

Securities is not disseminated publicly. For these reasons, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.<sup>15</sup>

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

#### IV. Solicitation of Comments

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

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-FINRA-2019-002 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number SR-FINRA-2019-002. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

<sup>15</sup> For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2019-002 and should be submitted on or before March 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Eduardo Aleman,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85097; File No. 4-551]

### Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The NASDAQ Stock Market LLC, BOX Exchange LLC, NASDAQ BX, Inc., NASDAQ PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, and MIAX Emerald, LLC Concerning Options-Related Market Surveillance

February 11, 2019.

Notice is hereby given that the Securities and Exchange Commission ("Commission") has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> approving and declaring effective an amendment to the plan for allocating regulatory responsibility ("Plan") filed on January 8, 2019, pursuant to Rule 17d-2 of the Act,<sup>2</sup> by

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78q(d).

<sup>2</sup> 17 CFR 240.17d-2.

NYSE American LLC ("NYSE American"), Cboe BZX Exchange, Inc., ("BZX"), the Cboe EDGX Exchange, Inc. ("EDGX"), Cboe C2 Exchange, Inc. ("C2"), Cboe Exchange, Inc. ("Cboe"), Nasdaq ISE, LLC ("ISE"), Financial Industry Regulatory Authority, Inc. ("FINRA"), NYSE Arca, Inc. ("Arca"), The NASDAQ Stock Market LLC ("Nasdaq"), BOX Exchange LLC ("BOX"), NASDAQ BX, Inc. ("BX"), NASDAQ PHLX LLC ("PHLX"), Miami International Securities Exchange, LLC ("MIAX"), Nasdaq GEMX, LLC ("Gemini"), Nasdaq MRX, LLC ("Mercury"), MIAX PEARL, LLC ("MIAX PEARL"), and MIAX Emerald, LLC (MIAX Emerald) (collectively, "Participating Organizations" or "parties").

#### I. Introduction

Section 19(g)(1) of the Act,<sup>3</sup> among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)<sup>4</sup> or Section 19(g)(2)<sup>5</sup> of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act<sup>6</sup> was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.<sup>7</sup> With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule

<sup>3</sup> 15 U.S.C. 78s(g)(1).

<sup>4</sup> 15 U.S.C. 78q(d).

<sup>5</sup> 15 U.S.C. 78s(g)(2).

<sup>6</sup> 15 U.S.C. 78q(d)(1).

<sup>7</sup> See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

17d-1 and Rule 17d-2 under the Act.<sup>8</sup> Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.<sup>9</sup> When an SRO has been named as a common member’s DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO’s obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.<sup>10</sup> Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

## II. The Plan

On December 11, 2007, the Commission declared effective the Participating Organizations’ Plan for allocating regulatory responsibilities pursuant to Rule 17d-2.<sup>11</sup> On April 11, 2008, the Commission approved an

<sup>8</sup> 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

<sup>9</sup> See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

<sup>10</sup> See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

<sup>11</sup> See Securities Exchange Act Release No. 56941 (December 11, 2007), 72 FR 71723 (December 18, 2007) (File No. 4-551).

amendment to the Plan to include NASDAQ as a participant.<sup>12</sup> On October 9, 2008, the Commission approved an amendment to the Plan to clarify that the term Regulatory Responsibility for options position limits includes the examination responsibilities for the delta hedging exemption.<sup>13</sup> On February 25, 2010, the Commission approved an amendment to the Plan to add Bats and C2 as SRO participants and to reflect the name changes of the American Stock Exchange LLC to the NYSE Amex LLC, and the Boston Stock Exchange, Inc. to the NASDAQ OMX BX, Inc.<sup>14</sup> On May 11, 2012, the Commission approved an amendment to the Plan to add BOX as a participant to the Plan.<sup>15</sup> On December 5, 2012, the Commission approved an amendment to the Plan to add MIAX as a participant to the Plan.<sup>16</sup> On July 26, 2013, the Commission approved an amendment to the Plan to add Topaz Exchange, LLC as a Participant to the Plan.<sup>17</sup> On October 29, 2015, the Commission approved an amendment to add EDGX as a Participant to the Plan and to change the name of Topaz Exchange, LLC to ISE Gemini, LLC.<sup>18</sup> On February 16, 2016, the Commission approved an amendment to add ISE Mercury, LLC as a Participant to the Plan.<sup>19</sup> On February 2, 2017, the Commission approved an amendment to add MIAX PEARL as a Participant to the Plan.<sup>20</sup>

The Plan is designed to reduce regulatory duplication for common members by allocating regulatory responsibility for certain options-related market surveillance matters among the Participating Organizations. Generally, under the Plan, a Participating Organization will serve as the Designated Options Surveillance

<sup>12</sup> See Securities Exchange Act Release No. 57649 (April 11, 2008), 73 FR 20976 (April 17, 2008) (File No. 4-551).

<sup>13</sup> See Securities Exchange Act Release No. 58765 (October 9, 2008), 73 FR 62344 (October 20, 2008) (File No. 4-551).

<sup>14</sup> See Securities Exchange Act Release No. 61588 (February 25, 2010), 75 FR 9970 (March 4, 2010) (File No. 4-551).

<sup>15</sup> See Securities Exchange Act Release No. 66975 (May 11, 2012), 77 FR 29712 (May 18, 2010) (File No. 4-551).

<sup>16</sup> See Securities Exchange Act Release No. 68362 (December 5, 2012), 77 FR 73719 (December 11, 2012) (File No. 4-551).

<sup>17</sup> See Securities Exchange Act Release No. 70052 (July 26, 2013), 78 FR 46665 (August 1, 2013) (File No. 4-551).

<sup>18</sup> See Securities Exchange Act Release No. 76310 (October 29, 2015), 80 FR 68354 (November 4, 2015) (File No. 4-551).

<sup>19</sup> See Securities Exchange Act Release No. 77149 (February 16, 2016), 81 FR 8781 (February 22, 2016) (File No. 4-551).

<sup>20</sup> See Securities Exchange Act Release No. 79930 (February 2, 2017), 82 FR 9807 (February 8, 2017) (File No. 4-551).

Regulator (“DOSR”) for each common member assigned to it and will assume regulatory responsibility with respect to that common member’s compliance with applicable common rules for certain accounts. When an SRO has been named as a common member’s DOSR, all other SROs to which the common member belongs will be relieved of regulatory responsibility for that common member, pursuant to the terms of the Plan, with respect to the applicable common rules specified in Exhibit A to the Plan.

## III. Proposed Amendment to the Plan

On January 8, 2019, the parties submitted a proposed amendment to the Plan. The primary purpose of the amendment is to add MIAX Emerald as a Participant to the Plan and to reflect name changes of certain Participating Organizations. The text of the proposed amended 17d-2 plan is as follows (additions are *italicized*; deletions are [bracketed]):

\* \* \* \* \*

AGREEMENT BY AND AMONG NYSE [MKT]AMERICAN LLC, [BATS]CBOE BZX EXCHANGE, INC., CBOE EDGX EXCHANGE INC., BOX [OPTIONS] EXCHANGE LLC, NASDAQ BX, INC., CBOE C2 [OPTIONS] EXCHANGE, INC.[ORPORATED], CBOE [THE CHICAGO BOARD OPTIONS] EXCHANGE, INC.[ORPORATED], [THE INTERNATIONAL SECURITIES EXCHANGE]NASDAQ ISE, LLC, [ISE GEMINI]NASDAQ GEMX, LLC, [ISE MERCURY]NASDAQ MRX, LLC, FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC., NYSE ARCA, INC., THE NASDAQ STOCK MARKET LLC, NASDAQ PHLX LLC, MIAMI INTERNATIONAL SECURITIES EXCHANGE, LLC, [AND] MIAX PEARL, LLC, AND MIAX EMERALD, PURSUANT TO RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934

This agreement (this “Agreement”), by and among NYSE [MKT]American LLC (“[MKT]NYSE American”), [Bats]Cboe BZX Exchange, Inc., (“[Bats]BZX”), the [Bats]Cboe EDGX Exchange, Inc. (“EDGX”), [the]Cboe C2 [Options] Exchange, Inc.[orporated] (“C2”), Cboe[the Chicago Board Options] Exchange, Inc.[orporated] (“[CBOE]Cboe”), [the International Securities Exchange]Nasdaq ISE, LLC (“ISE”), Financial Industry Regulatory Authority, Inc. (“FINRA”), NYSE Arca, Inc. (“Arca”), The NASDAQ Stock Market LLC (“Nasdaq”), BOX [Options] Exchange LLC (“BOX”), NASDAQ BX, Inc. (“BX”), NASDAQ PHLX [Inc.]LLC (“PHLX”), Miami International

Securities Exchange, LLC (“MIAX”), [ISE Gemini, LLC] *Nasdaq GEMX, LLC* (“Gemini”), [ISE Mercury] *Nasdaq MRX, LLC* (“Mercury”), [and] *MIAX PEARL, LLC* (“MIAX PEARL”), and *MIAX Emerald, LLC* (*MIAX Emerald*), is made this 10th day of October 2007, and as amended the 31st day of March 2008, the 1st day of October 2008, the 3rd day of February 2010, the 25th day of April 2012, and the 19th day of November 2012, and the 30th day of May 2013, and the 16th day of October 2015, and the 29th day of January 2016, [and] the 23rd day of January 2017, and the 8th day of January 2019, pursuant to Section 17(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and Rule 17d-2 thereunder (“Rule 17d-2”), which allows for a joint plan among self-regulatory organizations (“SROs”) to allocate regulatory obligations with respect to brokers or dealers that are members of two or more of the parties to this Agreement (“Common Members”). [MKT, Bats,] *NYSE American, BZX, C2, [CBOE] Choe, EDGX, [ISE] Gemini, ISE, [ISE] Mercury, FINRA, Arca, Nasdaq, BOX, BX, PHLX, MIAX, [and] MIAX PEARL, and MIAX Emerald*, are collectively referred to herein as the “Participants” and individually, each a “Participant.” This Agreement shall be administered by a committee known as the Options Surveillance Group (the “OSG” or “Group”), as described in Section V hereof. Unless defined in this Agreement or the context otherwise requires, the terms used herein shall have the meanings assigned thereto by the Exchange Act and the rules and regulations thereunder.

WHEREAS, the Participants desire to eliminate regulatory duplication with respect to SRO market surveillance of Common Member<sup>1</sup> activities with regard to certain common rules relating to listed options (“Options”); and

WHEREAS, for this purpose, the Participants desire to execute and file this Agreement with the Securities and Exchange Commission (the “SEC” or “Commission”) pursuant to Rule 17d-2.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Participants agree as follows:

I. Except as otherwise provided in this Agreement, each Participant shall assume Regulatory Responsibility (as defined below) for the Common Members that are allocated or assigned to such Participant in

accordance with the terms of this Agreement and shall be relieved of its Regulatory Responsibility as to the remaining Common Members. For purposes of this Agreement, a Participant shall be considered to be the

II. Designated Options Surveillance Regulator (“DOSR”) for each Common Member that is allocated to it in accordance with Section VII.

III. As used in this Agreement, the term “Regulatory Responsibility” shall mean surveillance, investigation and enforcement responsibilities relating to compliance by the Common Members with such Options rules of the Participants as the Participants shall determine are substantially similar and shall approve from time to time, insofar as such rules relate to market surveillance (collectively, the “Common Rules”). For the purposes of this Agreement the list of Common Rules is attached as Exhibit A hereto, which may only be amended upon unanimous written agreement by the Participants. The DOSR assigned to each Common Member shall assume Regulatory Responsibility with regard to that Common Member’s compliance with the applicable Common Rules for certain accounts.<sup>2</sup> A DOSR may perform its Regulatory Responsibility or enter an agreement to transfer or assign such responsibilities to a national securities exchange registered with the SEC under Section 6(a) of the Exchange Act or a national securities association registered with the SEC under Section 15A of the Exchange Act. A DOSR may not transfer or assign its Regulatory Responsibility to an association registered for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products.

The term “Regulatory Responsibility” does not include, and each Participant shall retain full responsibility with respect to:

(a) surveillance, investigative and enforcement responsibilities other than those included in the definition of Regulatory Responsibility;

(a) any aspects of the rules of a Participant that are not

substantially similar to the Common Rules or that are allocated for a separate surveillance purpose under any other agreement made pursuant to Rule 17d-2. Any such aspects of a Common Rule will be noted as excluded on Exhibit A. With respect to options position limits, the term Regulatory Responsibility shall include examination responsibilities for the delta hedging exemption. Specifically, the Participants intend that FINRA will conduct examinations for delta hedging for all Common Members that are members of FINRA notwithstanding the fact that FINRA’s position limit rule is, in some cases, limited to only firms that are not members of an options exchange (i.e., access members). In such cases, FINRA’s examinations for delta hedging options position limit violations will be for the identical or substantively similar position limit rule(s) of the other Participant(s). Examinations for delta hedging for Common Members that are non-FINRA members will be conducted by the same Participant conducting position limit surveillance. The allocation of Common Members to DOSRs for surveillance of compliance with options position limits and other agreed to Common Rules is provided in Exhibit B. The allocation of Common Members to DOSRs for examinations of the delta hedging exemption under the options position limits rules is provided in Exhibit C.

III. Each year within 30 days of the anniversary date of the commencement of operation of this Agreement, or more frequently if required by changes in the rules of a Participant, each Participant shall submit to the other Participants, through the Chair of the OSG, an updated list of Common Rules for review. This updated list may add Common Rules to Exhibit A, shall delete from Exhibit A rules of that Participant that are no longer identical or substantially similar to the Common Rules, and shall confirm that the remaining rules of the Participant included on Exhibit A continue to be identically or substantially similar to the Common Rules. Within 30 days from the date that each Participant has received revisions to Exhibit A from the Chair of the OSG, each Participant shall confirm in writing to the Chair of the OSG whether that Participant’s rules listed in Exhibit A are Common Rules.

<sup>1</sup> In the case of the BX and BOX, members are those persons who are Options Participants (as defined in the BOX [Options] Exchange LLC Rules and NASDAQ BX, Inc. Rules).

<sup>2</sup> Certain accounts shall include customer (“C” as classified by the Options Clearing Corporation (“OCC”)) and firm (“F” as classified by OCC) accounts, as well as other accounts, such as market maker accounts as the Participants shall, from time to time, identify as appropriate to review.

IV. Apparent violation of another Participant's rules discovered by a DOSR, but which rules are not within the scope of the discovering DOSR's Regulatory Responsibility, shall be referred to the relevant Participant for such action as is deemed appropriate by that Participant. Notwithstanding the foregoing, nothing contained herein shall preclude a DOSR in its discretion from requesting that another Participant conduct an investigative or enforcement proceeding ("Proceeding") on a matter for which the requesting DOSR has Regulatory Responsibility. If such other Participant agrees, the Regulatory Responsibility in such case shall be deemed transferred to the accepting Participant and confirmed in writing by the Participants involved. Additionally, nothing in this Agreement shall prevent another Participant on whose market potential violative activity took place from conducting its own Proceeding on a matter. The Participant conducting the Proceeding shall advise the assigned DOSR. Each Participant agrees, upon request, to make available promptly all relevant files, records and/or witnesses necessary to assist another Participant in a Proceeding.

V. The OSG shall be composed of one representative designated by each of the Participants (a "Representative"). Each Participant shall also designate one or more persons as its alternate representative(s) (an "Alternate Representative"). In the absence of the Representative, the Alternate Representative shall assume the powers, duties and responsibilities of the Representative. Each Participant may at any time replace its Representative and/or its Alternate Representative to the Group.<sup>3</sup> A majority of the OSG shall constitute a quorum and, unless otherwise required, the affirmative vote of a majority of the Representatives present (in person, by telephone or by written consent) shall be necessary to constitute action by the Group.

The Group will have a Chair, Vice Chair and Secretary. A different Participant will assume each position on a rotating basis for a one-year term. In the event that a Participant replaces a

Representative who is acting as Chair, Vice Chair or Secretary, the newly appointed Representative shall assume the position of Chair, Vice Chair, or Secretary (as applicable) vacated by the Participant's former Representative. In the event a Participant cannot fulfill its duties as Chair, the Participant serving as Vice Chair shall substitute for the Chair and complete the subject unfulfilled term. All notices and other communications for the OSG are to be sent in care of the Chair and, as appropriate, to each Representative.

VI. The OSG shall determine the times and locations of Group meetings, provided that the Chair, acting alone, may also call a meeting of the Group in the event the Chair determines that there is good cause to do so. To the extent reasonably possible, notice of any meeting shall be given at least ten business days prior to the meeting date. Representatives shall always be given the option of participating in any meeting telephonically at their own expense rather than in person.

VII. No less frequently than every two years, in such manner as the Group deems appropriate, the OSG shall allocate Common Members that conduct an Options business among the Participants ("Allocation"), and the Participant to which a Common Member is allocated will serve as the DOSR for that Common Member. Any Allocation shall be based on the following principles, except to the extent all affected Participants consent to one or more different principles:

- (a) The OSG may not allocate a Common Member to a Participant unless the Common Member is a member of that Participant.
- (b) To the extent practicable, Common Members that conduct an Options business shall be allocated among the Participants of which they are members in such manner as to equalize as nearly as possible the allocation among such Participants, provided that no Common Members shall be allocated to FINRA. For example, if sixteen Common Members that conduct an Options business are members only of three Participants, none of which is FINRA, those Common Members shall be allocated among the three Participants such that no Participant is allocated more than six such members and no Participant is allocated less than five such members. If, in the previous example, one of the three

Participants is FINRA, the sixteen Common Members would be allocated evenly between the remaining Participants, so that the two non-FINRA Participants would be allocated eight Common Members each.

- (c) To the extent practicable, Allocation shall take into account the amount of Options activity conducted by each Common Member in order to most evenly divide the Common Members with the largest amount of activity among the Participants of which they are members. Allocation will also take into account similar allocations pursuant to other plans or agreements to which the Common Members are party to maintain consistency in oversight of the Common Members.<sup>4</sup>
- (d) To the extent practicable, Allocation of Common Members to Participants will be rotated among the applicable Participants such that a Common Member shall not be allocated to a Participant to which that Common Member was allocated within the previous two years. The assignment of DOSRs pursuant to the Allocation is attached as Exhibit B hereto, and will be updated from time to time to reflect Common Member Allocation changes.
- (e) The Group may reallocate Common Members from time-to-time, as it deems appropriate.
- (f) Whenever a Common Member ceases to be a member of its DOSR, the DOSR shall promptly inform the Group, which shall review the matter and allocate the Common Member to another Participant.
- (g) A DOSR may request that a Common Member to which it is assigned be reallocated to another Participant by giving 30 days written notice to the Chair of the OSG. The Group, in its discretion, may approve such request and reallocate the Common Member to another Participant.
- (h) All determinations by the Group with respect to Allocation shall be made by the affirmative vote of a majority of the Participants that, at the time of such determination, share the applicable Common Member being allocated; a Participant shall not be entitled to vote on any Allocation relating to a Common Member unless the

<sup>3</sup> A Participant must give notice to the Chair of the Group of such a change.

<sup>4</sup> For example, if one Participant was allocated a Common Member by another regulatory group that Participant would be assigned to be the DOSR of that Common Member, unless there is good cause not to make that assignment.

- Common Member is a member of such Participant.
- VIII. Each DOSR shall conduct routine surveillance reviews to detect violations of the applicable Common Rules by each Common Member allocated to it with a frequency (daily, weekly, monthly, quarterly, semi-annually or annually as noted on Exhibit A) not less than that determined by the Group. The other Participants agree that, upon request, relevant information in their respective files relative to a Common Member will be made available to the applicable DOSR. In addition, each Participant shall provide, to the extent not otherwise already provided, information pertaining to its surveillance program that would be relevant to FINRA or the Participant(s) conducting routine examinations for the delta hedging exemption.
- At each meeting of the OSG, each Participant shall be prepared to report on the status of its surveillance program for the previous quarter and any period prior thereto that has not previously been reported to the Group. In the event a DOSR believes it will not be able to complete its Regulatory Responsibility for its allocated Common Members, it will so advise the Group in writing promptly. The Group will undertake to remedy this situation by reallocating the subject Common Members among the remaining Participants. In such instance, the Group may determine to impose a regulatory fee for services provided to the DOSR that was unable to fulfill its Regulatory Responsibility.
- IX. Each Participant will, upon request, promptly furnish a copy of the report or applicable portions thereof relating to any investigation made pursuant to the provisions of this Agreement to each other Participant of which the Common Member under investigation is a member.
- X. Each Participant will routinely populate a common database, to be accessed by the Group relating to any formal regulatory action taken during the course of a Proceeding with respect to the Common Rules concerning a Common Member.
- XI. Any written notice required or permitted to be given under this Agreement shall be deemed given if sent by certified mail, return receipt requested, to any Participant to the attention of that Participant's Representative, to the Participant's principal place of business or by e-mail at such address as the Representative shall have filed in writing with the Chair.
- XII. The costs incurred by each Participant in discharging its Regulatory Responsibility under this Agreement are not reimbursable. However, any of the Participants may agree that one or more will compensate the other(s) for costs incurred.
- XIII. The Participants shall notify the Common Members of this Agreement by means of a uniform joint notice approved by the Group. Each Participant will notify the Common Members that have been allocated to it that such Participant will serve as DOSR for that Common Member.
- XIV. This Agreement shall be effective upon approval of the Commission. This Agreement may only be amended in writing duly approved by each Participant. All amendments to this Agreement, excluding changes to Exhibits A, B and C, must be filed with and approved by the Commission.
- XV. Any Participant may manifest its intention to cancel its participation in this Agreement at any time upon providing written notice to (i) the Group six months prior to the date of such cancellation, or such other period as all the Participants may agree, and (ii) the Commission. Upon receipt of the notice the Group shall allocate, in accordance with the provisions of this Agreement, those Common Members for which the canceling Participant was the DOSR. The canceling Participant shall retain its Regulatory Responsibility and other rights, privileges and duties pursuant to this Agreement until the Group has completed the reallocation as described above, and the Commission has approved the cancellation.
- XVI. The cancellation of its participation in this Agreement by any Participant shall not terminate this Agreement as to the remaining Participants. This Agreement will only terminate following notice to the Commission, in writing, by the then Participants that they intend to terminate the Agreement and the expiration of the applicable notice period. Such notice shall be given at least six months prior to the intended date of termination, or such other period as all the Participants may agree. Such termination will become effective upon Commission approval.
- XVII. Participation in the Group shall be strictly limited to the Participants and no other party shall have any right to attend or otherwise participate in the Group except with the unanimous approval of all Participants. Notwithstanding the foregoing, any national securities exchange registered with the SEC under Section 6(a) of the Act or any national securities association registered with the SEC under section 15A of the Act may become a Participant to this Agreement provided that: (i) such applicant has adopted rules substantially similar to the Common Rules, and received approval thereof from the SEC; (ii) such applicant has provided each Participant with a signed statement whereby the applicant agrees to be bound by the terms of this Agreement to the same effect as though it had originally signed this Agreement and (iii) an amended agreement reflecting the addition of such applicant as a Participant has been filed with and approved by the Commission.
- XVIII. This Agreement is wholly separate from the multiparty Agreement made pursuant to Rule 17d-2 by and among the NYSE MKT LLC, the Bats BZX Exchange, Inc., BOX Options Exchange, LLC, the C2 Options Exchange, Inc., the Chicago Board Options Exchange, Inc., the International Securities Exchange, LLC, Financial Industry Regulatory Authority, The NASDAQ Stock Market LLC, the New York Stock Exchange, LLC, the NYSE Arca, Inc., the NASDAQ BX, Inc., the NASDAQ PHLX LLC, Miami International Securities Exchange, LLC, ISE Gemini, LLC, ISE Mercury, LLC, [and] Bats EDGX Exchange, Inc., and *MIAX PEARL LLC* involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options or index warrants entered into on [February 16, 2016,] *January 23, 2017*, and as may be amended from time to time.

#### LIMITATION OF LIABILITY

No Participant nor the Group nor any of their respective directors, governors, officers, employees or representatives shall be liable to any other Participant in this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory

Responsibility as provided hereby or for the failure to provide any such Regulatory Responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or more of the Participants and caused by the willful misconduct of one or more of the other Participants or its respective directors, governors, officers, employees or representatives. No warranties, express or implied, are made by the

Participants, individually or as a group, or by the OSG with respect to any Regulatory Responsibility to be performed hereunder.

**RELIEF FROM RESPONSIBILITY**

Pursuant to Section 17(d)(1)(A) of the Exchange Act and Rule 17d-2, the Participants join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve the Participants that are party to this

Agreement and are not the DOSR as to a Common Member of any and all Regulatory Responsibility with respect to the matters allocated to the DOSR.

\* \* \* \* \*

**EXHIBIT A**

**Options Surveillance Group 17d-2 Agreement**

**COMMON RULES as of January 8, 2019 [January 23, 2017]**

**VIOLATION I: EXPIRING EXERCISE DECLARATIONS (EED)—FOR LISTED AND FLEX EQUITY OPTIONS**

SRO	Description of Rule	Exchange Rule No.	Frequency of Review
[Bats]BZX	Exercise of Options Contracts	Rule 23.1	At Expiration.
BOX	Exercise of Options Contracts	Rule 9000	At Expiration.
C2	Exercise of Options Contracts	Rule 11.1	At Expiration.
[CBOE]Cboe	Exercise of Options Contracts	Rule 11.1	At Expiration.
EDGX	Exercise of Options Contracts	Rule 23.1	At Expiration.
FINRA	Exercise of Options Contracts	Rule 2360(b)(23)	At Expiration.
ISE	Exercise of Options Contracts	Rule 1100	At Expiration.
[ISE Gemini] GEMX	Exercise of Options Contracts	Rule 1100	At Expiration.
[ISE Mercury] MRX	Exercise of Options Contracts	Rule 1100	At Expiration.
MIAX	Exercise of Options Contracts	Rule 700	At Expiration.
MIAX PEARL	Exercise of Options Contracts	Rule 700	At Expiration.
MIAX Emerald	Exercise of Options Contracts	Rule 700	At Expiration.
Nasdaq	Exercise of Options Contracts	[Ch. VIII, Sect.1] Options 5, Section 100.	At Expiration.
Nasdaq BX	Exercise of Options Contracts	[Ch. VII, Sect.1] Options 5, Section 100	At Expiration.
Nasdaq PHLX	Exercise of Equity Options Contracts	Rule 1042	At Expiration.
NYSE Arca	Exercise of Options Contracts	Rule 6.24-O	At Expiration.
NYSE [MKT]American	Exercise of Options Contracts	Rule 980	At Expiration.

**VIOLATION II: POSITION LIMITS (PL)—FOR LISTED EQUITY OPTIONS**

SRO	Description of Rule (for review as they apply to PL)	Exchange Rule No.	Frequency of review
[Bats]BZX	Position Limits	Rule 18.7	Daily.
	Exemptions from Position	Rule 18.8	As Needed.
	Liquidation Positions	Rule 18.11	As Needed.
BOX	Position Limits	Rule 3120	Daily.
	Exemptions from Position Limits	Rule 3130	As Needed.
	Liquidation Positions	Rule 3160	As Needed.
C2	Position Limits	Rule 4.11	Daily.
	Liquidation of Positions	Rule 4.14	As Needed.
[CBOE]Cboe	Position Limits	Rule 4.11	Daily.
	Liquidation of Positions	Rule 4.14	As Needed.
EDGX	Position Limits	Rule 18.7	Daily.
	Exemptions from Position	Rule 18.8	As Needed.
	Liquidation Positions	Rule 18.11	As Needed.
FINRA	Position Limits	Rule 2860(b)(3)	Daily.
	Liquidation of Positions and Restrictions on Access.	Rule 2860(b)(6)	As Needed.
ISE	Position Limits	Rule 412	Daily.
	Exemptions from Position Limits	Rule 413	As Needed.
	Liquidat[ng]on Positions	Rule 416	As Needed.
[ISE Gemini] GEMX	Position Limits	Rule 412	Daily.
	Exemptions from Position Limits	Rule 413	As Needed.
	Liquidat[ng]on Positions	Rule 416	As Needed.
[ISE Mercury ] MRX	Position Limits	Rule 412	Daily.
	Exemptions from Position Limits	Rule 413	As Needed.
	Liquidat[ng]on Positions	Rule 416	As Needed.
MIAX	Position Limits	Rule 307	Daily.
	Exemptions from Position Limits	Rule 308	As Needed.
	Liquidating Positions	Rule 311	As Needed.
MIAX Pearl	Position Limits	Rule 307	Daily.
	Exemptions from Position Limits	Rule 308	As Needed.
	Liquidating Positions	Rule 311	As Needed.
MIAX Emerald	Position Limits	Rule 307	Daily.

## VIOLATION II: POSITION LIMITS (PL)—FOR LISTED EQUITY OPTIONS—Continued

SRO	Description of Rule (for review as they apply to PL)	Exchange Rule No.	Frequency of review
Nasdaq	<i>Exemptions from Position Limits</i>	<i>Rule 308</i>	<i>As Needed.</i>
	<i>Liquidating Positions</i>	<i>Rule 311</i>	<i>As Needed.</i>
Nasdaq BX	Position Limits	Ch. III, Sect. 7	Daily.
	<i>Exemptions from Position Limits</i>	Ch. III, Sect. 8	<i>As Needed.</i>
Nasdaq PHLX	<i>Liquidat[ng]on Positions</i>	Ch. III, Sect. 11	<i>As Needed.</i>
	Position Limits	Ch. III, Sect. 7	Daily.
NYSE Arca	<i>Exemptions from Position Limits</i>	Ch. III, Sect. 8	<i>As Needed.</i>
	<i>Liquidat[ng]on Positions</i>	Ch. III, Sect. 11	<i>As Needed.</i>
NYSE [MKT] <i>American</i>	Position Limits	Rule 1001	Daily.
	Liquidation of Position	Rule 1004	<i>As Needed.</i>
NYSE [MKT] <i>American</i>	Position Limits	Rule 6.8- <i>O</i>	Daily.
	Liquidation of Position	Rule 6.7- <i>O</i>	<i>As Needed.</i>
NYSE [MKT] <i>American</i>	Position Limits	Rule 904	Daily.
	Liquidating Positions	Rule 907	<i>As Needed.</i>

## VIOLATION III: LARGE OPTIONS POSITION REPORT (LOPR)—FOR LISTED AND FLEX EQUITY OPTIONS AND ETF OPTIONS

SRO	Description of Rule (for review as they apply to LOPR)	Exchange Rule No.	Frequency of review
[Bats] <i>BZX</i>	Reports Related to Position Limits	Rule 18.10	Yearly.
BOX	Reports Related to Position Limits	Rule 3150	Yearly.
C2	Reports Related to Position Limits	Rule 4.13(a)	Yearly.
	Reports Related to Position Limits	Rule 4.13(b)	Yearly.
[CBOE] <i>Cboe</i>	Reports Related to Position Limits	Rule 4.13(d)	Yearly.
	Reports Related to Position Limits	Rule 4.13(a)	Yearly.
EDGX	Reports Related to Position Limits	Rule 4.13(b)	Yearly.
	Reports Related to Position Limits	Rule 4.13(d)	Yearly.
FINRA	Options	Rule 2360(b)(5)	Yearly.
ISE	Reports Related to Position Limits	Rule 415	Yearly.
[ISE Gemini] <i>GEMX</i>	Reports Related to Position Limits	Rule 415	Yearly.
[ISE Mercury] <i>MRX</i>	Reports Related to Position Limits	Rule 415	Yearly.
MIAX	Reports Related to Position Limits	Rule 310	Yearly.
MIAX PEARL	Reports Related to Position Limits	Rule 310	Yearly.
MIAX Emerald	<i>Reports Related to Position Limits</i>	<i>Rule 310</i>	<i>Yearly.</i>
Nasdaq	Reports Related to Position Limits	Ch. III, Sect. 10	Yearly.
Nasdaq BX	Reports Related to Position Limits	Ch. III, Sect. 10	Yearly.
Nasdaq PHLX	Reporting of Options Positions	Rule 1003	Yearly.
NYSE Arca	Reporting of Options Positions	Rule 6.6- <i>O</i>	Yearly.
NYSE [MKT] <i>American</i>	Reporting of Options Positions	Rule 906	Yearly.

## VIOLATION IV: OPTIONS CLEARING CORPORATION (OCC)—ADJUSTMENT PROCESS

SRO	Description of Rule (as they apply to OCC Adjustments/By- laws Article V, Section 1.01(a) and .02)	Exchange Rule No.	Frequency of review
[Bats] <i>BZX</i>	Adherence to Law	Rule 18.1	Yearly.
BOX	Adherence to Law	Rule 3010	Yearly.
C2	Adherence to Law	Rule 4.2	Yearly.
[CBOE] <i>Cboe</i>	Adherence to Law	Rule 4.2	Yearly.
EDGX	Adherence to Law	Rule 18.1	Yearly.
FINRA	Violation of By-Laws and Rules of FINRA or The OCC.	Rule 2360(b)(21)	Yearly.
ISE	Adherence to Law	Rule 401	Yearly.
[ISE Gemini] <i>GEMX</i>	Adherence to Law	Rule 401	Yearly.
[ISE Mercury] <i>MRX</i>	Adherence to Law	Rule 401	Yearly.
MIAX	Adherence to Law	Rule 300	Yearly.
MIAX PEARL	Adherence to Law	Rule 300	Yearly.
MIAX Emerald	<i>Adherence to Law</i>	<i>Rule 300</i>	<i>Yearly.</i>
Nasdaq	Adherence to Law	Ch. III, Sect. 1	Yearly.
Nasdaq BX	Adherence to Law	Ch. III, Sect. 1	Yearly.
Nasdaq PHLX	Violation of By-Laws And Rules Of OCC.	Rule 1050	Yearly.
NYSE Arca	Adherence to Law and Good Business Practice.	Rule 11.1	Yearly.
NYSE [MKT] <i>American</i>	Business Conduct	Rule 16	Yearly.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number 4-551 on the subject line.

##### *Paper Comments*

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

All submissions should refer to File Number 4-551. 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 website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of NYSE American, BZX, C2, Cboe, EDGX, Gemini, ISE, Mercury, FINRA, Arca, Nasdaq, BOX, BX, PHLX, MIAX, MIAX PEARL, and MIAX Emerald. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number 4-551 and should be submitted on or before March 12, 2019.

#### V. Discussion

The Commission continues to believe that the Plan, as proposed to be amended, is an achievement in cooperation among the SRO participants. The Plan, as amended, will

reduce unnecessary regulatory duplication by allocating to the designated SRO the responsibility for certain options-related market surveillance matters that would otherwise be performed by multiple SROs. The Plan promotes efficiency by reducing costs to firms that are members of more than one of the SRO participants. In addition, because the SRO participants coordinate their regulatory functions in accordance with the Plan, the Plan promotes, and will continue to promote, investor protection. Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to add MIAX Emerald as a Participant and to reflect the name changes of certain Participating Organizations. By declaring it effective today, the amended Plan can become effective and be implemented without undue delay.<sup>21</sup> In addition, the Commission notes that the prior version of this Plan was published for comment, and the Commission did not receive any comments thereon.<sup>22</sup> Finally, the Commission does not believe that the amendment to the Plan raises any new regulatory issues that the Commission has not previously considered.

#### VI. Conclusion

This order gives effect to the amended Plan submitted to the Commission that is contained in File No. 4-551.

*It is therefore ordered*, pursuant to Section 17(d) of the Act, that the Plan, as amended by and between NYSE American, BZX, C2, Cboe, EDGX, Gemini, ISE, Mercury, FINRA, Arca, Nasdaq, BOX, BX, PHLX, MIAX, MIAX PEARL, and MIAX Emerald filed with the Commission pursuant to Rule 17d-2 on January 8, 2019 is hereby approved and declared effective.

*It is further ordered* that those SRO participants that are not the DOSR as to a particular common member are relieved of those regulatory responsibilities allocated to the common member's DOSR under the amended Plan to the extent of such allocation.

<sup>21</sup> On December 20, 2018, the Commission approved MIAX Emerald's application for registration as a national securities exchange. See Securities Exchange Act Release No. 84891, 83 FR 67421 (December 28, 2018).

<sup>22</sup> See Securities Exchange Act Release No. 79930 (February 2, 2017), 82 FR 9807 (February 8, 2017) (File No. 4-551).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019-02595 Filed 2-15-19; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85114; File No. SR-CBOE-2019-006]

### Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Financial Incentive Program for Lead Market-Makers Appointed in MSCI EAFE Index (MXEA) Options and MSCI Emerging Markets Index (MXEF) Options

February 12, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 1, 2019, Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe Exchange, Inc. (the "Exchange" or "Cboe Options") proposes to amend its financial incentive program for Lead Market-Makers appointed in MSCI EAFE Index (MXEA) options and MSCI Emerging Markets Index (MXEF) options. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

<sup>23</sup> 17 CFR 200.30-3(a)(34).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.