sheets for transactions effected on the Exchange, but the Rule does not set forth specific procedures for doing so. Current NYSE Rule 4360, which concerns fidelity bonds, references FINRA's exemptive process; this rule would be amended to delete the reference to the FINRA Rule 9600 Series as the Exchange would now have its own such provisions.

Proposed NYSE Rule 9700 Series

FINRA's Rule 9700 Series provides redress for persons aggrieved by the operations of any automated quotation, execution, or communication system owned or operated by FINRA. As this would be inapplicable to the Exchange, the Exchange proposes to designate the proposed NYSE Rule 9700 Series as reserved to maintain consistency with FINRA's rule numbering conventions. The Exchange notes that under current NYSE Rule 18, 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.

Proposed NYSE Rule 9800 Series

The Exchange proposes to adopt a new NYSE Rule 9800 Series to set forth procedures for issuing temporary cease and desist orders. Under proposed NYSE Rule 9810, with the prior written authorization of the Exchange's CRO or such other senior officers as the CRO may designate, FINRA's Department of Enforcement or the Department of Market Regulation could initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Act, SEC Rules 10b–

[44] Currently, the FINRA Rule 9600 Series also permits FINRA members to seek exemptive relief from other rules—NASD Rules 1021, 1050, 1070, 2210, 2340, 3010(b)(2), or 3150, or FINRA Rules 2114, 2310, 2359, 2360, 4210, 4320, 5110, 5121, 5122, 5130, 6183, 6625, 6731, 7470, 8213, 11870, or 11900, or Municipal Securities Rulemaking Board Rule G–37. If NYSE adopts similar rules in the future as part of the rules harmonization project, it will consider permitting member organizations to seek exemptive relief through the NYSE Rule 9600 Series.

5 and 15g–1 through 15g–9, NYSE Rule 2010 (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 NYSE Rule 2020. Proposed NYSE Rule 9820 would govern the appointment of a Hearing Officer and Panelists.

Under proposed NYSE 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 NYSE Rule 9830 would govern how the hearing was conducted.

Under proposed NYSE 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 NYSE 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 NYSE Rule 9860 would authorize the initiation of a suspension or cancellation of a Respondent's association or membership under proposed NYSE Rule 9556 if the Respondent violated a temporary cease and desist order.

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

The proposed rule text would be substantially the same as that in FINRA's Rule 9800 Series, except for conforming and technical amendments and except that the Exchange's CRO, rather than FINRA's CEO, would authorize the initiation of temporary cease and desist proceedings and the initiation of suspension or cancellation proceedings for a violation of a temporary cease and desist order. As noted above, the Exchange currently does not have procedures comparable to FINRA's Rule 9800 Series.

Technical and Conforming Changes

The Exchange proposes technical and conforming changes to NYSE Rules 2A, 20, 36, 103B, 309, 345A, 600A, 619, 772, 1301, 1301A, 1301B, 4110, 4120, 4130, and 4360 and NYSE Rule Interpretation 345A.

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

Current NYSE Rule 20(b) requires that NYSE Regulation establish a Regulatory Advisory Committee, which includes persons associated with member organizations and representatives of both those member organizations doing business on the Floor of the Exchange and those who do not do business on the Floor. The Regulatory Advisory Committee acts in an advisory capacity regarding disciplinary matters and regulatory rules other than trading rules. The Exchange proposes to delete the reference to the Regulatory Advisory Committee acting in an advisory capacity regarding disciplinary matters because it would not perform such a function under the proposed rule change—only the Adjudicators specified under the proposed rule change would have authority over disciplinary proceedings. The Regulatory Advisory Committee has not performed this function since FINRA assumed responsibility for the Exchange's disciplinary proceedings; as such, the Exchange proposes to remove this out-of-date reference in NYSE Rule 20(b).

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

NYSE Rule 103B would be amended to include references to the proposed NYSE Rule 8000 Series and Rule 9000 Series, which would contain proceedings for which a Designated Market Maker (''DMM'') unit could lose its registration in a specialty stock.

As noted above, NYSE Rule 309 would be amended to replace the term ''allied member'' with ''principal executive'' [45] and update a cross-reference.

NYSE Rule 345A would be amended to delete a reference to NYSE Rule 346(f) because NYSE Rule 346 was recently deleted in its entirety.

NYSE Rule 600A would be amended to correct typographical errors in the rule title, include references to the disciplinary proceedings of the proposed NYSE Rule 8000 Series and Rule 9000 Series for failure to honor an arbitration award, and change references from ''NASD DR'' to ''FINRA.''

NYSE Rule 619 would be amended to include a reference to proposed NYSE Rule 8210, which would govern the authority of the Exchange to request information and testimony.

NYSE Rule 772 would be amended to include references to the disciplinary proceedings of the proposed NYSE Rule 8000 Series and Rule 9000 Series, which would govern ways in which a member organization may be suspended.

NYSE Rules 1301, 1301A, and 1301B would be amended to include a reference to the proposed NYSE Rule 8000 Series, which would govern the production of books and records, and replace the term ''allied member'' with ''principal executive.[46]

NYSE Rules 4110, 4120, and 4130 would be amended to revise a cross-reference to FINRA Rule 9557 as the Exchange proposes to adopt NYSE Rule 9557.

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

NYSE Rule Interpretation 345A would be amended to include a reference to the proposed Rule 9000 Series, which would govern the time periods allowed to appeal or request a review.

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 NYSE Rule 8000–9000 Series, either because the Exchange does not believe they are necessary or the authority is implicit in the proposed rule change.

First, under current NYSE Rule 475(f), any person suspended under current 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, comprehensive protections to Respondents, and continued availability

[45] *See supra* note 16.

[46] *Id.*

of the Exchange's appeals process under the proposed rule change.

Second, under current NYSE 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 NYSE Rule 9211 and need not be express in the proposed rule change.

Under current NYSE 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 allied member creates a vacancy in any office or position held by such member or allied member. The Exchange believes that this is implicit in the concept of a suspension and need not be express in the proposed rule change.

Under current NYSE Rule 476(i), a member or allied member 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 allied member'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 proposed rule change because complaints may be brought against both member organizations and covered persons and are subject to review by Hearing Panel and the Exchange Board of Directors.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[47] in general, and furthers the objectives of Section 6(b)(5) of the Act,[48] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule furthers the objectives of Section 6(b)(7) of the Act,[49] in particular, in that it provides fair procedures for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(3) of the Act,[50] in particular, in that it supports the fair representation of members[51] in the administration of the Exchange's affairs.

The proposed changes will provide greater harmonization between Exchange and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance for dual members. As previously noted, in many instances the proposed rule text is identical to FINRA's current rule text,[52] which already has been approved by the Commission, and in many other cases the differences between current FINRA rules and the proposed rules would be strictly technical in nature.[53] As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will 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 FINRA's jurisdiction. As such, the Exchange's Hearing Panelists cannot be drawn solely from a pool of FINRA members and associated persons but rather must include NYSE-only member organizations and persons with experience in NYSE 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 current 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. A FINRA-only appellate body would not provide such representation. Similarly, the Exchange believes that its CRO is better suited to resolving certain procedural matters and rendering certain decisions under the proposed rule change because the Exchange's CRO will have greater familiarity with the Exchange's rules and membership than would FINRA's General Counsel.

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. In particular, the Exchange believes that it would be fair and efficient to have the Office of Disciplinary Affairs act as a check and balance against the agreements reached by the Parties for resolving disciplinary matters.

Finally, the Exchange would retain its list of minor rule violations, which have already been approved by the Commission,[54] with certain technical and conforming amendments, while adopting FINRA's minor rule violation fine levels and process for imposing them, which also have already been approved by the Commission.[55]

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

The [sic] 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 designed to address any competitive issues but rather is designed to provide greater harmonization between Exchange and FINRA rules of similar purpose for investigations and disciplinary matters, resulting in less burdensome and more efficient regulatory compliance for dual members and facilitating FINRA's performance of its regulatory functions under the RSA.

[47] 15 U.S.C. 78f(b).

[48] 15 U.S.C. 78f(b)(5).

[49] 15 U.S.C. 78f(b)(7).

[50] 15 U.S.C. 78f(b)(3).

[51] The Exchange's equivalent to the term "member" in this context is "member organization." *See supra* note 10.

[52] *See supra* note 9.

[53] *See supra* note 17.

[54] The most recent amendments to the Exchange's minor rule violation plan were approved in Securities Exchange Act Release No. 66758 (April 6, 2012) 77 FR 22032 (April 12, 2012) (SR–NYSE–2012–05).

[55] *See* FINRA Rule 9216(b).

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

No written comments were solicited or received with respect to the proposed rule change.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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 Number SR–NYSE–2013–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2013–02. 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 NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–NYSE–2013–02, and should be submitted on or before February 14, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01375 Filed 1–23–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68684; File No. SR–NSX–2013–01]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Provide for the Payment of Exchange Fees Through an Integrated Billing Process

January 17, 2013.

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 January 10, 2013, National Stock Exchange, Inc. (''NSX®'' or the ''Exchange'') 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 Exchange. The Commission is publishing this notice to solicit comment on the proposed rule change from interested persons.

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

The Exchange is proposing to: (1) define the term ''Clearing Member'' under Exchange Rule 1.5; and (2) adopt Exchange Rule 16.4 to allow Equity Trading Permit (''ETP'')[3] Holders to pay their Exchange and vendor invoices for Exchange-related services through the Exchange's integrated billing system (''IBS'').

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.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 is proposing to: (1) define the term ''Clearing Member'' under Exchange Rule 1.5; and (2) adopt Exchange Rule 16.4 to allow ETP Holders to pay their Exchange and vendor invoices for Exchange-related services through the Exchange's IBS.

Definition of Clearing Member

The Exchange is proposing to: (1) define the term ''Clearing Member'' under Exchange Rule 1.5 as ''[a]n ETP Holder that is a member of a Qualified Clearing Agency defined in Section Q below.'' Section Q of Exchange Rule 1.5 defines ''Qualified Clearing Agency'' as ''a clearing agency registered with the Commission pursuant to Section 17A of the Act that is deemed qualified by the Exchange.'' In adding a definition of Clearing Member to Exchange Rule 1.5, the Exchange does not propose to add a new category of Exchange member or alter current ETP Holder obligations. The Exchange simply proposes this definition to describe ETP Holders that may also be members of a Qualified Clearing Agency as a means to add clarity to the integrated billing solution

[56] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Rule 1.5 defines the term ''ETP'' as an Equity Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities.