

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85639; File No. SR-NYSEARCA-2019-15]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Investigation, Disciplinary, Sanction, and Other Procedural Rules Modeled on the Rules of the Exchange's Affiliate NYSE American LLC

April 12, 2019.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the "Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on April 2, 2019, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to adopt investigation, disciplinary, sanction, and other procedural rules modeled on the rules of the Exchange's affiliate NYSE American LLC ("NYSE American"), and to make certain conforming and technical changes. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

##### 1. Purpose

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

##### Background and General Description of Proposed Rule Change

In 2016, NYSE American adopted rules for conducting investigations and enforcement actions that are, with certain exceptions, substantially the same as the Rule 8000 Series and Rule 9000 Series of its affiliate the New York Stock Exchange LLC (the "NYSE") and the Financial Industry Regulatory Authority, Inc. ("FINRA").<sup>4</sup> In September 2016, NYSE American amended its Rule 8313 (Release of Disciplinary Complaints, Decisions and Other Information) modeled on the text of FINRA's version of the rule and harmonized its disciplinary rules and procedures relating to the imposition of temporary and permanent cease and desist orders with certain approved FINRA amendments, including adopting a new Rule 9291 based on FINRA's Rule 9291.<sup>5</sup>

To facilitate rule harmonization among self-regulatory organizations ("SROs"), the Exchange proposes the NYSE Arca Rule 10.8000 and 10.9000 Series based on the text of the NYSE American Rule 8000 and Rule 9000 Series, with certain changes, as described below.<sup>6</sup> The Exchange notes

<sup>4</sup> See Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR-NYSEMKT-2016-30) ("2016 Notice"). The NYSE American disciplinary rules were implemented on April 15, 2016. See NYSE American Information Memorandum 16-02 (March 14, 2016). The Commission approved the NYSE's adoption of FINRA's disciplinary rules in 2013. See Securities Exchange Act Release No. 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR-NYSE-2013-02). Most recently, the Commission approved NYSE National, Inc.'s ("NYSE National") adoption of disciplinary rules based on the NYSE American and FINRA Rule 8000 and Rule 9000 Series. See Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968 (May 23, 2018) (SR-NYSENat-2018-02). Certain grammatical or other non-substantive changes were made to the NYSE National disciplinary rules that are proposed to be incorporated into the Exchange's disciplinary rules.

<sup>5</sup> Securities Exchange Act Release Nos. 78959 (September 28, 2016), 81 FR 68481 (October 4, 2016) (SR-NYSEMKT-2016-71) (Notice).

<sup>6</sup> The Exchange operates its options and equities markets directly and maintains a single rule book following the merger of NYSE Arca Equities, Inc., with and into the Exchange. See Securities Exchange Act Release Nos. 81419 (August 17, 2017), 82 FR 40044 (August 23, 2017) (SR-NYSEArca-2017-40).

that all but nine permit holders<sup>7</sup> (six ETP Holders,<sup>8</sup> two OTP Holders and one that is both an ETP Holder and an OTP Firm) are already subject to similar rules by virtue of their membership in NYSE American, the NYSE, NYSE National, FINRA and/or the NASDAQ Stock Market LLC ("NASDAQ"), whose disciplinary rules are similar to FINRA's rules. The overwhelming majority of Exchange ETP Holders, OTP Holders, and OTP Firms are thus already subject to rules similar to the proposed rules described herein.

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

##### Description of NYSE Arca Rules 10 and 13

Rule 10 sets forth the Exchange's current rules governing disciplinary proceedings and other hearings and

<sup>7</sup> There are currently 190 equity and option permit holders on the Exchange.

<sup>8</sup> An "ETP Holder" means a sole proprietorship, partnership, corporation, limited liability company or other organization in good standing that is a registered broker-dealer and has been issued an Equity Trading Permit ("ETP") by the Exchange. See Rules 1.1(n) and (o). By way of comparison, FINRA uses the term "member" in its rules and NYSE uses the term "member organization" in its rules.

<sup>9</sup> "OTP" means an Options Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities. An OTP may be issued to a sole proprietor, partnership, corporation, limited liability company or other organization that is a registered broker-dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. See Rule 1.1(mm). "OTP Holder" means a natural person, in good standing, who has been issued an OTP, or has been named as a Nominee. An OTP Holder must be a registered broker or dealer pursuant to Section 15 of the Act, or a nominee or an associated person of a registered broker or dealer that has been approved by the Exchange to conduct business on the Exchange's Trading Facilities. An OTP Holder has status as a "member" of the NYSE Arca, Inc. as that term is defined in Section 3 of the Act. See Rule 1.1(nn). "OTP Firm" means a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange's Trading Facilities. An OTP Firm must be a registered broker-dealer pursuant to Section 15 of the Act. An OTP Firm also has status as a "member" of the Exchange, as that term is defined in Section 3 of the Act. See Rule 1.1(oo). By way of comparison, FINRA uses the term "member" in its rules and NYSE uses the term "member organization."

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

appeals in Rules 10.1 through 10.18. Rule 13 sets forth the Exchange's current procedures for the cancellation, suspension, and reinstatement of ETP Holder, OTP Firm, or OTP Holder status on the Exchange in Rules 13.1 through 13.9.

#### Rule 10.1

Rule 10.1 concerns the Exchange's disciplinary jurisdiction. Under Rule 10.1(a), an ETP Holder, OTP Holder, OTP Firm or associated person of an ETP Holder, OTP Holder or OTP Firm ("Associated Person")<sup>10</sup> who is alleged to have violated or aided and abetted a violation of any provision of the Act, the rules thereunder, any provision of the Exchange's Bylaws or rules or any commentary thereof, any resolution of the Board of Directors regulating the conduct of business of the Exchange, or any policy or procedure of the Exchange is subject to the disciplinary jurisdiction of the Exchange, and after notice and opportunity for a hearing may be appropriately disciplined by cancellation of trading privileges, expulsion, suspension, limitation of activities, functions, and operations, suspension or bar from association with an ETP Holder, OTP Holder or OTP Firm, fine, censure or any other fitting sanction. An ETP Holder, OTP Holder or OTP Firm may be charged with any violation committed by its employees or an Associated Person, as though such violation were its own.

Under Rule 10.1(b), any ETP Holder, OTP Holder, OTP Firm or Associated Person continues to be subject to the disciplinary jurisdiction of the Exchange following suspension or cancellation of an ETP or OTP or termination of or association with an ETP Holder, OTP Holder or OTP Firm with respect to matters that occurred prior to such termination if the Exchange gives written notice of the commencement of an inquiry into such matters to such former ETP Holder, OTP Holder, OTP Firm or Associated Person within one year of receipt by the Exchange of written notice of the termination of such person's status as an ETP Holder, OTP Holder, OTP Firm or Associated Person.

<sup>10</sup> "Associated Person" means a person who is a partner, officer, director, member of a limited liability company, trustee of a business trust, employee of an OTP Firm or ETP Holder or any person directly or indirectly controlling, controlled by or under common control with an OTP Firm or ETP Holder. See Rule 1.1(d). The term is sometimes capitalized in the Exchange's rules and will be capitalized herein. Since an OTP Holder can have associated persons, the Exchange proposes to add OTP Holder to the definition of Associated Person in Rule 1.1.

Under Rule 10.1(c), the Board of Directors may authorize any officer to enter into a regulatory services agreement on behalf of the Exchange with another SRO. Notwithstanding the fact that the Exchange may enter into one or more such agreements, the Exchange retains ultimate legal responsibility for, and control of, its SRO responsibilities, and any such regulatory services agreement must so provide.

#### Rule 10.2

Rule 10.2 concerns investigations and regulatory cooperation. Rule 10.2(a) provides that the Exchange's Chief Regulatory Officer ("CRO") and his or her delegates will function independently of the commercial interests of the Exchange and the commercial interests of the ETP Holders, OTP Holders and OTP Firms and have sole discretion to investigate possible violations within the Exchange's disciplinary jurisdiction. No member of the Board of Directors or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.

Under Rule 10.2(b), any person, any Exchange committee, or the Board of Directors may submit for investigation a complaint alleging possible violations. Each complaint must specify in reasonable detail the facts constituting the violation and any specific provision allegedly violated.

Under Rule 10.2(c), an ETP Holder, OTP Holder, OTP Firm or Associated Person is entitled to be represented by counsel during any investigation by the Exchange.

Under Rule 10.2(d), no ETP Holder, OTP Holder, OTP Firm, Associated Person, or other person or entity over whom the Exchange has jurisdiction may impede or delay a regulatory investigation with respect to possible violations within the disciplinary jurisdiction of the Exchange or refuse to furnish testimony, documentary materials, or other information requested by the Exchange during the course of its investigation. Failure to do so is considered obstructive of an inquiry or investigation and subject to formal disciplinary action.

Under Rule 10.2(e), an ETP Holder, OTP Holder, OTP Firm or Associated Person must submit trade data in an automated format (known as "electronic blue sheets") prescribed by the Exchange with respect to any request for information made by the Exchange. The Exchange may grant exceptions to these requirements. Failure to submit the data in the required format is considered

obstructive of an inquiry or investigation and subject to formal disciplinary action. If a transaction was a proprietary transaction effected or caused to be effected by the ETP Holder, OTP Holder or OTP Firm for any account in which such ETP Holder, OTP Holder, OTP Firm or Associated Person is directly or indirectly interested, such ETP Holder, OTP Holder or OTP Firm must submit or cause to be submitted the information set forth in Commentary .01(A) of Rule 10.2(e). If a transaction was effected or caused to be effected by the ETP Holder, OTP Holder or OTP Firm for any customer account, such ETP Holder, OTP Holder or OTP Firm must submit or cause to be submitted the information set forth in Commentary .01(B) of Rule 10.2(e).

Under Rule 10.2(f), no ETP Holder, OTP Holder, OTP Firm, Associated Person, or other person or entity over whom the Exchange has jurisdiction pursuant to Rule 10.1 may refuse to appear and testify before another exchange or SRO<sup>11</sup> in connection with a regulatory investigation, examination, or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination, or disciplinary proceeding if the Exchange requests such information or testimony in connection with any inquiry resulting from an agreement entered into by the Exchange or its SRO pursuant to Rule 3.6. The requirements of the rule apply regardless of whether the Exchange has initiated an investigation pursuant to Rule 10.2(a) or a disciplinary proceeding pursuant to Rule 10.4.

#### Rule 10.3

Rule 10.3 concerns ex parte communications.<sup>12</sup> Rule 10.3(a)

<sup>11</sup> Under Commentary .01 of Rule 10.2(f), the terms "exchange" and "SRO" include, but are not limited to, any member or affiliate member of the Intermarket Surveillance Group. Under Commentary .02 of the rule, any person required to furnish information or testimony pursuant to the rule is afforded the same rights and procedural protections as that person would have if the Exchange had initiated the request for information or testimony.

<sup>12</sup> Under Commentary .01 of Rule 10.3, "ex parte communication" means an oral or written communication made without notice to all parties, *i.e.*, Exchange Regulatory Staff and the Subjects of investigations or Respondents in disciplinary proceedings. The term "Exchange Regulatory Staff" used in Commentary .01 of Rule 10.3 is not defined in the current rules. A written communication is ex parte unless a copy has been previously or simultaneously delivered to all interested parties. An oral communication is ex parte unless it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present. Under Commentary .02 of Rule 10.3, a disciplinary proceeding is considered to be pending

describes prohibited communications. Under the rule, unless upon adequate notice and reasonable opportunity for all parties to participate:

- No person who is a subject of a pending investigation by the Exchange (“Subject”) or a Respondent in a pending disciplinary proceeding (“Respondent”),<sup>13</sup> or counsel for or a representative of the Subject or the Respondent, or any interested NYSE Arca staff,<sup>14</sup> with knowledge of a pending investigation or disciplinary proceeding, may make or knowingly cause to be made an ex parte communication relevant to the facts or allegations of the investigation or the disciplinary proceeding to (a) a member of the Board of Directors, (b) a person who advises the Board of Directors, (c) any member of the Exchange’s Regulatory Staff who is not participating in the resolution of the investigation or the disciplinary proceeding, or (d) a member of the Business Conduct Committee (“BCC”),<sup>15</sup> the Ethics and Business Conduct Committee (“EBCC”),<sup>16</sup> or the Committee for Review (“CFR”).<sup>17</sup>

- No person who is a member of the BCC, EBCC or Conduct Panel with knowledge of a pending investigation or disciplinary proceeding, or any interested Exchange staff,<sup>18</sup> may make

from the date that a Complaint is issued pursuant to Rule 10.4 until the proceeding, including any appeals, becomes final.

<sup>13</sup> See Rule 10.4(a).

<sup>14</sup> The term “interested NYSE Arca staff” is not defined in the current rules.

<sup>15</sup> Disciplinary proceedings against ETP Holders and Associated Persons are currently heard by a “Conduct Panel” appointed by the BCC. See Rules 3.2(b)(2)(B) and 10.5 (Hearing). Under the proposed rules, Hearing Panels or Extended Hearing Panels will be the primary adjudicators and function in the role of the Conduct Panel. As proposed, panelists for Hearing Panels or Extended Hearing Panels in equities matters will be drawn from the Hearing Board as described in proposed Rule 10.9232. See, e.g., proposed Rule 10.9232 (Criteria for Selection of Panelists, Replacement Panelists, and Floor-Based Panelists); see also proposed Rule 10.9120(v) (definition of “Panelist”) and 10.9231 (Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer).

<sup>16</sup> Disciplinary proceedings against OTP Holders, OTP Firms and Associated Persons are currently heard by a “Conduct Panel” appointed by the EBCC. See Rules 3.2(b)(1)(B) and 10.5. Under the proposed rules, Hearing Panels or Extended Hearing Panels will be the primary adjudicators and function in the role of the Conduct Panel. As proposed, panelists for Hearing Panels or Extended Hearing Panels in options matters will be drawn from the Hearing Board as described in proposed Rule 10.9232. See, e.g., proposed Rules 10.9120(v) (definition of “Panelist”) and 10.9231 (Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer).

<sup>17</sup> See Rule 3.3(a)(2).

<sup>18</sup> The term “interested Exchange staff” is not defined in the current rules.

or knowingly cause to be made an ex parte communication relevant to the facts or allegations of the investigation or the disciplinary proceeding to (a) a member of the Board of Directors, (b) a person who advises the Board of Directors, (c) any member of the Exchange’s Regulatory Staff, or (d) the Subject of a pending investigation by the Exchange or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent.

- No person who is a member of the Board of Directors, or any person who advises the Board of Directors, or any interested NYSE Arca staff, with knowledge of a pending investigation or disciplinary proceeding, may knowingly make or cause to be made an ex parte communication relevant to the facts or allegations of the investigation or the disciplinary proceeding to (a) any member of the Exchange’s Regulatory Staff, (b) the Subject of a pending investigation by the Exchange or a Respondent in a pending disciplinary proceeding, or counsel for or a representative of the Subject or the Respondent, or (c) a member of the BCC, EBCC or Conduct Panel.

Under Rule 10.3(b), any person who receives, makes, or knowingly causes to be made a communication prohibited by the rule must promptly submit to the Regulatory Staff for inclusion in the record of the investigation or disciplinary 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 any oral responses to such communications.

Rule 10.3(c) sets forth remedies. Under the rule, any ETP Holder, OTP Holder, OTP Firm or Associated Person who made or knowingly caused to be made an ex parte communication prohibited by Rule 10.3(a) is subject to disciplinary action. Furthermore, the BCC or EBCC, to the extent consistent with the interests of justice, may issue to the ETP Holder, OTP Holder, OTP Firm, Associated Person of an ETP Holder, OTP Firm, or interested NYSE Arca staff responsible for the communication, or who benefited from the communication, an order to show cause why the claim, defense or interest of the ETP Holder, OTP Holder, OTP Firm, Associated Person of an ETP Holder, OTP Firm, or interested NYSE Arca staff should not be adversely affected by reason of such ex parte communication, including but not limited to the entry of an adverse summary decision. All parties to a disciplinary proceeding and the

Regulatory Staff are provided with adequate notice and a reasonable opportunity to respond to any allegations or contentions contained in the prohibited communication, and any responses are included in the record of the investigation or disciplinary proceeding.

Rule 10.3(d) describes permitted communications. Nothing in the rule prohibits the members of a disciplinary committee or the Regulatory Staff from discussing a pending investigation or disciplinary proceeding at a meeting of the committee in connection with (1) the adjudication of the investigation pursuant to the Rule 10.12, the Minor Rule Plan, (2) the determination of whether to impose informal discipline, (3) the determination of whether to authorize a complaint or take no further action, or (4) the determination of whether to accept an offer of settlement.

Under Rule 10.3(e), no member of the BCC, EBCC or Conduct Panel may participate in a matter governed by Rule 10.3(c) as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In such a case, the person must recuse himself or herself or be disqualified as follows: The CRO has the authority to direct the disqualification of the interested member of the BCC, EBCC or Conduct Panel, and the Chief Executive Officer (“CEO”) has the authority to direct the disqualification of the CRO.

#### Rule 10.4

Rule 10.4 governs complaints. Under Rule 10.4(a), the CRO and his or her delegate(s) have the authority to determine whether there is probable cause<sup>19</sup> for finding that a violation within the disciplinary jurisdiction of the Exchange has occurred and if further proceedings are warranted. If the Exchange Regulatory Staff (the “Complainant”) determines that further proceedings are warranted, then Regulatory Staff initiates a formal disciplinary action by preparing a statement of charges (“Complaint”) against a Respondent specifying the acts in which the Respondent is alleged to have engaged in [sic], or which the Respondent is alleged to have omitted, and alleging the specific provisions of the Bylaws, rules, policies or procedures of the Exchange, or the rules, regulations, and procedures promulgated under the Act, of which

<sup>19</sup> Under Commentary .01 of Rule 10.4, the term “probable cause” means that facts and circumstances establish a reasonable likelihood that the person committed the violation in issue.

such acts or omissions are alleged to be in violation.

Under Rule 10.4(b), at any time prior to service of the written answer to the Complaint, the Complaint may be amended to allege new matters of fact or law. After service of the written answer, the BCC or EBCC may allow amendment of the Complaint upon written motion by the Regulatory Staff and a showing of good cause. The Respondent has 15 business days<sup>20</sup> after service of the charges to file a written answer. The answer must specifically admit or deny each allegation contained in the charges, and the Respondent is deemed to have admitted any allegation not specifically denied. The answer may also contain any defense that the Respondent wishes to submit and may be accompanied by documents in support of the answer or defense. If the Respondent fails to file an answer, the charges are considered to be admitted. The period to file any answer may be extended for such further periods as may be granted by the Regulatory Staff if such request for extension of the filing period is received by the Regulatory Staff within five business days before the date on which the answer is due.

Rule 10.4(c) provides for summary determinations. The rule provides that notwithstanding the provisions of Rule 10.5, the BCC or EBCC may make a determination without a hearing and may impose a penalty as to such charges that the Respondent has admitted or has failed to answer or that otherwise do not appear to be in dispute. Notice of such summary determination, specifying the violations and penalty, must be served upon the Respondent.

#### Rule 10.5

Rule 10.5 governs hearings. Under Rule 10.5(a), upon the Respondent's filing an answer, the Respondent may request a hearing. The BCC or EBCC appoints three or more members to hear the matter ("Conduct Panel"). Parties are given at least 15 days' notice of the time and place of the hearing and a statement of the matters to be considered therein.

Under Rule 10.5(b), prior to the hearing, the Parties are notified of the composition of the Conduct Panel. Any objection to the composition of the Conduct Panel must be submitted to the Hearing Administrator within five business days of receipt of the notification regarding the composition of the Conduct Panel. Under Rule 10.5(c), at least five business days prior to the hearing, the parties must submit

to the Hearing Administrator a list of witnesses and any documentary evidence or other materials to be presented at the hearing. The Hearing Administrator must immediately furnish such list of witnesses, documentary evidence, or other materials to the other parties.

Under Rule 10.5(d), at the hearing, both the Complainant and the Respondent are entitled to be heard in person and to present any relevant matter. Any witness, testimony, or evidence offered by the Complainant or the Respondent is subject to cross-examination by the other party. The Conduct Panel determines all questions concerning the admissibility of evidence and otherwise regulates the conduct of the hearing. Formal rules of evidence do not apply. The charges are presented by the Exchange. The Exchange, the Respondent, and any other party may present evidence and produce witnesses, who must testify under oath and are subject to questioning by the Conduct Panel and other parties. The Conduct Panel, upon its own motion or the motion of the Complainant or Respondent, may request the production of documentary materials and witnesses. No ETP Holder, OTP Holder, OTP Firm or Associated Person may refuse to furnish relevant testimony, documentary materials, or other information requested by the Conduct Panel during the course of the hearing. The Respondent and intervening parties are entitled to be represented by counsel, who may participate fully in the hearing. A transcript of the hearing must be made and becomes part of the record.

Under Rule 10.5(e), any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Conduct Panel that the party has an interest in the subject of the hearing and that the disposition of the matter may, as a practical matter, impair or impede the party's ability to protect that interest. The Conduct Panel also may, in its discretion, permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in common. Any person wishing to intervene as a party to a hearing must file with the Conduct Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought. The Conduct Panel, in exercising its discretion concerning intervention, must take into consideration whether the intervention will unduly delay or prejudice the

adjudication of the rights of the original parties.

#### Rule 10.6

Rule 10.6 governs offers of settlement. Under Rule 10.6(a), a Respondent who is notified that a matter has been referred to Enforcement against him or her may propose in writing to Enforcement an offer of settlement at any time. If a Respondent proposes an offer of settlement after a hearing on the merits has begun, the making of an offer of settlement does not stay the proceeding, unless otherwise decided by the Conduct Panel. Under Rule 10.6(b), a Respondent who makes an offer of settlement must do so in conformity with the rule and must not make such an offer frivolously or propose a sanction inconsistent with the seriousness of the violations to be found. Rule 10.6(c) sets forth contents and signature requirements for an offer of settlement. Under the rule, an offer of settlement must be in writing and signed by the person making the offer, and, if the person is represented by counsel or a representative, signed also by the counsel or representative. The offer of settlement must contain reasonable detail about the facts, violations, and sanctions; a statement consenting to the findings of fact and violations; a proposed sanction to be imposed that is consistent with the Exchange's then current Sanctioning Guidelines or, if inconsistent with them, a detailed statement supporting the proposed sanction(s); and the effective date of any sanctions imposed.

Under Rule 10.6(d), if a Respondent submits an offer of settlement, by the submission thereof, such Respondent expressly waives any right (1) to appeal or otherwise challenge the acceptance or the rejection of the offer or the related decision before a Conduct Panel, the BCC or EBCC, any other Board committee, the Board, the Securities and Exchange Commission (the "Commission"), the courts, or any other relevant authority; (2) to claim bias or prejudice of the CRO, BCC, EBCC, Chairman of the BCC or EBCC, the Conduct Panel, the Chairman of the Conduct Panel, a panelist of the Conduct Panel, the General Counsel, the Board, or any member of the Board, in connection with such person's or body's participation in discussions regarding the terms and conditions of the offer of settlement and the decision, or other consideration of the offer of settlement and decision, including acceptance, or rejection of such offer of settlement and decision; and (3) to claim that a person or body violated the ex parte prohibitions of NYSE Arca Rule 10.3, in

<sup>20</sup> All references to "days" herein mean calendar days unless business days are specified, as above.

connection with such person’s or body’s participation in discussions regarding the terms and conditions of the offer of settlement and the decision, or other consideration of the offer of settlement and decision, including acceptance or

rejection of such offer of settlement and decision.

Rule 10.6(e) addresses uncontested offers of settlement, and Rule 10.6(f) addresses contested offers of settlement. If a Respondent makes an offer of settlement and Enforcement does not

oppose it, the offer of settlement is uncontested; conversely, if Enforcement opposes it, the offer of settlement is contested. Enforcement must transmit the offer and a proposed decision with its recommendation to the following adjudicators at the following stages:

	Before complaint issued	After complaint issued, before hearing commences	After hearing commences
Uncontested Offer .....	General Counsel .....	General Counsel .....	Conduct Panel.
Contested Offer .....	n/a .....	BCC or EBCC <sup>21</sup> .....	Conduct Panel.

The proposed decision accepting an offer of settlement must recite the facts and findings to which Respondent has stipulated, impose sanctions consistent with those to which Respondent has consented, and recite the rules, regulations, or statutory provisions relating to such sanctions. The adjudicator indicated above must accept or reject the offer of settlement and proposed decision. If the offer and decision are accepted, they become final. The decision is issued, and the Respondent is notified.

Rule 10.6(g) governs final disciplinary action. Under Rule 10.6(g)(1), a proceeding pursuant to Rule 10.6(e)(2) concludes as of the date a decision is issued. The decision constitutes final disciplinary action of the Exchange, and the sanction(s) takes effect as set forth in the decision. Under Rule 10.6(g)(2), a proceeding pursuant to Rule 10.6(e)(3), (e)(4), (f)(3) or (f)(4) concludes as of the date the decision is issued by the General Counsel of the Exchange. The decision shall constitute final disciplinary action of the Exchange. The sanction(s) shall take effect as set forth in the decision.

Rule 10.6(h) addresses rejection of an offer of settlement. Under the rule, if an uncontested offer of settlement or a decision is rejected by the General Counsel of the Exchange or the Conduct Panel, the Respondent is notified in writing and the offer of settlement and proposed decision are deemed withdrawn. If a contested offer of settlement or a decision is rejected by the BCC, EBCC or Conduct Panel, the Respondent is notified in writing and the offer of settlement and proposed decision are deemed withdrawn. A rejected offer of settlement or a rejected proposed decision is not a part of the record in any proceeding against the Respondent making the offer. If an offer of settlement or a decision is rejected by

the General Counsel of the Exchange, the BCC, EBCC or the Conduct Panel, the Respondent has no right to challenge or contest the rejection of the offer of settlement or the decision before a Conduct Panel, the BCC or EBCC, any Board Committee, the Board, the Commission, the courts, or any other relevant authority.

Rule 10.6(i) addresses a settlement offer in a disciplinary proceeding with multiple Respondents. In such proceedings, settlement offers may be accepted or rejected as to any one or all of the Respondents submitting offers. The proceedings are terminated as to those Respondents whose offers of settlement are accepted, but such Respondents may be required to participate in any hearing conducted as to those Respondents that did not submit offers of settlement or whose offers of settlement were rejected.

Under Rule 10.6(j), if an offer of settlement is rejected by the General Counsel of the Exchange, the BCC or EBCC or the Conduct Panel, the Respondent may not be prejudiced by the offer, which may not be introduced into evidence in connection with the determination of the issues involved in the pending complaint or in any other proceeding.

Lastly, Rule 10.6(k) provides for review of final disciplinary actions. Under the rule, the BCC or EBCC and the CFR review quarterly the final disciplinary actions pursuant to Rule 10.6(g) in order to provide Enforcement and the General Counsel of the Exchange with guidance related to future settlement practices and sanction amounts. The CFR and the Board do not have the ability to reject final disciplinary actions pursuant to Rule 10.6.

**Rule 10.7**

Rule 10.7 addresses decisions. Under the rule, within 30 days after the date

of a hearing conducted pursuant to Rule 10.5, the Conduct Panel must prepare a written decision determining whether the Respondent has committed a violation and imposing the penalty, if any, therefor. The decision must include a statement of findings and conclusions, with the reasons therefor upon all material issues presented on the record. Where a penalty is imposed, the decision must include a statement specifying the acts or practices in which the Respondent engaged or omitted and setting forth the specific provisions of the Bylaws, Rules, policies or procedures of the Exchange, or the rules, regulations and procedures promulgated under the Act, which the act or omission to act are deemed to violate. The Respondent must be promptly sent a copy of the decision. The determination of the Conduct Panel and any penalty imposed become final 15 days after notifying the Respondent, except if a request for review of such determination or penalty, or both, is filed as hereinafter described, the penalty is stayed pending outcome of that review.

**Rule 10.8**

Rule 10.8 provides for review of disciplinary decisions. Under Rule 10.8(a), either the Complainant or the Respondent may request a review of a decision issued under Rule 10.7 or a summary determination issued under Rule 10.4(c) by petitioning the CFR for such review within 15 days after service of notice of a decision made pursuant to Rule 10.7 or Rule 10.4(c). Such petition must be in writing and must specify the findings and conclusions to which exceptions are taken together with reasons for such exceptions. Any objections to a decision not specified by written exception are considered to have been abandoned. The Respondent must submit a filing fee of \$500 with its

<sup>21</sup> The Exchange proposes to correct an oversight in current Rule 10.6(f)(2) and (3) to include omitted references to the BCC.

request for review. The CFR may waive such filing fee upon a showing of hardship or other compelling reason. If the decision is overruled in whole, the filing fee is refunded. If the decision is overruled in part as a result of the Respondent's request for review, refund of the filing fee, or any portion thereof, is at the discretion of the CFR.

Under Rule 10.8(b), the CFR may appoint a CFR Appeals Panel ("Appeals Panel") to conduct reviews of disciplinary proceedings or may decide to conduct review proceedings on its own. The composition of the Appeals Panel is determined by the CFR in accordance with Rule 3.3. The body conducting the review, either the CFR itself or the Appeals Panel, is referred to in the rule as "the Review Board." Unless the Review Board decides to open the record for the introduction of new evidence or to hear argument, the review is based solely upon the record and the written exceptions filed by the parties. The standard of review is de novo. Based upon such review, the Review Board may affirm, reverse, or modify, in whole or in part, the decision of the Conduct Panel. Such modification may include an increase or decrease of the sanction. The decision of the Review Board is in writing and becomes final 15 days after notifying the parties, except if a request for review of such determination is filed pursuant to Rule 10.8(c) or Rule 10.8(d) as described below, the penalty is stayed pending the outcome of that review.

Each Review Board member is required to disclose to the CFR any circumstances that might preclude such Review Board member from rendering an objective and impartial determination. Prior to the commencement of the first hearing session, the CFR may remove a Review Board member who discloses such information. The CFR must also inform the parties of any information disclosed pursuant to this rule if the Review Board member who disclosed the information is not removed. If any Review Board member, after the commencement of the review, but prior to the rendition of the decision, becomes disqualified, resigns, dies, refuses or is unable to perform or discharge his or her duties, the CFR, upon such proof as it deems satisfactory, must either (a) appoint a new member to the Review Board to replace such member, or (b) direct that the review proceed without the substitution of a new member.

Under Rule 10.8(c), notwithstanding anything else contained in the rule, the Board may, on its own initiative, order review of a decision made pursuant to

Rule 10.5 or 10.7 within 30 days after notice of the decision has been served on the Respondent. If the Board does not order review of a decision made pursuant to Rule 10.5 or 10.7 within the period specified, the decision shall become final. Such review shall be conducted in accordance with the procedure set forth in Rule 10.8(b). Either the Complainant or the Respondent may request a review of the decision of the Review Board by the Board within 15 days after service of notice of a decision made pursuant to Rule 10.8(b). Such petition must be in writing and shall specify the findings and conclusions to which exceptions are taken together with reasons for such exceptions. Any objections to a decision not specified by written exception will be considered to have been abandoned. Respondent shall submit a filing fee of \$500 with its request for review, which filing fee may be waived by the Board upon a showing of hardship or other compelling reason. If the decision is overruled in whole, the filing fee will be refunded. If the decision is overruled in part as a result of Respondent's request for review, refund of the filing fee, or any portion thereof, is in the discretion of the Board.

Under Rule 10.8(d), the Board may, on its own initiative, order review of a decision made by the Review Board within 30 days after notice of the decision is served on the Respondent. If such review is held, it shall be conducted in accordance with the procedure set forth in Rule 10.8(b) as if the Board had conducted the initial review, except that the record shall include the decision of the Review Board and any exceptions filed by the parties to such decision. If the Board does not order review of a decision of the Review Board within the period specified in this paragraph, the decision of the Review Board shall become final.

Rule 10.8(e) provides that nothing in Rule 10.8 affects any right that a Respondent may have to seek review of an Exchange decision by the Commission.

#### Rule 10.9

Rule 10.9 addresses judgments and penalties. Under Rule 10.9(a), an ETP Holder, OTP Holder, OTP Firm, or Associated Person is subject to appropriate discipline by the Exchange for violations under the rule including cancellation or suspension of trading privileges, expulsion, suspension, limitation of activities, functions and operations, suspension or bar from association with an ETP Holder, OTP Holder or OTP Firm, fine, censure, or any other fitting sanction. Under Rule

10.9(b), penalties imposed under the rule are not effective until the Exchange review process is complete or the decision otherwise becomes final. Rule 10.9(c) provides that notwithstanding anything contained in Rule 10.9 to the contrary, the Exchange may impose such conditions and/or restrictions on the activities of the Respondent as the Exchange considers reasonably necessary for the protection of investors and of the Exchange.

#### Rule 10.10

Rule 10.10 provides that any charges, notices or other documents may be served upon the Respondent either personally or by leaving the same at the Respondent's place of business or by deposit in the United States Post Office, postage prepaid via registered or certified mail addressed to the Respondent at its address as it appears on the books and records of the Exchange.

#### Rule 10.11

Rule 10.11 sets forth procedures for a person aggrieved by Exchange action taken pursuant to the provisions of the Bylaws and Rules of the Exchange for which action an ETP Holder, OTP Holder, OTP Firm, or Associated Person has been sanctioned via floor citation or pursuant to Rule 10.12 (the Minor Rule Plan), and applies for an opportunity to make an oral presentation or to have the matter reviewed on the papers alone. The rule further provides that this Section does not apply to disciplinary action taken pursuant to Rule 10.4, non-disciplinary action taken pursuant to Rule 10.14, or to an action in arbitration.

Under Rule 10.11(b), any ETP Holder, OTP Holder, OTP Firm or Associated Person aggrieved by any action of the Exchange within the scope of the rule and who desires the opportunity to make an oral presentation with respect to such action or to have such action reviewed on the papers alone must file a written application with Enforcement within five business days after notification that such action has been taken. The notification submitted by the Exchange must state the specific grounds for the action taken by the Exchange and must notify the party of the party's right to make an oral presentation or to have the matter reviewed on the papers alone. The application must contain (1) an identification of the Exchange action over which the review is being requested, (2) the reason(s) why the applicant disagrees with such action, and (3) the relief sought. In addition, the application must indicate whether the applicant desires to make an oral

presentation, in which event it must be considered a “request for a hearing,” or to proceed only upon the existing and/or any additional documents or materials, in which event it must be considered a “request for a review on the papers.” The terms “hearing” and “review on the papers” are referred to jointly as the “Proceeding(s)” under the rule.

Under Rule 10.11(c), any person associated with the applicant whose interest might be affected by the Proceeding is entitled to participate as a party. Further, in the discretion either of the Conduct Panel or the Board of Directors, any other person whose interests might be affected by the Proceeding may be permitted to intervene in the Proceeding and may be granted such rights of a party as either the Conduct Panel or the Board of Directors deems appropriate. Any determination of the Conduct Panel as to participation in the Proceeding is subject to review by the Board of Directors at the close of the Proceeding or, in the Board of Directors’ discretion, during the course of the Proceeding.

Rule 10.11(d) sets forth the procedure following application for hearing and/or review on the papers. Under Rule 10.11(d), applications for a hearing and/or review on the papers must be referred to the BCC or EBCC. The BCC or EBCC must appoint a Conduct Panel pursuant to Rule 10.5(a). The Conduct Panel must be furnished with all materials considered by the Regulatory Staff in connection with its initial action. Parties to the Proceeding must be notified of the composition of the Conduct Panel. Any objection to the composition of the Conduct Panel must be submitted within five business days of receipt of the notification regarding the composition.

Within 15 business days after receipt of the notification regarding the composition of the Conduct Panel, the applicant, if the application is for a review on the papers, must submit to the Conduct Panel any additional documents, statements, arguments or other materials. Regulatory Staff then has 15 business days to submit to the Conduct Panel any additional documents, statements, arguments or other materials in response to the applicant’s submission. If the application is for a hearing, the parties may, at this time, request an opportunity to call witnesses to the hearing; the Conduct Panel, in its discretion, may or may not grant this request. If a hearing is held, each party must furnish to the Conduct Panel and other parties, not less than five business days before the scheduled hearing date,

copies of all documentary evidence that such party intends to present at the hearing. Parties must be given at least 15 business days’ notice of the time and place of the hearing.

Whether the Proceeding is a hearing or a review on the papers alone, the Conduct Panel determines all questions concerning the admissibility of evidence and otherwise regulates the conduct of the Proceeding. Formal rules of evidence do not apply. If a hearing is held, each of the parties is permitted to make an opening statement, present witnesses, present documentary evidence, cross-examine witnesses, and present closing arguments; a transcript is made and becomes part of the record. The Conduct Panel may question all parties and witnesses to the Proceeding. The Conduct Panel may also request the production of documentary evidence and witnesses. No ETP Holder, OTP Holder, OTP Firm, or associated person of an ETP Holder or OTP Firm, or employee of the Exchange, shall refuse to furnish relevant testimony, documentary materials or other information requested by the Conduct Panel during the course of the Proceeding. All parties are entitled to be represented by counsel who may participate fully in the Proceeding. In the event of a hearing, a transcript of the hearing shall be made and shall become part of the record.

Within 30 days after the date of the hearing or the review on the papers, the Conduct Panel must render its decision. The standard of review is de novo. The Conduct Panel may confirm, reverse, or modify, in whole or in part, the decision of the Exchange Regulatory Staff, and may make any findings or conclusions that in its judgment are proper. The decision of the Conduct Panel is in writing, contains a concise statement setting forth the specific findings and conclusions of the Conduct Panel and the reasons in support thereof, and is sent to the parties to the Proceeding.

If the Conduct Panel determines after a hearing or review on the papers that an ETP Holder, OTP Holder, OTP Firm or Associated Person has violated one or more rules of the Exchange as alleged, the Conduct Panel (i) may impose one or more of the disciplinary sanctions authorized by the Exchange’s Bylaws and rules, and (ii) must impose a \$250 forum fee against the person charged if the determination was reached based on a review of the papers, or a \$500 forum fee if a hearing was conducted. However, if the sole disciplinary sanction imposed by the Conduct Panel is a fine less than the total fine initially imposed by the Exchange Regulatory Staff, then the Conduct Panel may waive

the forum fee. The decision of the Conduct Panel is subject to review by the Board of Directors either on the Board’s own motion within 30 days after issuance (or upon presentation to the Board, whichever is later), or upon written petition of any party to the Proceeding filed within 15 business days after issuance.

Rule 10.11(e) sets forth the procedure following petition for review by the Board. Under the rule, petitions for appellate review of the Proceeding are referred to the Board, which is furnished with all material considered by the Exchange Regulatory Staff and the Conduct Panel. Parties may submit a written statement to the Board and may request an opportunity to make an oral presentation. The Board, in its discretion, may grant or deny the request for oral presentation. In the absence of a request for such a presentation, or at any time, the Board may require an oral presentation. Whether appellate review is conducted by hearing or by review on the papers alone, the matter shall be referred to the CFR. A transcript shall be made of any oral presentation and shall become part of the record.

Review by the CFR is made upon the material furnished it by the Exchange Regulatory Staff or Conduct Panel as well as by the parties after such further proceedings as the CFR shall order. The standard of review is de novo. The CFR may appoint a CFR Appeals Panel to conduct reviews, or may decide to conduct review proceedings on its own. The CFR or CFR Appeals Panel may confirm, reverse, or modify, in whole or in part, the decision of the Regulatory Staff or Conduct Panel and may make any findings or conclusions which in its judgment are proper. The decision of the CFR or CFR Appeals Panel shall be in writing, contain a concise statement of the findings and conclusions of the CFR or CFR Appeals Panel and the reasons therefor, and is sent to the parties to the Proceeding.

Rule 10.11(f) provides that nothing contained in the rule affects any right that a Respondent may have to seek review of the Exchange’s decision by the Commission.

#### Rule 10.12

As noted, Rule 10.12 sets forth the Exchange’s Minor Rule Plan. Under Rule 10.12(a), in lieu of initiating a formal disciplinary action or proceeding, the Exchange may impose a fine not to exceed \$5,000<sup>22</sup> on any ETP

<sup>22</sup> The proposed rule would retain the Exchange’s maximum fine for minor rule violations which, under current Rule 10.12, is \$5,000.

Holder, OTP Holder, OTP Firm or Associated Person for any violation of a rule of the Exchange that has been determined to be minor in nature.<sup>23</sup>

Under Rule 10.12(b), whenever it appears that an ETP Holder, OTP Holder, OTP Firm or Associated Person has violated a rule under the Minor Rule Plan, the Exchange must serve on such person or organization a written statement setting forth (i) the rule(s) alleged to have been violated, (ii) the act or omission constituting each such violation, and (iii) notice that such person or organization may submit a written statement to a designated committee for its consideration. Under Rule 10.12(c), the BCC or EBCC and Exchange Regulatory Staff have the authority to impose a fine pursuant to the rule. Pursuant to Rule 10.12(d), if a person or organization fined pursuant to the rule pays the fine, such payment is deemed a waiver of any right to a disciplinary proceeding under Rule 10.11 and of any right to a review of the matter by the BCC or EBCC, CFR, or Board of Directors.

Under Rule 10.12(e), any person or organization fined pursuant to the rule may contest such fine by filing with Enforcement a written application submitted not more than five business days after receipt of written notification that a fine has been imposed. If a determination is contested, the matter becomes a formal disciplinary action, and any penalty imposed by a hearing panel must be publicly reported after such decision has become “final” pursuant to Rule 10.7. Any person or organization found in violation of a minor rule is not required to report such violation on SEC Form BD or Form U-4 if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Any fine imposed in excess of \$2,500 is subject to current rather than quarterly reporting to the Commission pursuant to Rule 19d-1 under the Act. Rule 10.12(f) provides that nothing in the rule requires the Exchange to impose a fine for a violation of any rule under this Minor Rule Plan. If the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed under Rule 10.4 rather than under Rule 10.12.

<sup>23</sup> As set forth in Rule 10.12(f), the Exchange is not required to impose a fine for a violation under its Minor Rule Plan. The Exchange always can bring formal disciplinary action against a member or associated person that has violated its rules.

Under Rule 10.12(g), subject to certain procedural requirements, a Trading Official or any Regulatory Staff designated by the Exchange may issue a Floor Citation to any ETP Holder, OTP Holder, OTP Firm, or Associated Person, when it appears to such Official(s) that a Minor Rule Plan violation specified in Rule 10.12(h) or (i) has occurred. Except as provided in Rule 10.13 (the summary sanction procedure for options pursuant to which a Trading Official may summarily sanction any OTP Holder, OTP Firm, or Associated Person), the circumstances underlying the issuance of each floor citation is reviewed by the BCC or EBCC for a determination of whether the evidence is sufficient to find a violation of Exchange rules.

Rule 10.12(h) sets forth a list of options floor decorum and minor trading rule violations. Rule 10.12(i) sets forth a list of minor trading rule violations. Rule 10.12(j) sets forth a list of record-keeping and other minor rule violations. Rule 10.12(k) sets forth the recommended fine schedule for the options minor rule plan. Rule 10.12(l) sets forth the recommended fine schedule for the equities minor rule plan. Under both Rules 10.12(k) and (l), the fines for violations increase if there have been prior offenses.

#### Rule 10.13

Rule 10.13 sets forth a summary sanction procedure for options pursuant to which a Trading Official may summarily sanction any OTP Holder, OTP Firm, or Associated Person. Under subsection (c), if a Trading Official does not become aware of a violation of Rule 6.69-0 (failure to time stamp an order ticket) until Exchange Regulatory Staff discovers the violation and notifies the Trading Official, a Trading Official may impose a summary sanction at the time they [sic] are notified and will be responsible for issuing a floor citation. Under Rule 10.13(d), any OTP Holder, OTP Firm or Associated Person sanctioned pursuant to this procedure may appeal pursuant to Rule 10.11.

#### Rule 10.14

Rule 10.14 provides procedures for persons “aggrieved” by any of the Exchange actions specified therein to apply for an opportunity to be heard and have the action reviewed. By its terms, Rule 10.14 does not apply to reviews of disciplinary actions for which review is already provided under Rule 10, actions in arbitration, and reviews of delisting decisions for which review is provided under Rule 5-E. Accordingly, the Exchange has determined to retain Rule 10.14 and

amend subsections (a)(2)–(4) as described below to reflect those actions that will be governed by Rule 10.14 prior to the effective date of the new disciplinary rules but that will be governed by the proposed Rule 10.8000 Series and 10.9000 Series following the effective date of the new rules.

#### Rule 10.15

Rule 10.15 sets forth miscellaneous provisions. Under Rule 10.15(a), any charges, notices or other documents may be served upon the Respondent either personally or by leaving the same at Respondent’s place of business or by deposit in the United States Post Office, postage prepaid via registered or certified mail addressed to the Respondent at his address as it appears on the books and records of the Exchange. Under Rule 10.15(b), unless otherwise stated, any time limits imposed under Rule 10.0 for the submission of answers, petitions or other materials may be extended only by the prior written approval of the Exchange. Under Rule 10.15(c), the procedures set forth in Rule 10.4 and 10.8 do not apply in cases where Floor Citations are issued for violations of Rules, policies or procedures adopted by the Exchange and the fine or fines imposed are \$500.00 or less. Under Rule 10.15(d), the Board may designate any Standing or Special Committee of the Exchange as the Conduct Panel in any given proceeding or type of proceeding.

#### Rule 10.16

Rule 10.16 sets forth the options Sanctioning Guidelines.<sup>24</sup>

#### Rule 10.17

Rule 10.17 governs the release of disciplinary complaints, decisions and other information. The rule is modeled

<sup>24</sup> See Securities Exchange Act Release Nos. 45416 (February 7, 2002), 67 FR 6777 (February 13, 2002); 45567 (March 15, 2002), 67 FR 13392 (March 22, 2002) (SR-PCX-2001-23). The Exchange filed that proposed rule change pursuant to the provisions of Section IV.B.i of the Commission’s September 11, 2000 Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Act, which required the Exchange to adopt rules establishing, or modifying existing, sanctioning guidelines such that they are reasonably designed to effectively enforce compliance with options order handling rules. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282. The Sanctions Guidelines do not apply to equities-related violations. As such, the CRO, Hearing Officer, Hearing Panel or Extended Hearing Panel, as applicable, would consider relevant Exchange precedent or such other precedent as it deemed appropriate in determining sanctions that should be imposed in connection with a decision pursuant to proposed Rule 10.9268 or 10.9269, or in connection with an AWC, fine or settlement pursuant to proposed Rule 10.9216 or 10.9270.

on FINRA, NYSE and NYSE American Rule 8313, and is substantially the same as proposed Rule 10.8313.

#### Rule 10.18

Rule 10.18 governs expedited client suspension proceedings and sets forth procedures for issuing suspension orders, immediately prohibiting a Respondent from conducting continued disruptive quoting and trading activity on the Exchange in violation of Rule 11.21 (Disruptive Quoting and Trading Activity Prohibited). The rule is substantially the same as proposed Rule 10.9560.

#### Rule 13

Rule 13 addresses cancellations, suspensions, and reinstatements. Rule 13.1 concerns certain required notices. Under this rule, an ETP Holder, OTP Holder or OTP Firm that is expelled or suspended from any SRO, encounters financial difficulty or operating inadequacies, fails to perform contracts, or becomes insolvent must give prompt written notice to the Exchange. An ETP Holder, OTP Holder or OTP Firm also must give prompt written notice to the Exchange with respect to the expulsion or suspension of any Associated Person by any SRO.

Rule 13.2 sets forth the procedures for certain suspensions, cancellations, bars, limitations and prohibitions on access to the Exchange's services. Under Rule 13.2(a)(1), in accordance with Section 6(d)(3) of the Act, the Board of Directors may summarily:

- Suspend the trading privileges of an ETP Holder, OTP Holder, OTP Firm or Associated Person who has been and is expelled or suspended from any SRO or barred or suspended from being associated with a member of any SRO;
- suspend the trading privileges of an ETP Holder, OTP Holder, OTP Firm or Associated Person who is in such financial or operating difficulty that the Exchange determines and so notifies the appropriate regulatory agency that such suspension is necessary for the protection of the investors, creditors, ETP Holders, OTP Firms, OTP Holders or the Exchange;
- suspend the trading privileges of an ETP Holder or Associated Person who is found in violation of any of the prohibited acts as specified in Rule 11.2(a)–(f) that are violations of the rules of the Exchange; or
- limit or prohibit any person with respect to access to services offered by the Exchange if one of the first two bullets are [sic] applicable to such person or, in the case of a person who is not an ETP Holder, OTP Holder or OTP Firm, if the Exchange determines

that such person does not meet the qualification requirements or prerequisites for such access with safety to investors, creditors, ETP Holders, OTP Firms, OTP Holders, or the Exchange.

Under Rule 13.2(a)(2), the Exchange also may take the following non-summary actions, after written notice, after the passage of any grace period and/or applicable cure period, and after opportunity for hearing:

- Cancel ETP trading privileges of an ETP Holder, OTP Holder or OTP Firm that becomes ineligible for trading privileges or that continues to be associated with an ineligible person, or suspend or bar a person from continuing to be associated with an ETP Holder, OTP Holder or OTP Firm because such person is or becomes ineligible for association under Rule 2.22;
- suspend or cancel trading privileges of an ETP Holder, OTP Holder or OTP Firm for failure to pay any fees, charges, assessments, or fines to the Exchange under Rule 3.7 or 3.8,<sup>25</sup> or failure to comply with an arbitration award or settlement agreement related to an arbitration or mediation under Rule 12;
- cancel trading privileges of an ETP Holder, OTP Holder or OTP Firm for failure to file or submit on request any report, document, or other information required to be filed with or requested by the Exchange under Rule 10.2(d);
- limit or prohibit any ETP Holder, OTP Holder, OTP Firm or Associated Person of an ETP Holder, OTP Firm or other person with respect to access to services offered by the Exchange, if the Exchange determines that such person does not meet the qualification requirements or prerequisites for such access or such person cannot be permitted to continue to have access with safety to investors, creditors, ETP Holders, OTP Holders, OTP Firms, or the Exchange; or
- suspend all trading rights and privileges of an ETP Holder, OTP Holder or OTP Firm for failure to comply with Rule 3.10 (which concerns Exchange affiliation rules).<sup>26</sup>

<sup>25</sup> Rule 13.2(a)(2)(B) currently refers to "Rule 3.8–E or 3.7–O." The Exchange proposes to replace these references with the references to Rule 3.7 (Dues, Fees and Charges) and Rule 3.8 (Liability for Payment).

<sup>26</sup> In such case, the Exchange must: (1) Provide notice to the ETP Holder, OTP Holder or OTP Firm within five business days of learning of the events contemplated by the rule; (2) allow the ETP Holder, OTP Holder or OTP Firm 15 days to cure any such failure; (3) if the ETP Holder, OTP Holder or OTP Firm does not cure such failure to comply within such 15-day cure period, schedule a hearing to occur within 30 days following the expiration of such 15-day period; and (4) render its decision as to the suspension of all trading rights and privileges

Under Rule 13.2(b), any person aggrieved by any summary action taken under Rule 13.2(a)(1) must be promptly notified of the suspension and the reason therefor and afforded an opportunity for a hearing by the Exchange. The Exchange must provide the suspended or affected person or organization with a written statement of the specific grounds for the suspension or disciplinary proceeding and an opportunity to be heard. A record of any such hearing must be maintained. A determination by the Exchange to continue the suspension or impose a disciplinary sanction must be supported by a statement setting forth the specific grounds for such suspension or sanction.

Under Rule 13.2(c), any action taken pursuant to Rule 13.2(a)(1) or (2) is subject to the applicable hearing and review provisions of Rule 10.14.

Under Commentary .01 of Rule 13.2, if a determination is made by the Exchange to take action pursuant to the rule, notice thereof is sent to the Commission. In addition, the Commission may on its own motion order, or such a person or organization may apply to the Commission, for a stay of such action pending the results of a hearing.

Rule 13.3 concerns the effect of a suspension or cancellation. When an ETP Holder, OTP Holder, OTP Firm or Associated Person has its trading privileges suspended or canceled by the Exchange under Rule 13.2(a)(1) or (2), such person or organization must be deprived during the term of the suspension of all rights and trading privileges conferred by the ETP or OTP, except as otherwise provided in the rules of the Exchange. The person or organization having trading privileges suspended or canceled remains subject to the disciplinary power of the Exchange.

Under Rule 13.4, an ETP Holder, OTP Holder, OTP Firm or Associated Person whose trading privileges are suspended under the provisions of Rule 13.2(a)(1) or (2)<sup>27</sup> may be disciplined pursuant to the rules of the Exchange for any offense committed either before or after the announcement of the suspension, in all respects as if no suspension were in effect.

Under Rule 13.5, every ETP Holder, OTP Holder, OTP Firm or Associated Person whose trading privileges are suspended under the provisions of Rule

of the ETP Holder, OTP Holder or OTP Firm no later than 10 days following the hearing.

<sup>27</sup> Current Rule 13.4 refers to "Rule 13.3(a)(1) or (2)." The Exchange proposes to correct the reference to read "Rule 13.2(a)(1) or (2)."

13.2(a)(1) must immediately afford every resource required by the Exchange for the investigation of its affairs as required by the Board of Directors and must, after the notification of the suspension, file with the Exchange a written statement covering all information required by the Exchange.

Under Rule 13.6, if an ETP Holder, OTP Holder, OTP Firm or Associated Person has had trading privileges suspended under the provisions of Rule 13.2(a)(1) and such person or organization does not request a hearing within 30 days to review such suspension or at such hearing it is determined that the suspension was properly imposed, and such person or organization has not, within 45 days after the suspension, remedied the reason for such suspension and has not applied for reinstatement, the Board may cancel the trading privileges of such person or organization. If application for reinstatement is made within 45 days of suspension, and such application is disapproved, the Board of Directors may cancel the trading privileges of such person or organization.

Under Rule 13.7, when an ETP Holder, OTP Holder, OTP Firm or Associated Person that has had trading privileges suspended under the provisions of Rule 13.2(a)(1) or (2) applies for reinstatement, it must be demonstrated to the satisfaction of the Exchange that the problem or problems responsible for such suspension have [sic] been satisfactorily resolved. If such problem involves financial difficulty or operating inadequacies, the person or organization must furnish the Exchange comprehensive financial and operating reports in a form and manner to be prescribed by the Exchange. If the ETP Holder, OTP Holder, OTP Firm or Associated Person furnishes satisfactory proof of a resolution of the problem or problems responsible for such suspension, the Exchange notifies in writing all ETP Holders, OTP Holders and OTP Firms of the application for reinstatement and that a meeting of the Board of Directors to consider it will be held on a designated date which shall be not less than ten (10) business days subsequent to such notice. At such meeting at which a quorum is present the ETP Holder, OTP Holder, OTP Firm or Associated Person may be reinstated provided not less than a majority of the Directors voting approve the application.

Under Rule 13.8, if an ETP Holder, OTP Holder, OTP Firm or Associated Person whose trading privileges have been suspended under the provisions of the rule fails or is unable to apply for

reinstatement in accordance with Rule 13.7, or fails to obtain reinstatement as therein provided, then the trading privileges conferred by an ETP or OTP are terminated.

Finally, Rule 13.9 governs when an ETP Holder, OTP Firm, OTP Holder or an Associated Person of an ETP Holder, OTP Firm or OTP Holder does not meet the eligibility or qualification standards set forth in the Exchange's rules; does not meet the prerequisites for access to services offered by the Exchange or an ETP Holder, OTP Firm or OTP Holder thereof; or cannot be permitted to continue to have access to services offered by the Exchange or an ETP Holder, OTP Firm or OTP Holder thereof with safety to investors, creditors, ETP Holders, OTP Firms, OTP Holders, or the Exchange. Current Rule 13.9 was modeled on NYSE and NYSE American Rule 9555 and, as discussed below, is substantially the same as proposed Rule 10.9555.<sup>28</sup>

#### Proposed Rule Change

The Exchange proposes the Rule 10.8000 Series (Investigations and Sanctions) and the Rule 10.9000 Series (Code of Procedure), which would be based on the text of the NYSE American Rule 8000 and 9000 Series. The Exchange proposes to include these rules in Rule 10. Because the proposed rules would address topics currently set forth in both Rules 10 and 13, the Exchange proposes to rename Rule 10 as "Disciplinary Proceedings; Suspension, Cancellation and Reinstatement." The Exchange further proposes to add a new subheading of "Rule 10.0. Legacy Disciplinary Proceedings, Other Hearings and Appeals," which would precede current Rules 10.1 through 10.18.

Unless otherwise specified below, the individual rules in the proposed Rule 10.8000 Series and Rule 10.9000 Series are based on the individual rules of the counterpart NYSE American Rule 8000 and 9000 Series without any differences, except that the Exchange:

- Would describe its own transition process in Rules 10.0 and 13 and in proposed Rules 10.8001, 10.8130(d), and 10.9001;
- would use the terms "ETP Holder," "OTP Holder" and "OTP Firm,"

<sup>28</sup> Subsection (h) of Rule 13.9 is modeled on NYSE and NYSE American Rule 9559, which provides uniform hearing procedures for expedited proceedings under the NYSE and NYSE American Rule 9550 Series, including proceedings under NYSE and NYSE American Rule 9555. Subsection (h) of Rule 13.9 has no analogue in NYSE and NYSE American Rule 9555, and was added to Rule 13.9 because NYSE Arca did not have a procedural rule comparable to NYSE and NYSE American Rule 9559.

together or separately, as applicable, rather than "member organization" or "Exchange member," consistent with the Exchange's other rules;

- would define "covered person" to include those persons subject to the Exchange's jurisdiction, rather than use NYSE American's text for that term;

- would retain the text of the Exchange's currently applicable list of minor rule violations in proposed Rule 10.9217;

- would retain its options

Sanctioning Guidelines;<sup>29</sup>

- would make certain other technical and conforming changes;<sup>30</sup> and

- proposes non-substantive differences in specified rules, as needed, which do not change the meaning of the proposed rule text as compared to the NYSE American version of the same rule.

The Exchange also proposes to harmonize its rules for non-payment of fees or other sums due to the Exchange, other than fines or monetary sanctions, with NYSE American. In particular, the Exchange proposes to delete the current text and heading of Rule 3.8 and adopt the heading and text of NYSE American Rule 41. The heading of Rule 3.8 would become "Failure to Pay Exchange Fees." As amended, Rule 3.8 would provide that an ETP Holder, OTP Holder or OTP Firm<sup>31</sup> who does not pay a fee or any other sums due to the Exchange, within forty-five days after the same shall become payable, would be reported to the Chief Financial Officer of the Exchange or designee who, after notice has been given to such ETP Holder, OTP Holder or OTP Firm of such arrearages, could suspend access to some or all of the facilities of the Exchange until payment is made. Amended Rule 3.8 would also specifically provide that failure to pay any fine levied in connection with a disciplinary action shall be governed by Rule 10.8320. Finally, as amended, Rule 3.8 would provide that denial of access to some or all of the facilities of the Exchange through suspension under the provisions of the rule would not prevent the ETP Holder, OTP Holder or OTP Firm from being proceeded against for any offense other than that for which such ETP Holder, OTP Holder or OTP Firm was suspended. By adopting this

<sup>29</sup> See note 24, *supra*.

<sup>30</sup> As described below and herein, the Exchange proposes to make technical and conforming changes to Rules 2.5, 3.2, 3.3, 3.6, 3.8, 3.10, 4.11-O, 6.2-O, 6.17-O, 6.24-O, 6.35-O, 6.44-O, 6.67-O, 6.69-O, 6.82-O, 4.11-E [sic], 7.20-E, 7.22-E, 7.23-E, 9.21-E, 10, 12, 13.2 and 13.4.

<sup>31</sup> NYSE American Rule 41 included a reference to "principal executive," a registration category that has no direct analogue on the Exchange.

new rule text, the Exchange would have a single rule applicable to both its equities and options markets that is consistent with the counterpart rule of its affiliated exchanges.

#### Transition

Once the proposed rule change is effective, the Exchange intends to announce by Information Memorandum with at least 30 days advance notice the effective date of the new rules.<sup>32</sup> To further facilitate an orderly transition from the current rules to the new rules, the Exchange proposes that matters already initiated under the current rules would be completed under such rules. The proposed transition is substantially the same as the NYSE American transition to its Rule 8000 and 9000 Series.<sup>33</sup>

Specifically, Rule 10.0 would continue to apply with respect to a proceeding for which the Exchange had (1) served a Complaint under Rule 10.4, (2) received a written offer of settlement under Rule 10.6, or for which (3) a written statement or citation had been filed or served under Rule 10.11 or Rule 10.12 prior to the effective date of the new rules. Rule 10.0, as applicable, would continue to apply until any such proceeding under the respective rule was final. Rule 10.0 would also continue to apply to any ETP Holder, OTP Holder, OTP Firm or covered person over whom the Exchange asserted jurisdiction by providing written notice of the commencement of an inquiry pursuant to Rule 10.1(b) prior to the effective date of the new rules.

In all other cases, the proposed Rule 10.8000 and Rule 10.9000 Series, as described below, would apply, except that summary sanctions in options-related matters would continue to be governed by current Rule 10.13, appeals of Floor citations would continue to be governed by Rule 10.11 and, as discussed below, the options Sanctioning Guidelines set forth in Rule 10.16 would apply to all sanctions imposed in options-related matters.

Finally, Rule 10.14 would continue to apply to actions by persons aggrieved by Exchange decisions as provided for therein, subject to the exceptions noted therein. Currently, Rule 10.14 applies to three types of actions that will be

governed by the Rule 10.8000 Series and 10.9000 Series following the effective date of the new rules: The barring of any person from becoming associated with an ETP Holder or OTP Firm (Rule 10.14(a)(2)); the suspension or cancellation of ETP or OTP trading privileges (Rule 10.14(a)(3)); and the prohibition or limitation with respect to access to services provided by the Exchange, or the access to services of any ETP Holder or OTP Firm taken pursuant to the Bylaws, or Rules or procedures of the Exchange. The Exchange proposes to amend Rule 10.14 to provide that, following the effective date of the new rules, the barring of any person from becoming associated with an ETP Holder or OTP Firm, the suspension or cancellation of ETP or OTP trading privileges, and the prohibition or limitation with respect to access to services provided by the Exchange, or the access to services of any ETP Holder or OTP Firm taken pursuant to the Bylaws, or Rules or procedures of the Exchange, will be governed by the Rule 10.8000 Series and 10.9000 Series.

Summary suspensions under current Rule 13 would continue to apply to a proceeding for which the Exchange has issued a written notice of suspension, cancellation, or other action thereunder prior to the effective date of the of the new rules. Thereafter, the proposed Rule 10.9500 Series would apply, with the exception of the non-payment of a fine levied in connection with a disciplinary action, other monetary sanction imposed pursuant to Rule 10.8310 or a cost imposed pursuant to Rule 10.8330, in which case Rule 10.8320 would apply.

When the transition is complete, the Exchange intends to submit a proposed rule change that would delete the provisions of Rules 10 and 13 that are no longer necessary. Other provisions would be retained and moved to an appropriate place in the Exchange's rules.

#### Proposed Changes to Rule 3.2 (Exchange Committees)

Under Rules 3.2(b)(1) and 3.2(b)(2), the EBCC and BCC, respectively, have certain delegated authority and functions, including conducting hearings and rendering decisions in summary disciplinary actions and proceedings pursuant to Rule 10.5 and in expedited proceedings pursuant to Rule 13.9. Under Rules 3.2(b)(1)(C) and 3.2(b)(2)(C), the EBCC and BCC, respectively, have the authority, whenever it appears that an OTP Holder, OTP Firm or ETP Holder is in violation of Rule 4 or Rule 4-E,

respectively, to direct a representative of such OTP Holder, OTP Firm or ETP Holder to appear before the EBCC or BCC for examination upon 48 hours' notice, either orally or in writing. After such examination, the EBCC or BCC has the authority to suspend such OTP Holder, OTP Firm or ETP Holder until the requirements of Rule 4 or 4-E are fully met. Appeals of such suspensions or sanctions imposed by the Regulatory Staff are governed by Rule 3.2(b)(1)(D) and 3.2(b)(2)(D).

The Exchange proposes certain clarifying and/or non-substantive changes to Rules 3.2(b)(1) and 3.2(b)(2), which set forth the delegated authority and functions the EBCC and BCC, respectively.

First, the Exchange proposes to amend Rule 3.2(b)(1)(A) governing the composition of the EBCC to clarify that Associated Persons of an OTP Holder may also be members of the EBCC.

The Exchange also proposes to amend Rule 3.2(b)(2)(B)(ii), which describes the functions and authority of the BCC, to clarify that the BCC would conduct hearings and render decisions in summary disciplinary actions and proceedings pursuant to Rule 10.5.

Following the effective date of the new disciplinary rules, panelists for disciplinary proceedings involving both equity and options permit holders would be drawn from a hearing board as provided for in proposed Rule 10.9232. The Exchange proposes to retain the EBCC and the BCC to effectuate their current responsibilities, including with respect to legacy disciplinary matters under Rule 10.5. As a practical matter, members of the hearing board under proposed Rule 10.9232 would generally be members of the EBCC and the BCC.

Finally, the Exchange proposes the non-substantive change of moving Rule 10.15(d), which provides that the Board of Directors may designate any Standing or Special Committee of the Exchange as the Conduct Panel in any given proceeding or type of proceeding, to a new subsection (d) to Rule 3.2. The Exchange proposes to amend the language to also provide for Hearing Panels, which is how Conduct Panels for current disciplinary actions under Rule 10 are referred to in the proposed Rule 10.8000 and 10.9000 Series. The proposed changes would add clarity to the Exchange's rules by relocating a provision relating to Board powers with respect to Standing or Special Committees of the Exchange to the rule governing Exchange committees and would clarify the provision's applicability to disciplinary matters under the proposed rules.

<sup>32</sup> The proposed Information Memorandum would be substantially the same as that published for NYSE American. See NYSE MKT (now American) Information Memorandum 16-02 (March 14, 2016). See generally 2016 Notice and note 4, *supra*.

<sup>33</sup> See 2016 Notice, *supra* note 4, & NYSE MKT (now American) Information Memorandum 16-02 (March 14, 2016).

### Proposed Changes to Rule 3.3 (Board Committees)

The Exchange proposes to amend Rule 3.3, which governs the CFR, to reflect the transition. Specifically, Rule 3.3(a)(2)(B), which provides that the CFR may appoint a CFR Appeals Panel to conduct certain reviews, would be amended to reflect that the CFR Appeals Panel would conduct reviews of matters subject to the applicable provisions of Rule 3.2(b)(1)(C) or Rule 10.0 or the Rule 10.9000 Series, as applicable. Rule 3.3(a)(2)(C) would be amended to reflect that decisions of the CFR are subject to review of the Board of Directors, subject to Rule 10.0 or the Rule 10.9000 Series, as applicable. The clause “of the Exchange” would also be deleted as superfluous.

The proposed amendments to Rule 3.3 would not change the authority of the EBCC, BCC or CFR.

### Jurisdiction

The Exchange proposes a new Rule 2.0 titled “Disciplinary Jurisdiction” based on current Rule 10.1, which describes the Exchange’s current disciplinary jurisdiction. Proposed Rule 2.0(a) would be substantially the same as current Rule 10.1(a) with the following changes.<sup>34</sup> First, the Exchange would replace “associated person” with the term “covered person” and note that the term is defined in proposed Rule 10.9120(g). Second, the Exchange would replace the reference to “this Rule” with “the Rule 10.8000 and 10.9000 Series.”

Proposed Rule 2.0(b) would provide that an ETP Holder, OTP Holder or OTP Firm that resigns or has its membership canceled or revoked, and a person whose status as a covered person has been terminated and who is no longer a covered person of any ETP Holder, OTP Holder or OTP Firm or a covered person whose registration has been revoked or canceled, would continue to be subject to the Exchange’s disciplinary jurisdiction as set forth in proposed Rule 10.8130.

Finally, proposed Rule 2.0(c) would be substantially the same as current Rule 10.1(c), and would provide that the Board of Directors may authorize any officer, on behalf of the Exchange, subject to the approval of the Board of Directors, to enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the

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

As proposed, Rule 2.0 would set forth the scope of the Exchange’s disciplinary jurisdiction under the Rule 10.8000 and 10.9000 Series. As discussed below, proposed Rule 10.8130 would address the Exchange’s retention of jurisdiction, and would enable the Exchange to generally retain jurisdiction to file a complaint against an ETP Holder, OTP Holder, OTP Firm or covered person for two years after such status was terminated.

Current Rule 10.1 would continue to apply to a proceeding for which the Exchange has served a Complaint under Rule 10.4, received a written offer of settlement under Rule 10.6, or for which a written application has been filed under Rule 10.11 or Rule 10.12 prior to the effective date of the new disciplinary rules, and shall continue to apply until such proceeding is final.

### Terms and Definitions Used Throughout the Proposed Rule 10.8000 and 10.9000 Series

To continue the current coverage of the Exchange’s disciplinary rules and conform to the NYSE American rules’ terminology, the proposed rule change would use the terms “ETP Holder,”<sup>35</sup> “OTP Holder,” “OTP Firm,” and “covered person” to describe the persons to which the proposed Rule 10.8000 and 10.9000 Series apply. The term “covered person,” referenced in proposed Rule 10.8120(b) and defined in proposed Rule 10.9120(g), would include an Associated Person of an ETP Holder, an OTP Holder or OTP Firm, an Approved Person, and any other person subject to the jurisdiction of the Exchange. By defining and utilizing the term “covered person” in this manner,

the Exchange would effect no substantive change in the scope of persons subject to the Exchange’s disciplinary rules.

### Proposed Rule 10.8000 Series

The Proposed Rule 10.8000 Series would address Investigations and Sanctions.

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

The text of NYSE American Rules 8110 through 8330 would be adopted as Rules 10.8110 through 10.8330 with proposed changes to reflect the Exchange’s membership and to update a cross-reference in proposed Rules 10.8130 and 10.8320.<sup>36</sup> Proposed Rule 10.8100 (General Provisions) would include proposed Rules 10.8110 through 10.8130.

Proposed Rule 10.8110 (Availability of Rules for Customers) would require ETP Holders, OTP Holders and OTP Firms to make available a current copy of the Exchange’s rules for examination by customers upon request. Although there is no comparable requirement in the current Rules, the Exchange’s rules are currently available on the Exchange’s website.<sup>37</sup>

Proposed Rule 10.8120 (Definitions) would provide cross-references to definitions of the terms “Adjudicator,” “covered person,” and “Regulatory Staff” in proposed Rule 10.9120. Proposed Rule 10.8120 is simply technical in nature.<sup>38</sup>

Proposed Rule 10.8130 (Retention of Jurisdiction) would set forth retention of jurisdiction provisions that are substantially the same as NYSE American Rule 8130, except for (1) references to reflect the Exchange’s membership, (2) the cross-references in paragraph (b)(1) and (d), (3) clarifying in paragraph (d) for purposes of the transition that Rule 10.0 would continue to apply to persons or entities over whom the Exchange asserted

<sup>36</sup> Rules 8212, 8213, and 8312 are marked “Reserved” in the NYSE American rulebook. As such, to maintain consistency with NYSE American’s rule numbering, the Exchange has designated proposed Rules 10.8212, 10.8213, and 10.8312 as “Reserved.”

<sup>37</sup> The rules are available at [http://wallstreet.cch.com/PCXtools/PlatformViewer.asp?SelectedNode=chip\\_1\\_1&manual=/PCX/PCXRules/pcx-rules/](http://wallstreet.cch.com/PCXtools/PlatformViewer.asp?SelectedNode=chip_1_1&manual=/PCX/PCXRules/pcx-rules/).

<sup>38</sup> Based on NYSE National Rule 10.8120, proposed Rule 10.8120 would incorporate non-substantive grammatical differences in subsections (a) and (b) to replace the phrase “have the meaning as defined in” with “have the same meaning as” before applicable Exchange rules.

<sup>34</sup> The new Rule 2.0 titled “Rule 2.0 Jurisdiction” would appear below “Rule 2 Trading Permits.” The current subheading titled “[Rules 2.1–2.6]” would be deleted.

<sup>35</sup> The term “ETP Holder” encompasses Market Makers, Designated Market Makers, and Lead Market Makers. See Rules 1.1(o), (w) and (z).

jurisdiction by providing written notice of the commencement of an inquiry pursuant to current rule 10.1(b) prior to the effective date of the new disciplinary rules, and (4) a non-substantive grammatical difference in paragraph (b) to add the word “who” to conform to NYSE National Rule 10.8130.

Generally, subject to proposed Rule 10.8130(d), under the proposed rule change, the Exchange would retain jurisdiction to file a complaint against an ETP Holder, OTP Holder, OTP Firm or covered person for two years after such ETP Holder’s, OTP Holder’s, OTP Firm’s or covered person’s status is terminated. This differs from current Rule 10.1(b), which provides that jurisdiction is retained if a written notice of the commencement of an inquiry into such matters is given by the Exchange to the former ETP Holder, OTP Holder, OTP Firm or Associated Person within one year of receipt by the Exchange of written notice of the termination of such person’s status as an ETP Holder, OTP Holder, OTP Firm or Associated Person. The Exchange believes that the period under the proposed rule is appropriate because it will harmonize the Exchange’s rule with NYSE American’s rule.

Proposed Rule 10.8200 (Investigations) would set forth the following rules. Proposed Rule 10.8210 (Provision of Information and Testimony and Inspection and Copying of Books) would set forth procedures for the provision of information and testimony and inspection and copying of books by the Exchange. Proposed Rule 10.8210(a) would require an ETP Holder, OTP Holder, OTP Firm or covered person to provide information and testimony and permit the inspection of books, records, and accounts for the purpose of an investigation, complaint, examination, or proceeding authorized by the Exchange’s rules. As noted above, under proposed Rule 10.8130, the Exchange would retain jurisdiction over an ETP Holder, OTP Holder, OTP Firm or a covered person to file a complaint or otherwise initiate a proceeding for two years after such ETP Holder’s, OTP Holder’s, OTP Firm’s or covered person’s status is terminated; as such, the Exchange can continue to obtain information and testimony during such period and thereafter if a complaint or proceeding is timely filed. Currently, the Exchange also requires persons subject to its jurisdiction to provide books and records and appear and testify upon request under current Rule 10.2(d), and as noted above, the Exchange retains jurisdiction after

termination of a registration or association as long as a written notice of the commencement of an 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 its affiliate’s rules with respect to jurisdiction and obtaining books and records from ETP Holders, OTP Holders, OTP Firms and covered persons.

Finally, proposed Rule 10.8210 would provide that, in performing the functions of investigation, complaint, examination, or proceeding authorized by Exchange rules, the CRO and Regulatory Staff would function independently of the commercial interests of the Exchange and the commercial interests of ETP Holders, OTP Holders and OTP Firms. As noted below, the concept of CRO and regulatory staff independence from the commercial interests of the Exchange and its permit holders is based on current Rule 10.2(a), which provides that no member of the Board of Directors or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding, and also appears in proposed Rule 10.9110(a). The Exchange proposes to add the last sentence of Rule 10.2(a), which provides that no member of the Board of Directors or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding, to proposed Rule 10.8210(a).<sup>39</sup>

Proposed Rule 10.8210(b) would authorize Exchange staff to enter into regulatory cooperation agreements with a domestic federal agency or subdivision thereof, a foreign regulator, or a domestic or foreign SRO. Under current Rule 3.6, the Exchange may enter into agreements with domestic and foreign SROs, but it does not cover domestic agencies and foreign regulators. As such, the Exchange would delete the text of current Rule 3.6 as of the effective date of the new rules and mark Rule 3.6 as “Reserved.”

The remainder of proposed Rule 10.8210 would set forth certain procedures for investigations. Proposed Rule 10.8210(c) would require ETP Holders, OTP Holders, OTP Firms, and covered persons to comply with information requests under the Rule. This requirement is substantially the

same as current Rule 10.2(d), as described above.

Proposed Rule 10.8210(d) would provide that a notice under this Rule would be deemed received by the ETP Holder, OTP Holder, OTP Firm or covered person (including a currently or formerly registered person) to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the ETP Holder, OTP Holder, or OTP Firm, or the last known residential address of the covered person as reflected in the Central Registration Depository (“CRD”). With respect to a person who is currently associated with an ETP Holder, OTP Holder or OTP Firm in an unregistered capacity, a notice under this Rule would be deemed received by the person by mailing or otherwise transmitting the notice to the last known business address of the ETP Holder, OTP Holder or OTP Firm as reflected in CRD. With respect to a person subject to the Exchange’s jurisdiction who was formerly associated with an ETP Holder, OTP Holder or OTP Firm in an unregistered capacity, a notice under the proposed Rule would be deemed received by the person upon personal service, as set forth in Rule 10.9134(a)(1).

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

Current Rule 10.10 provides that any charges, notices or other documents

<sup>39</sup> As noted below, the last sentence of current Rule 10.2(a) will also be added to proposed Rule 10.9110(a).

may be served upon the Respondent either personally or by leaving the same at Respondent's place of business or by deposit in the United States Post Office, postage prepaid via registered or certified mail addressed to the Respondent at its address as it appears on the books and records of the Exchange. The changes to proposed Rule 10.8210(d) would harmonize service of process across affiliated exchanges.

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

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

Finally, proposed Rule 10.8210(g) would require any ETP Holder, OTP Holder, OTP Firm or covered person who in response to a request pursuant to this Rule provided the requested information on a portable media device to ensure that such information was encrypted. Proposed Rule 10.8210(g)(3) would also replace "in" with "to" before "which" in the first sentence of the subsection. This non-substantive grammatical difference with NYSE American Rule 8210(g) is based on NYSE National Rule 10.8210(g). The Exchange's current rules do not contain comparable provisions.

Commentary .01 to proposed Rule 10.8210 would require ETP Holders, OTP Holders, OTP Firms and covered persons to provide Exchange staff and adjudicators with requested books, records and accounts. In specifying the books, records and accounts "of such ETP Holder, OTP Holder, OTP Firm or covered person," proposed paragraph (a) of the rule refers to books, records and accounts that the broker-dealer or its covered persons makes or keeps relating to its operation as a broker-dealer or relating to the person's association with the ETP Holder, OTP Holder or OTP Firm. This includes but is not limited to records relating to an Exchange investigation of outside business activities, private securities transactions or possible violations of just and equitable principles of trade, as

well as other Exchange rules and the federal securities laws. It does not ordinarily include books and records that are in the possession, custody or control of an ETP Holder, OTP Holder, OTP Firm or covered person, but whose bona fide ownership is held by an independent third party and the records are unrelated to the business of the ETP Holder, OTP Holder, OTP Firm or covered person. The rule would require, however, that an ETP Holder, OTP Holder, OTP Firm or covered person must make available its books, records or accounts when these books, records or accounts are in the possession of another person or entity, such as a professional service provider, but the ETP Holder, OTP Holder, OTP Firm or covered person controls or has a right to demand them. The Exchange's current rules do not contain comparable provisions. The Exchange believes that the additional specificity would provide better notice to persons subject to its jurisdiction.

Proposed Rule 10.8211 (Automated Submission of Trading Data Requested by the Exchange) would set forth the procedures for electronic blue sheets. Because FINRA now performs surveillance functions based on the information gathered as a result of these rules, the Exchange believes that its procedures for electronic blue sheets should be harmonized with FINRA and across affiliated exchanges that have adopted the FINRA rule. Proposed Rule 10.8211 is substantially the same as NYSE American Rule 8211 except for references reflecting the Exchange's membership.

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

Proposed Rule 10.8310 (Sanctions for Violation of the Rules) would set forth the range of sanctions that could be imposed in connection with disciplinary actions under the proposed rule change. Such sanctions would include censure, fine, suspension, revocation, bar, expulsion, or any other fitting sanction. These sanctions are substantially the same as the permitted sanctions set forth in current Rules 10.1 and 10.9, which are expulsion, cancellation of trading privileges; suspension; limitation of activities, functions, and operations; suspension or bar from association with an ETP Holder, OTP Holder or OTP Firm; fine; censure; or any other fitting sanction. Although there is some difference between the text of the current and proposed rules, the Exchange believes that in practice the range of sanctions is the same due to the inclusion in both rules of the general category "any other fitting sanction."

Proposed Rule 10.8310 would also permit the Exchange to impose a temporary or permanent cease and desist order against an ETP Holder, OTP Holder, OTP Firm or covered person. This authority, which currently exists only with respect to alleged violations of Rule 11.21 (Disruptive Quoting and Trading Activity Prohibited), is described in further detail below in the section concerning the proposed Rule 10.9800 Series. Under proposed Rule 10.8310, each party to a proceeding resulting in a sanction is deemed to have assented to the imposition of the sanction unless such party files a written application for review or relief pursuant to the Rule 10.9000 Series.

Proposed Rule 10.8311 (Effect of a Suspension, Revocation, Cancellation, Bar or Other Disqualification) would provide that if the Commission or the Exchange imposed a suspension, revocation, cancellation or bar or other disqualification on a person, an ETP Holder, OTP Holder or OTP Firm may not permit such person to remain associated with it in any capacity that is inconsistent with the sanction imposed or disqualified status, including a clerical or ministerial capacity and may not, with certain exceptions, pay or credit to any person subject to a sanction or disqualification, during the period of the sanction or disqualification or any period thereafter, any salary, commission, profit, or any other remuneration that the person might accrue during the period of the sanction or disqualification. Under Rule 13.3, when an ETP Holder, OTP Holder, OTP Firm or Associated Person has its trading privileges suspended or canceled by the Exchange for any reason specified in Rule 13.2(a)(1) or (2), such person or entity is deprived during the term of the suspension of all rights and trading privileges conferred by the ETP or OTP, except as otherwise provided in the rules. The proposed rule is broader because it applies to all persons subject to a suspension, revocation, cancellation or bar and more explicitly prohibits the payment of compensation.

Proposed Rule 10.8313 (Release of Disciplinary Complaints, Decisions and Other Information) would provide, in part, that the Exchange would publish all final disciplinary decisions issued under the proposed Rule 10.9000 Series, other than minor rule violations, on its website. Current Rule 10.17, which is substantially the same as proposed Rule 10.8313 and was modeled on NYSE and

NYSE American Rule 8313, would be deleted.<sup>40</sup>

Proposed Rule 10.8320 (Payment of Fines, Other Monetary Sanctions, or Costs; Summary Action for Failure to Pay) would govern payment of fines and other monetary sanctions or costs and provide for a summary action for an ETP Holder's, OTP Holder's or OTP Firm's or covered person's failure to pay. The Exchange proposes a non-substantive grammatical difference with NYSE American Rule 8320 in paragraph (b)(1).

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

Proposed Rule 10.8320(b) and (c) would permit the Exchange, after seven days' notice in writing, to summarily suspend or expel from membership an ETP Holder, OTP Holder or OTP Firm or revoke the registration of a covered person for failure to pay a fine or other monetary sanction imposed pursuant to proposed Rule 10.8310 or a cost imposed pursuant to proposed Rule 10.8330 when such fine, monetary sanction, or cost becomes finally due and payable. As noted above, under current Rule 13.2, an ETP Holder, OTP Holder, OTP Firm or Associated Person is subject to a non-summary suspension for failing to pay a fine, after written notice, an unspecified grace period, and opportunity for hearing.

As the NYSE and NYSE American explained in proposing their Rules 8320, FINRA's rules do not set forth a notice period but, as a matter of practice, FINRA typically provides a respondent at least 30 days to pay a fine after the conclusion of a proceeding. As both exchanges reasoned, a 30-day period, along with the seven days' notice provided under Rules 8320, provides respondents with an adequate amount of time to pay a fine and avoid any further sanction by the Exchange.<sup>41</sup> The Exchange proposes to follow the same reasoning for its Rule 10.8320. For clarity regarding the transition, proposed Rule 10.9001 would provide that the provisions of Rule 13 governing summary suspensions shall apply only to such a proceeding for which the Exchange has issued a written notice thereunder prior to the effective date of the proposed rule change and that thereafter the proposed Rule 10.9500 Series will apply, except with respect to non-payment of a fine levied in

connection with a disciplinary action, other monetary sanction imposed pursuant to proposed Rule 10.8310 or a cost imposed pursuant to proposed Rule 10.8330, in which case proposed Rule 10.8320 would apply. In addition, proposed Rule 10.8320(d) would provide that the Exchange may exercise the authority set forth in paragraphs (b) and (c) as described above with respect to non-payment of a fine, monetary sanction, or cost assessed in a disciplinary action initiated under Rule 13.2(a)(2)(B) for which a decision was issued on or after the transition date.

Proposed Rule 10.8330 (Costs of Proceedings) would provide that a disciplined ETP Holder, OTP Holder, OTP Firm or covered person may be assessed the costs of a proceeding, which are determined by the Adjudicator. Under current Rules 10.1 and 10.9, the Exchange may assess costs as a "fitting sanction," and under Rule 10.11, the Exchange charges certain forum fees ranging from \$250 to \$500, which may be waived in certain instances. The Exchange believes that Adjudicators should have the discretion to assess costs as they deem appropriate.

#### Proposed Rule 10.9000 Series

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

#### Proposed Rules 10.9001 Through 10.9120

Proposed Rule 10.9001 (Effective Date of Rule 10.9000 Series) would set forth the effective date of the Rule 10.9000 Series, noting the transitional provisions described above. The text of proposed Rule 10.9001 would include similar introductory text as that proposed for Rules 10.0 and 13. While the transition would be structured in substantially the same manner as NYSE American's transition, the Exchange's proposed text would differ from NYSE American Rule 9001 due to differences in terminology and cross-references.

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

Proposed Rule 10.9110 (Application) would state the types of proceedings to which the proposed Rule 10.9000 Series would apply (each of which is described below) and the rights, duties, and obligations of ETP Holders, OTP Holders, OTP Firms and covered persons, and would set forth the defined terms and cross-references. The proposed rule would also provide that, in performing the functions under the Rule 10.9000 Series, the CRO and Regulatory Staff shall function independently of the commercial interests of the Exchange and the

commercial interests of the ETP Holders, OTP Holders, and OTP Firms. The proposed rule would also incorporate language from current Rule 10.2 providing that no member of the Board of Directors or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding. Proposed Rule 10.9110(c) would incorporate non-substantive grammatical changes based on NYSE National Rule 10.9110(c) to insert "same" before "meaning" and delete "define" before "in Rule 10.9120," which are not found in the NYSE American version of the rule. The Exchange does not have a comparable rule.

Proposed Rule 10.9120 (Definitions) would set forth definitions applicable to the Rule 10.9000 Series. The definitions are substantially the same as the definitions set forth in NYSE American Rule 9120, except that (1) references would reflect the Exchange's membership; (2) "covered person" defined in paragraph (g) would conform to the Exchange's rules; and (3) the Exchange would not define the terms "Board of Directors" and "Exchange" in proposed Rule 10.9120 because those terms are already defined in Rule 1.1. The Exchange would therefore designate paragraphs (b) and (n) as "Reserved."<sup>42</sup>

#### Proposed Rules 10.9130 Through 10.9138

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

Proposed Rule 10.9131 (Service of Complaint) would set forth the requirements for serving a complaint or document initiating a proceeding. Proposed Rule 10.9132 (Service of Orders, Notices, and Decisions by Adjudicator) would cover the service of orders, notices, and decisions by an Adjudicator. Proposed Rule 10.9133 (Service of Papers Other Than Complaints, Orders, Notices, or Decisions) would govern the service of papers other than complaints, orders, notices, or decisions. Proposed Rule 10.9134 (Methods of, Procedures for Service) would describe the methods of

<sup>42</sup> As noted above, current Exchange rules do not define the term "Exchange Regulatory Staff". See note 12, *supra*. Proposed Rule 10.9120(x) would generally define "Regulatory Staff" as any officer or employee reporting, directly or indirectly, to the CRO of the Exchange, and FINRA staff acting on behalf of the Exchange in connection with the Rule 10.8000 Series and Rule 10.9000 Series. The proposed definition is congruent with the current practice at the Exchange, and refers to the same individuals that currently work in the Exchange's regulatory department.

<sup>40</sup> See Securities Exchange Act Release No. 79547 (December 14, 2016), 81 FR 92892 (December 20, 2016) (SR-NYSEArca-2016-161).

<sup>41</sup> See Securities Exchange Act Release Nos. 68678 (January 16, 2013), 78 FR 5213, 5222 (January 24, 2013) (SR-NYSE-2013-02) (Notice); 2016 Notice, 81 FR at 11321.

service and the procedures for service. Proposed Rule 10.9135 (Filing of Papers with Adjudicator: Procedure) would set forth the procedure for filing papers with an Adjudicator. Proposed Rule 10.9136 (Filing of Papers: Form) would govern the form of papers filed in connection with any proceeding under the proposed Rule 10.9200 and 10.9300 Series. Proposed Rule 10.9137 (Filing of Papers: Signature Requirement and Effect) would state the requirements for and the effect of a signature in connection with the filing of papers. Finally, proposed Rule 10.9138 (Computation of Time) would establish the computation of time.

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

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

duplicate copies would be required to be served at the entity's last known address. If an entity were represented by counsel or a representative, papers served on such entity, excluding a complaint or document initiating a proceeding, would be required to be served on such counsel or representative.

By comparison, current Rule 10.10, which governs service of process, is less detailed. As noted above, it provides that any charges, notices or other documents may be served upon the Respondent either personally or by leaving the same at Respondent's place of business or by deposit in the United States Post Office, postage prepaid via registered or certified mail addressed to the Respondent at its address as it appears on the books and records of the Exchange. The Exchange believes that the more detailed procedures for service of process in proposed Rules 10.9130 through 10.9138 would increase the likelihood of successful service of process while providing appropriate due process protections to its ETP Holders, OTP Holders, OTP Firms and covered persons.

#### Proposed Rules 10.9140 Through 10.9148

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

Proposed Rule 10.9141 (Appearance and Practice; Notice of Appearance) would govern appearances in a proceeding, notices of appearance, and representation. Proposed Rule 10.9141 would permit a Respondent to represent himself or herself, or be represented by an attorney at law admitted to practice before the highest court of any state of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States. The proposed rule also permits a partnership to be represented by a partner and a corporation, trust, or association to be represented by an officer of such entity. Proposed Rule 10.9141 requires an attorney or representative to file a notice of appearance. Current Rules 10.2, 10.5, 10.6, 10.11, and 10.14 are more general; they permit a respondent to be represented by counsel but do not require a notice of appearance.

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

Subsection (a) of proposed Rule 10.9143 (Ex Parte Communications) would prohibit certain ex parte

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

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

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

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

Finally, the Exchange proposes non-substantive grammatical differences from NYSE American Rule 9143 in paragraphs (c) and (e)(3).

As noted above, current Rule 10.3 also addresses ex parte communications. The current and proposed rules are substantially similar in how they address prohibited communications, disclosure of prohibited communications and remedies for disclosure of prohibited

communications. Notable differences include that the current rule does not utilize the term “Adjudicator” and does not define the terms “NYSE Arca staff” and “interested Exchange staff,” while the term “Interested Staff” as used in proposed Rule 10.9143 would be defined in proposed Rule 10.9120(t). The Exchange believes that specifically defining Interested Staff would provide Respondents with better notice about the proposed rule’s scope of coverage. The Exchange does not propose to retain Rule 10.3(d), which outlines certain permitted communications. Finally, as noted below, current Rule 10.3(e) contains substantially the same prohibition as proposed Rule 10.9160.

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

Proposed Rule 10.9145 (Rules of Evidence; Official Notice) would provide that formal rules of evidence would not apply in any proceeding brought under the proposed Rule 10.9000 Series. The proposed rule would also provide that in a proceeding governed by the Rule 10.9000 Series, an Adjudicator may take official notice of such matters as might be judicially noticed by a court, or of other matters within the specialized knowledge of the Exchange as an expert body, and that before an Adjudicator proposes to take official notice of a matter, it shall permit a Party the opportunity to oppose or otherwise comment upon the proposal to take official notice. Current Rules 10.5(d), 10.11(d), and 10.14(j)<sup>43</sup> also provide that formal rules of evidence do not apply. The Exchange’s rules do not currently contain a comparable provision to proposed Rule 10.9145(b) governing official notice.

Proposed Rule 10.9146 (Motions) would govern motions a Party may make and requirements for responses and formatting. A Party would be permitted to make written and oral motions, although an Adjudicator could require that a motion be in writing. An opposition to a written motion generally would have to be filed within 14 days,

but the moving party would have no right to reply, unless an Adjudicator so permits, in which case such reply generally would be due within five days. Proposed Rule 10.9146 also would permit a Party, a person who is the owner, subject, or creator of a Document subject to production under proposed Rule 10.8210 or any other rule which may be introduced as evidence in a disciplinary proceeding, or a witness who testifies at a hearing in a disciplinary proceeding, to move for a protective order. There is no current comparable rule that contains such detail. Current Rule 10.5(d) provides generally that the Conduct Panel regulates the hearing. The Exchange believes that the more detailed provisions of the proposed rule would provide additional specificity and clarity regarding motions to all Parties to a proceeding. Proposed Rule 10.9146 is substantially the same as NYSE American Rule 9146 except for references to the proposed rules and non-substantive grammatical differences based on NYSE National Rule 10.9146 in subsections (b)(2) and (k).

Proposed Rule 10.9147 (Rulings On Procedural Matters) would provide that Adjudicators may rule on procedural matters. The proposed rule is similar to current Rules 10.5 and 10.11, which provide that the Conduct Panel regulates hearings under those rules, and current Rule 10.14, which provides that the CFR Appeals Panel regulates hearings under that rule.

Finally, proposed Rule 10.9148 (Interlocutory Review) would generally prohibit interlocutory review, except as provided in proposed Rule 10.9280 for contemptuous conduct. The Exchange currently does not have a comparable rule. Under current Rule 10.11(c), any determination of the Conduct Panel as to participation in an appeal of a Minor Rule Plan sanction is subject to review by the Board at the close of the Proceedings or, in the Board’s discretion, during the course of the Proceedings. The Exchange does not believe such process is necessary for a Minor Rule Plan sanction, which should be resolved in an expedited manner.

Proposed Rules 10.9150 Through 10.9222

Proposed Rule 10.9150 would provide that a representative can be excluded by an Adjudicator for unethical or improper conduct. The proposed Rule is substantially the same as NYSE American Rule 9150 except for references to the proposed rules and a non-substantive grammatical difference based on NYSE National Rule 10.9150 in subsection (a). The Exchange

currently does not have a comparable rule.

Proposed Rule 10.9160 (Recusal or Disqualification)

Proposed Rule 10.9160 would provide that no person may act as an Adjudicator if he or she has a conflict of interest or bias, or circumstances exist where his or her fairness could reasonably be questioned. In such case, the person must recuse himself or herself, or may be disqualified. The proposed rule would cover the recusal or disqualification of an Adjudicator, the Chair of the Exchange Board of Directors, or a Director. The Hearing Officer or Chief Hearing Officer would rule on disqualifications at the hearing level<sup>44</sup> and the Chair of the Board of Directors would rule on them at the Board level (or a majority of the Board in the case of the disqualification of the Chair).

Current Rule 10.3(e) contains substantially the same prohibition. Under that rule, no member of the BCC, EBCC or a Conduct Panel may participate in a matter as to which that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. In such a case, the person must recuse himself or herself or be disqualified. The CRO may direct the disqualification of the interested member of the BCC, EBCC or Conduct Panel, and the CEO may direct the disqualification of the CRO. Under current Rule 10.8(b), each Review Board member is required to disclose to the CFR any circumstances which might preclude such Review Board member from rendering an objective and impartial determination, and the CFR may remove such Review Board member. There is no similar provision in Rule 10.0 that applies to the NYSE Arca Board of Directors with respect to its review, as would be included in proposed Rule 10.9160. The Exchange believes that the broader text of the proposed rule, applying the same prohibition against bias and a procedure for disqualification at all levels of review, would help to increase the fairness of and consistency in its proceedings.

Proposed Rules 10.9160(b), (c), and (d) are designated as “Reserved” to maintain consistency with NYSE American’s rule numbering.

Proposed Rules 10.9200 Through 10.9217

Proposed Rule 10.9200 (Disciplinary Proceedings) would cover disciplinary

<sup>43</sup> Under Rule 10.14(j), the CFR Appeals Panel determines all questions concerning the admissibility of evidence and regulates the conduct of the hearing. Each of the parties is permitted to make an opening statement, present witnesses and documentary evidence, cross-examine opposing witnesses, and present closing arguments, orally or in writing as determined by the CFR Appeals Panel. The CFR Appeals Panel also has the right to question all parties and witnesses to the proceeding, and a record is kept. Formal rules of evidence do not apply. The standard of review is de novo.

<sup>44</sup> See proposed Rules 10.9233 and 10.9234.

proceedings. Proposed Rule 10.9211 (Authorization of Complaint) would permit Enforcement to request the authorization from the CRO to issue a complaint against any ETP Holder, OTP Holder, OTP Firm or covered person, thereby commencing a disciplinary proceeding. Under current Rule 10.4(a), the CRO or his or her delegee determines whether there is probable cause for finding that there is a violation, and the Regulatory Staff initiates an action by filing a Complaint.

Proposed Rule 10.9212 (Complaint Issuance—Requirements, Service, Amendment, Withdrawal, and Docketing) would set forth the requirements of the complaint, amendments to the complaint, withdrawal of the complaint, and service of the complaint. The proposed rule also requires the Office of Hearing Officers to promptly record each complaint filed with it in the Exchange's disciplinary proceeding docket, and record in the disciplinary proceeding docket each event, filing, and change in the status of a disciplinary proceeding. Current Rule 10.4 does not contain a comparable provision. Further, the process for serving and amending a complaint would be substantially the same as current Rules 10.4(b) and 10.10. However, under the proposed rule, the form of the complaint would be more prescribed than under current Rule 10.4. For example, current Rule 10.4 does not provide that a complaint must be in writing or provide that at the time of issuance, Enforcement may propose an appropriate location for the hearing and, if the complaint alleges at least one cause of action involving activities on the Floor of the Exchange, that the Chief Hearing Officer select a Floor-Based Panelist for the panel that will hear the matter. Current Rule 10.4 also does not provide for withdrawal of a complaint.

Proposed Rule 10.9213 (Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel) would provide for the appointment of a Hearing Officer and Panelists by the Chief Hearing Officer. Under current Rule 10.5, the BCC or EBCC appoints one or more members to a Conduct Panel to hear the matter, and there is no Exchange or FINRA staff member that serves as a hearing officer. The Exchange believes that the participation of Hearing Officers, which is a long-standing practice of other SROs, would add legal and administrative expertise to the disciplinary process, and would enhance the dispassionate application of the rules, promote fairness in the disciplinary process, and help ensure

that complex or contentious cases are managed effectively.<sup>45</sup> The use of Panelists would help to ensure that market expertise and judgment would continue to be brought to bear on the disciplinary process.<sup>46</sup>

Proposed Rule 10.9214 (Consolidation or Severance of Disciplinary Proceedings) would permit the Chief Hearing Officer to sever or consolidate two or more disciplinary proceedings under certain circumstances and permit a Party to move for such action under certain circumstances. The Exchange currently does not have a comparable rule. Under current Rule 10.5, the Conduct Panel regulates hearings, but does not have this explicit authority.

Proposed Rule 10.9215 (Answer to Complaint) would set forth requirements for answering a complaint, including form, service, notice, content, affirmative defenses, motions for a more definite statement, amendments and extensions of time to answer amended complaints, default, and timing. An answer to a Complaint under current Rule 10.4(b) is due 15 business days after service of the Complaint, while under the proposed rule it would be due 25 days after service. The proposed rule also allows for an extension of time for good cause shown, while the current rule requires that an extension request must be received at least five business days prior to the answer's due date. Both the current and proposed rules treat charges as admitted if no answer is filed, but the proposed rule would require that the respondent receive a second notice concerning the consequences of failing to answer.

Proposed Rule 10.9216 (Acceptance, Waiver, and Consent; Procedure for Imposition of Fines for Minor Violation(s) of Rules) would establish the acceptance, waiver, and consent ("AWC") procedures by which a Respondent, prior to the issuance of a complaint, 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.<sup>47</sup> It also would establish procedures for executing a minor rule violation plan letter. The CRO would be authorized to accept or reject an AWC or minor rule violation plan letter. If the AWC were accepted by the CRO, it would be

deemed final and constitute the complaint, answer and decision in the matter 25 days after the AWC is sent to each Exchange Director and each member of the CFR, unless review by the Exchange Board of Directors is requested pursuant to proposed Rule 10.9310(a)(1)(B). If the AWC were rejected by the CRO, the Exchange would be permitted to take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter were rejected, the ETP Holder, OTP Holder, OTP Firm 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.

The Exchange notes that the AWC process is substantially similar to the Exchange's current process for uncontested offers of settlement prior to a hearing on the merits under Rule 10.6(e), except that the CRO would act on the offers rather than the General Counsel. The Exchange believes that the proposed process provides appropriate controls to assure consistency and protect against aberrant settlements. Specifically, the CRO would be reviewing all proposed AWCs (as well as minor rule violation plan letters). The Exchange believes that when both Parties to a proceeding agree to a settlement, a review by the CRO would be sufficient and it is not necessary to bring such matters to an Adjudicator. The Exchange believes that the CRO can provide objectivity and an appropriate check and balance to the settlement process, particularly in light of the call for review process set forth in proposed Rule 10.9310.

The Exchange also proposes to adopt NYSE American's process for minor rule violations while retaining the specific list of rules and fine levels included in the Exchange's current minor rule violation plan, with certain technical and conforming amendments. Unlike current Rules 10.11 and 10.12, which are described above, the proposed rule would not permit a Respondent to appeal or contest a minor rule violation letter by making an oral presentation or having a review on the papers alone. Rather, under the proposed rule, if the Respondent rejects the minor rule violation letter, then a complaint must be filed under proposed Rule 10.9211, and the minor rule violation letter may not be introduced into evidence. The Exchange believes the proposed rule is appropriate because it will harmonize

<sup>45</sup> See Securities Exchange Act Release No. 38545 (April 24, 1997), 62 FR 25226, 25249–50 (May 8, 1997) (SR–NASD–97–28).

<sup>46</sup> See *id.* and discussion of proposed Rule 10.9232, *infra*.

<sup>47</sup> Proposed Rule 10.9270 would address settlement procedures after the issuance of a complaint.

the Exchange's minor rule violation process with its affiliate's rules.

Finally, proposed Rule 10.9217 (Violations Appropriate for Disposition Under Rule 10.9216(b)) would set forth the list of rules under which an ETP Holder, OTP Holder, OTP Firm or covered person may be subject to a fine under a minor rule violation plan letter as described in proposed Rule 10.9216(b).

Proposed subsection (a) of proposed Rule 10.9217 would incorporate the first two sentences of NYSE American Rule 9217 except for changes reflecting the Exchange's membership, the citation to proposed Rule 10.9216(b), and the statement that a fine thereunder shall not exceed \$5,000 (the amount reflected in current Rule 10.12(a)).<sup>48</sup>

Proposed subsection (b) would incorporate subsection (c) of Rule 10.12 (the Exchange's current Minor Rule Plan) and provide that Regulatory Staff designated by the Exchange shall have the authority to impose a fine pursuant to this Rule.

Proposed subsection (c) would incorporate language from current Rule 10.12(e) providing that any person or organization found in violation of a minor rule is not required to report such violation on SEC Form BD or Form U-4 if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Any fine imposed in excess of \$2,500 is subject to current rather than quarterly reporting to the Commission pursuant to Rule 19d-1 under the Act. Proposed subsection (d) would incorporate current Rule 10.12(f) except that the reference to Rule 10.4 would be replaced with the Rule 10.9000 Series.<sup>49</sup>

Under a new heading titled "List of Rule Violations and Fines Applicable Thereto," the Exchange would provide that any ETP Holder, OTP Holder, OTP Firm, or covered person may be subject to a fine under proposed Rule 10.9216(b) with respect to any rules listed below. The Exchange would retain the list of rules currently set forth in Rule 10.12, as follows:

- Proposed subsection (e) would incorporate current Rule 10.12(h) (Minor Rule Plan: Options Floor

Decorum and Minor Trading Rule Violations).

- Proposed subsection (f) would incorporate current Rule 10.12(i) (Minor Rule Plan: Minor Trading Rule Violations) except that the title would be amended to include "Equities" before "Trading."

- Proposed subsection (g) would incorporate current Rule 10.12(j) (Minor Rule Plan: Record Keeping and Other Minor Rule Violations).

- Proposed subsection (h) would incorporate current Rule 10.12(k) (Options Minor Rule Plan: Recommended Fine Schedule) except that references to "associated person" would be replaced by "covered person"; correcting the cross-reference in subsection (iii)(1) from Rule 10.2(c) to (e) [sic]; and correcting the cross-reference in subsection (iii)(6) from Rule 10.2(b) to (d).<sup>50</sup>

- Finally, proposed subsection (i) would incorporate current Rule 10.12(l) (Equities Minor Rule Plan: Recommended Fine Schedule) except that references to "associated person" would be replaced by "covered person."

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

Proposed Rule 10.9220 would set forth the following rules.

Proposed Rules 10.9221 (Request for Hearing) and 10.9222 (Extensions of Time, Postponements, and Adjournments) would describe the process for a Respondent to request a hearing; the notice of a hearing; timing considerations; and the authority of a Hearing Officer, Hearing Panel or Extended Hearing Panel to order a hearing. Proposed Rule 10.9221 provides that a Hearing Officer generally must provide at least 28 days' notice of the hearing. Under current Rule 10.5(a), notice must be provided at least 15 days in advance.

Proposed Rules 10.9230 Through 10.9235

Proposed Rule 10.9231 (Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer) would govern appointment of a Hearing Panel or Extended Hearing Panel, and would also govern appointment of a replacement Hearing Officer and the

designation of an observer to a Hearing Panel or an Extended Hearing Panel. As proposed, the Exchange would use FINRA's Chief Hearing Officer and Hearing Officers from FINRA's Office of Hearing Officers, rather than have the BCC or EBCC appoint a Conduct Panel as it currently does under Rule 10.5. Proposed Rule 10.9231 would be substantially the same as NYSE American Rule 9231.

Proposed Rule 10.9232 (Criteria for Selection of Panelists, Replacement Panelists, and Floor-Based Panelists) would set forth the criteria for the selection of Panelists, Replacement Panelists and Floor-Based Panelists. Proposed Rule 10.9232 would be substantially the same as NYSE American Rule 9232. As is the case under NYSE American Rule 9232, Panelists would be required to be persons of integrity and judgment and, other than the Hearing Officer, would be a member of the Exchange hearing board. Moreover, at least one Panelist would be engaged in securities activities differing from that of the Respondent or, if retired, was so engaged in differing activities at the time of retirement. Proposed Rule 10.9232 would also provide that the Exchange Board of Directors would from time to time appoint a hearing board to be composed of such number of permit holders of the Exchange that are not members of the Exchange Board of Directors and registered employees and nonregistered employees of ETP Holders, OTP Holders and OTP Firms. In order to have the largest number of potential Panelists available, the proposed Rule would further provide that former permit holders and registered and non-registered employees of ETP Holders, OTP Holders and OTP Firms who have retired from the securities industry may be appointed to the hearing board. The Exchange believes that there are well-qualified persons, in particular retirees, who would be valuable members of the hearing board. The members of the hearing board would also be appointed annually and would serve at the pleasure of the Exchange Board of Directors.

Finally, proposed Rule 10.9232 would include Panelist selection criteria, which would be expertise, absence of any conflict of interest or bias or any appearance thereof, availability, and the frequency with which a person has served as a Panelist in the last two years, favoring the selection of a person as a Panelist who has never served or who has served infrequently as a Panelist during the period. While current Rule 10.3(e) includes provisions concerning conflict or bias, the

<sup>48</sup> See note 22, *supra*.

<sup>49</sup> The Exchange does not propose to incorporate Rule 10.12(e), which sets forth the Exchange's process for contesting minor rule violations and the reporting requirements for minor rule violations. As discussed below, these requirements are redundant of proposed Rule 10.9216(b).

<sup>50</sup> In proposed subsections (h)(1) [sic] and (6), (i)(iii)(1) [sic] and (6), and (j)(2)(1) [sic] and (6), references to the submission of blue sheets under Rule 10.2(e) would be supplemented with references to proposed Rule 10.8211, and references to cooperating with investigations under Rule 10.2(d) would be supplemented with references to proposed Rule 10.8210.

Exchange otherwise does not have a comparable rule.

Proposed Rules 10.9233 (Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers) and 10.9234 (Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Panelists) would establish the processes for recusal and disqualification of Hearing Officers or Panelists. Current Rule 10.5(b) allows a party to object to the composition of a Conduct Panel within five business days of receipt of notification of the composition, but does not state how the objection is handled. Under the proposed rules, a Party could file a motion to disqualify a Hearing Officer or Hearing Panelist not later than 15 days after the later of (1) when the Party learned of the facts believed to constitute the disqualification, or (2) when the Party was notified of the assignment of the Hearing Officer or the appointment of the Panelist, respectively. The proposed rules would further provide that the Hearing Officer would determine whether a Hearing Panelist should be disqualified and the Chief Hearing Officer would determine if the Hearing Officer should be disqualified.

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

Proposed Rules 10.9240 Through 10.9242

Proposed Rule 10.9240 would set forth the following rules.

Proposed Rules 10.9241 (Pre-hearing Conference) and 10.9242 (Pre-hearing Submission) would govern the substantive and procedural requirements for pre-hearing conferences and pre-hearing submissions. Proposed Rule 10.9242 would also prohibit former Regulatory Staff, within a period of one year immediately following termination of employment with the Exchange or FINRA, from providing expert testimony on behalf of any other person in any proceeding under the Rule 10.9000 Series. Nothing in the proposed Rule would prohibit former Regulatory Staff from testifying as a witness on behalf of the Exchange or FINRA. As noted above, current Rule 10.5 gives the Conduct Panel general authority in procedural matters, but there are no specific provisions in the current Rules relating to pre-hearing conferences and submissions.

Proposed Rules 10.9250 Through 10.9253

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

Proposed Rule 10.9251 (Inspection and Copying of Documents in Possession of Staff) would require Enforcement to make available to a Respondent any documents prepared or obtained in connection with the investigation that led to the proceedings, except that certain privileged or other internal documents, such as examination or inspection reports or documents that would reveal an examination, investigation, or enforcement technique or confidential source, or documents that are prohibited from disclosure under federal law, are not required to be made available. A Hearing Officer may require that a withheld document list be prepared. Proposed Rule 10.9251 also sets forth procedures for inspection and copying of produced documents. In addition, if a Document required to be made available to a Respondent pursuant to the proposed Rule was not made available by Enforcement, no rehearing or amended decision of a proceeding already heard or decided would be required unless the Respondent establishes that the failure to make the Document available was not harmless error. The Hearing Officer, or, upon review under proposed Rule 10.9310, the Exchange Board of Directors, would determine whether the failure to make the document available was not harmless error, applying applicable Exchange, FINRA, SEC, and federal judicial precedent. The proposed Rule would not establish any preference for Exchange versus other precedent in this respect; rather the Adjudicators could determine in their discretion what precedent to apply. The Exchange's current rules do not include a comparable provision.

Under proposed Rule 10.9252 (Requests for Information), a Respondent could request that the Exchange invoke proposed Rule 10.8210 to compel the production of Documents or testimony at the hearing if the Respondent can show that certain standards are met, *e.g.*, that the information sought is relevant, material, and non-cumulative. Under current

Rule 10.5(d), the Conduct Panel, upon its own motion or the motion of the Complainant or Respondent, may request the production of documentary materials and witnesses.

Under proposed Rule 10.9253 (Production of Witness Statements), a Respondent could file a motion to obtain certain witness statements. As stated above, current Rule 10.5(d) allows the Conduct Panel, upon its own motion or the motion of the Complainant or Respondent, to request the production of documentary materials and witnesses.

Proposed Rules 10.9260 Through 10.9269

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

Proposed Rule 10.9261 (Evidence and Procedure in Hearing) would generally require the Parties to submit copies of documentary evidence and the names of the witnesses each Party intends to present at the hearing no later than 10 days before the hearing. Current Rule 10.5(c) requires that such information be provided at least five business days before the hearing. The Exchange believes that the additional notice under the proposed rule would benefit all Parties. The proposed Rule would also provide that if a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the Party's representative. Finally, under the proposed rule, a Party, for good cause shown, may seek to submit any additional evidence at the hearing as the Hearing Officer, in his or her discretion, determines may be relevant and necessary for a complete record. The Exchange's current rules do not contain comparable provisions.

Proposed Rule 10.9262 (Testimony) would require persons subject to the Exchange's jurisdiction to testify under oath or affirmation at a hearing. Current Rule 10.5(d) similarly provides that witnesses must testify under oath.

Proposed Rule 10.9263 (Evidence: Admissibility) would authorize the Hearing Officer to exclude irrelevant, immaterial, or unduly repetitious or prejudicial evidence and permit a Party to object to the admission of evidence. Under the proposed Rule, objections to the admission or exclusion of evidence would be made on the record and would succinctly state the grounds relied upon; excluded material would be deemed a supplemental document and would be attached to the record and retained under proposed Rule 10.9267. Under current Rule 10.5(d), the Conduct Panel 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 Rule 10.9264 (Motion for Summary Disposition) would allow Parties to file a motion for summary disposition under certain circumstances and would describe the procedures for filing and ruling on such motion. Under current Rule 10.5, the Conduct Panel regulates the hearing, but the Rule does not specifically address motions for summary disposition.

Proposed Rule 10.9265 (Record of Hearing) would require that the hearing be recorded by a court reporter, that a transcript be prepared and made available for purchase, and that a Party or a witness be permitted to seek a correction of the transcript from the Hearing Officer. Current Rule 10.5(d) provides generally that the Exchange must keep a transcript of the hearing.

Proposed Rule 10.9266 (Proposed Findings of Fact, Conclusions of Law, and Post-Hearing Briefs) would authorize the Hearing Officer to require a post-hearing brief or proposed findings of fact and conclusions of law and would outline the form and timing for such submissions. There is no comparable current rule, although the Conduct Panel generally regulates the conduct of a hearing under Rule 10.5.

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

Proposed Rule 10.9268 (Decision of Hearing Panel or Extended Hearing Panel) would set forth the timing and the contents of a decision of the Hearing Panel or Extended Hearing Panel and the procedures for a dissenting opinion, service of the decision, and any requests for review. Under proposed Rule 10.9268, the decision would be issued within 60 days after the final date allowed for filing proposed findings of fact, conclusions of law, and post-hearing briefs, or by a date established at the discretion of the Chief Hearing Officer. Under current Rule 10.7, a decision must be issued within 30 days after the conclusion of the hearing. The Exchange believes that the longer period of time is appropriate to allow the Hearing Panel or Extended Hearing Panel adequate time to reach its decision and agree on the text of the decision and would not prejudice any Party.<sup>51</sup>

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

The Exchange notes that it has an affiliate that is an ETP Holder.<sup>52</sup> As such, in proposed Rule 10.9268, the Exchange proposes to include text providing that a disciplinary decision concerning an affiliate of the Exchange as such term is defined in Rule 12b-2 under the Exchange Act<sup>53</sup> would not be subject to review under proposed Rule 10.9310 but instead would be treated as a final disciplinary action subject to SEC review. The Exchange does not believe that an appeal by an affiliate to the Exchange Board 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 and NYSE American Rule 9268.<sup>54</sup> Because the Exchange's ETP Holder affiliate will still have a right to appeal to the SEC, the Exchange believes that the proposed rule is not unfairly discriminatory.

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

Finally, proposed Rule 10.9269 (Default Decisions) would establish the process for the issuance and review of default decisions by a Hearing Officer when a Respondent fails to timely answer a complaint or fails to appear at a pre-hearing conference or hearing where due notice has been provided. A Party may, for good cause shown, file a motion to set aside a default decision. Under current Rule 10.4(c), the BCC or EBCC may make a summary determination with respect to charges a respondent has failed to answer, has admitted, or [sic] do not appear to be in dispute. Under current Rule 10.8(a), either the Complainant or the Respondent may request a review of a

<sup>52</sup> Archipelago Securities, Inc., is a broker-dealer affiliate of the Exchange that is used for inbound and outbound routing of certain orders. See Rule 7.45-E.

<sup>53</sup> NYSE American Rule 9268(e)(2) does not contain the clause "as such term is defined in Rule 12b-2 under the Exchange Act" with regard to an affiliate.

<sup>54</sup> See NASDAQ Rule 9268(e)(2).

summary determination pursuant to Rule 10.4(c) by petitioning the CFR for such review within 15 days after service of notice of a decision.

#### Proposed Rule 10.9270 (Settlement Procedure)

Proposed Rule 10.9270 would provide for a settlement procedure for a Respondent who has been notified that a proceeding has been instituted against him or her. The proposed settlement procedure is similar to the settlement procedures in current Rule 10.6, except for contested settlements.

Under proposed Rule 10.9270(a), a Respondent notified of the institution of a disciplinary proceeding could make a written offer of settlement at any time, but the proposal would not stay the proceeding unless otherwise decided by the Hearing Officer. If a Respondent proposes an offer of settlement after the hearing on the merits has begun, the making of an offer of settlement shall not stay the proceeding, unless otherwise decided by the Hearing Panel or, if applicable, the Extended Hearing Panel. Under current Rule 10.6(a), the proceeding likewise is not stayed.

Under proposed Rule 10.9270(b), a Respondent making an offer of settlement would also be required to do so in conformity with the provisions of the proposed Rule and would be prohibited from making a frivolous settlement offer or one that was inconsistent with the seriousness of the violations. Current Rule 10.6(b) contains a similar prohibition.

Proposed Rule 10.9270(c) would provide that an offer of settlement shall be in writing and signed by the person making the offer, and, if the person is represented by counsel or a representative, signed also by the counsel or representative. Under the proposed Rule, the offer of settlement should contain in reasonable detail the required content of the proposal, which would include, among other things, a statement consenting to findings of fact and violations, a description of the proposed sanction and the effective date of any sanction(s) imposed, or a statement that the effective date of the sanction(s) will be a date to be determined by Regulatory Staff. Current Rule 10.6(c) similarly requires that an offer of settlement contain proposed findings of facts, violations, a proposed sanction, and the proposed effective date of any sanction imposed. The proposed rule would also require that the proposed sanction be consistent with the Exchange's sanctions guidelines, if applicable, or, if inconsistent with the sanction guidelines, include a detailed statement

supporting the proposed sanction. As noted above, the Exchange's Sanctioning Guidelines apply only to matters involving violations of the options rules.<sup>55</sup> In connection with matters not covered by the Sanctioning Guidelines, the CRO, Hearing Panel or Extended Hearing Panel, as applicable, would consider relevant Exchange precedent or such other precedent as it deemed appropriate in determining whether to accept a settlement offer.

Proposed Rule 10.9270(d) would provide that submission of a settlement offer waives a Respondent's right to a hearing, to claim bias or ex parte communication violations, any right to claim that a person or body violated the ex parte prohibitions of proposed Rule 10.9143 or the separation of functions prohibitions of proposed Rule 10.9144, and the right to review by the Board of Directors, the Commission, or the courts. Current Rule 10.6(d) contains substantially the same text.

Proposed Rule 10.9270(e) would address contested settlement offers. Under the proposed rule, if a Respondent made an offer of settlement and Enforcement opposed it, the offer of settlement would be contested and thereby deemed rejected, and thus the proceeding would continue to completion under the proposed Rule 10.9200 Series. The contested offer of settlement would not be transmitted to the Office of Hearing Officers, CRO, or Hearing Panel or Extended Hearing Panel, and would not constitute a part of the record in any proceeding against the Respondent making the offer. In contrast, under current Rule 10.6(f), the Exchange's Department of Enforcement must transmit a contested offer of settlement made after the issuance of the complaint but before the commencement of the hearing to the BCC or EBCC for acceptance or rejection, or if the contested offer is made after the commencement of the hearing, it must be transmitted to the Conduct Panel for acceptance or rejection. 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 10.9200 Series. The Exchange believes that its proposed rule would encourage Respondents to make reasonable offers of settlement that would be acceptable to Enforcement.

Proposed Rule 10.9270(f) and (h) would address uncontested settlement offers. Under the proposed rule, if a hearing on the merits had not begun, the

CRO could accept the settlement offer; if a hearing on the merits had begun, the Hearing Panel or Extended Hearing Panel could accept the settlement offer.<sup>56</sup> If they did not, the offer would be deemed withdrawn and the matter would proceed under the proposed Rule 10.9200 Series and the settlement offer would not be part of the record. Under current Rule 10.6, an uncontested offer of settlement made before a hearing must be transmitted to the General Counsel for acceptance or rejection, while such an offer made after a hearing has begun must be transmitted to the Conduct Panel for acceptance or rejection.

As described below, if the offer of settlement were accepted by the CRO, Hearing Panel or Extended Hearing Panel, it would become final 25 days after being sent, together with an order of acceptance, to each Director and each member of the Committee for Review, unless review by the Exchange Board of Directors is required pursuant to proposed Rule 10.9310(a)(1)(A) or (B). The Exchange anticipates that the required acceptance by the CRO, Hearing Panel, or Extended Hearing Panel would help ensure objectivity and consistency among offers of settlement that are issued. The proposed rule change would also allow an offer of settlement to be called for review by the Exchange Board of Directors. The Exchange believes that this review mechanism provides an additional, appropriate check and balance to the proposed settlement process.

Proposed Rule 10.9270(g) would provide that the proceeding under the proposed rule would conclude as of the date the order of acceptance is final (*i.e.*, 25 days after being sent to each Director and each member of the CFR, unless review by the Board of Directors is requested), and the order of acceptance would constitute final disciplinary action of the Exchange. The sanction would take effect as set forth in the order.

Proposed Rule 10.9270(i) would address disciplinary proceedings with multiple Respondents and permit settlement offers to be accepted or rejected as to any one or all of such Respondents. Current Rule 10.6(i) contains similar authorizations.

Proposed Rule 10.9270(j) would provide that a Respondent may not be prejudiced by a rejected offer of settlement nor may it be introduced into

evidence. Current Rule 10.6(j) provides the same.

Proposed Rule 10.9280 (Contemptuous Conduct)

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

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

Proposed Rule 10.9290 (Expedited Disciplinary Proceedings)

Under proposed Rule 10.9290, for any disciplinary proceeding, the subject matter of which also is subject to a temporary cease and desist proceeding initiated pursuant to proposed Rule 10.9810 or a temporary cease and desist order, hearings would be required to be held and decisions rendered at the earliest possible time. The proposed Rule is substantially the same as NYSE American Rule 9290. The Exchange does not currently have a similar rule.

Proposed Rule 10.9291 (Permanent Cease and Desist Orders) would govern the content, scope, form and delivery requirements of permanent cease and desist orders. Under proposed Rule 10.9291(a), when a decision issued under proposed Rule 10.9268 or proposed Rule 10.9269 or an order of acceptance issued under proposed Rule 10.9270 imposes a permanent cease and desist order, the decision shall: Order a Respondent (and any successor of a Respondent, where the Respondent is an ETP Holder, OTP Holder or OTP Firm) to cease and desist permanently from violating a specific rule or statutory provision; set forth the violation; and describe in reasonable detail the act or acts the Respondent (and any successor of a Respondent, where the Respondent is an ETP Holder, OTP Holder or OTP Firm) shall take or refrain from taking. The proposed Rule would also require Respondents that are ETP Holders, OTP Holders or OTP

<sup>55</sup> See NYSE Arca Rule 10.16 (NYSE Arca Sanctioning Guidelines—Options) and note 24, *supra*.

<sup>56</sup> The CRO, Hearing Panel, or Extended Hearing Panel, as applicable, would consider Exchange precedent or such other precedent as it deemed appropriate in determining whether to accept the settlement offer.

Firms to deliver a copy of a permanent cease and desist order, within one business day of receiving it, to its [sic] covered persons. With the exception of conforming changes reflecting the Exchange's membership, the text of the proposed Rule is substantially same as NYSE American Rule 9291. The Exchange currently does not have a similar rule.

#### Proposed Rules 10.9300 Through 10.9310

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

Proposed Rule 10.9310 (Review by Exchange Board of Directors) would provide for one review at the Board of Directors level, and discontinue the current practice under Rule 10.8 whereby the parties can appeal a disciplinary matter to the CFR (a Board committee) under subsection (b) and then appeal the CFR decision to the full Board of Directors under subsection (c). The Exchange believes that one level of appellate review would be fair and efficient and harmonize the Exchange's appellate process with the process of the Exchange's affiliates who have adopted similar disciplinary rules.

Under proposed Rule 10.9310(a)(1)(A), any Party, any Director, and any member of the CFR could require a review by the Exchange Board of Directors of any determination or penalty, or both, imposed by a Hearing Panel or Extended Hearing Panel under the proposed Rule 10.9200 Series, except that none of the aforementioned persons could request a review by the Exchange Board of Directors of a decision concerning an affiliate of the Exchange as that term is defined in Rule 12b-2 under the Exchange Act.<sup>57</sup> Under current Rule 10.8, in addition to the parties, only the Board of Directors may order review of a decision made by the Review Board<sup>58</sup> within 30 days after notice of the decision has been served on the Respondent.<sup>59</sup> Moreover, under the

proposed Rule, a request for review would be made by filing with the Secretary of the Exchange a written request therefor, which states the basis and reasons for such review, within 25 days after notice of the determination and/or penalty was served upon the Respondent. Under current Rule 10.8, the parties have 15 days to petition the CFR for review while, as noted, the Board of Directors has 30 days. The proposed Rule would apply a uniform period to all requests for review of a disciplinary determination or penalty.

Under proposed Rule 10.9310(a)(1)(B)(i), any Director and any member of the CFR could require a review by the Board of Directors of any determination or penalty, or both, imposed in connection with an AWC under Rule 10.9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), except for of a determination or penalty concerning an Exchange affiliate as defined in Rule 12b-2 under the Exchange Act. Under proposed Rule 10.9310(a)(1)(B)(ii), any Party could require a review by the Exchange Board of Directors of any rejection by the CRO of a letter of acceptance, waiver, and consent under Rule 10.9216 or an offer of settlement determined to be uncontested before a hearing on the merits has begun under Rule 10.9270(f), except that no Party may request Board of Directors review of a rejection of an AWC or an offer of settlement concerning an Exchange affiliate as defined in Rule 12b-2 under the Exchange Act.<sup>60</sup> Current Rule 10.8 does not have comparable provisions.

Under proposed Rule 10.9310(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 Rule 10.9267. Within 21 days after the Secretary of the Exchange gives notice of a request for review to the Parties, or at such later time as the Secretary of the Exchange 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

of any party to the Proceeding filed within 15 business days after issuance.

<sup>60</sup> NYSE American Rule 9310(a)(1)(B)(i) & (ii) do not contain the clause "as such term is defined in Rule 12b-2 under the Exchange Act" with regard to an affiliate.

Exchange was complete. Current Rule 10.8 does not have comparable provisions.

Under proposed Rule 10.9310(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. Current Rule 10.8 does not contain comparable requirements.

Proposed Rule 10.9310(b) provides that the CFR may, but is not required to, appoint an Appeals Panel pursuant to current Rule 3.3 to conduct a review and make a recommendation to the CFR. In this respect, the proposed rule is the same as NYSE American Rule 9310(b) and similar to the Exchange's current process as set forth in Rule 10.8(b). Further, upon review, and with the advice of the CFR, the 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, (including the terms of any permanent cease and desist order), or both, could modify or reverse any such determination, and could increase, decrease or eliminate any such penalty, or impose any penalty permitted under the Exchange's rules, as it deems appropriate. Unless the Board of Directors otherwise specifically directs, its determination and penalty, if any, after review shall be final and conclusive subject to the provisions for review of the Act. The proposed process is different from that in current Rule 10.8 because, as noted, the Exchange has determined to discontinue the current practice under Rule 10.8 whereby the parties can appeal a disciplinary matter to the CFR (a Board committee) under subsection (b) and then appeal the CFR decision to the full Board of Directors under subsection (c). Under the proposed rule, there would only be one Board-level appeal. The Board of Directors would make the final determination with the advice of the CFR.

Under proposed Rule 10.9310(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. Under

<sup>57</sup> NYSE American Rule 9310(a)(1)(A) does not contain the clause "as such term is defined in Rule 12b-2 under the Exchange Act" with regard to an affiliate.

<sup>58</sup> Current Rule 10.8(b) defines "Review Board" as "the CFR itself or a CFR Appeals Panel."

<sup>59</sup> However, under Rule 10.11(d), which concerns appeals of minor rule sanctions, a decision of a Conduct Panel is subject to review by the Board of Directors either on the Board's own motion within 30 days after issuance (or upon presentation to the Board, whichever is later), or upon written petition

current Rule 10.8, there is no provision for remand.

Under proposed Rule 10.9310(d), notwithstanding any other provisions of the proposed Rule 10.9000 Series, the CEO could not require a review by the Exchange Board of Directors under this rule and would be recused from deliberations and actions of the Exchange Board of Directors with respect to such matters. Current Rule 10.8 does not have a comparable provision.

#### Proposed Rules 10.9500 Through 10.9527

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

The proposed Rule 10.9520 Series would set forth procedures for a covered person to become or remain associated with an ETP Holder, OTP Holder or OTP Firm notwithstanding the existence of a statutory disqualification as defined in Section 3(a)(39) of the Exchange Act, and for a current ETP Holder, OTP Holder, OTP Firm or covered person to obtain relief from the eligibility or qualification requirements of the Exchange's Rules, which the proposed rule refers to as "eligibility proceedings." The proposed rules are substantially similar to the NYSE American Rule 9520 Series, and the Exchange intends for the scope of the proposed Rule 10.9520 Series to be substantially the same as the FINRA Rule 9520 Series and the NYSE American Rule 9520 Series.<sup>61</sup>

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

Proposed Rule 10.9522 (Initiation of Eligibility Proceeding; Member Regulation Consideration) would govern the initiation of an eligibility proceeding by the Exchange and the obligation for an ETP Holder, OTP Holder or OTP Firm to file an application or, for matters set forth in proposed Rule 10.9522(e)(1), a written request for relief if the ETP Holder, OTP Holder or OTP Firm determines prior to receiving a notice under Rule 10.9522(a) that (1) it

has become a disqualified ETP Holder, OTP Holder or OTP Firm; (2) a covered person associated with such ETP Holder, OTP Holder or OTP Firm or whose association is proposed by an applicant for membership under Exchange rules has become a disqualified person; or (3) the ETP Holder, OTP Holder or OTP Firm or applicant for membership under Exchange rules wishes to sponsor the association of a covered person who is a disqualified person. The proposed rule also contains provisions governing withdrawal of an application or written request for relief as well as the application of the prohibitions against ex parte communications set forth in Rule 10.9143 to the Rule 10.9520 Series.

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

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

Specifically, under subsection (a), which would apply to all disqualifications except those arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Act or arising under Section 3(a)(39)(E) of the Act, a disqualified ETP Holder, OTP Holder or OTP Firm, sponsoring ETP Holder, OTP Holder or OTP Firm, and/or disqualified person (the "Disqualified Person"), would execute a letter consenting to the imposition of the supervisory plan. By submitting such a letter, the Disqualified Person waive the right to a hearing before a Hearing Panel and any right of appeal to the Exchange Board of Directors, the

Commission, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted; any right to claim bias or prejudice by Member Regulation, the CRO, the Board of Directors, or any member of the Board of Directors, in connection with such person's or body's participation in discussions regarding the terms and conditions of Member Regulation's recommendation or the supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and any right to claim that a person violated the ex parte prohibitions of proposed Rule 10.9143 or the separation of functions prohibitions of proposed Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the recommendation or supervisory plan, or other consideration of the recommendation or supervisory plan, including acceptance or rejection of such recommendation or supervisory plan.

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

Under subsection (b), which would apply to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Act or arising under Section 3(a)(39)(E) of the Act, in approving an application

<sup>61</sup> NYSE American Rule 9521(b)(3) defining "disqualified person" does not contain the clause "as defined in Section 3(a)(39) of the Exchange Act" with regard to a disqualification.

under proposed Rule 10.9522(e)(2)(F), Member Regulation would be authorized to accept the membership or continued membership of a Disqualified Person or the association or continuing association of a Disqualified Person pursuant to a supervisory plan where the Disqualified Person would consent to the imposition of the supervisory plan. The Disqualified Person would execute a letter consenting to the imposition of the supervisory plan and Member Regulation would prepare a proposed Notice under Rule 19h-1 of the Act where required to be filed by the Exchange.

By submitting an executed letter consenting to a supervisory plan, a Disqualified Person would waive the right of appeal to the Board of Directors, the Commission, and the courts, or otherwise challenge the validity of the supervisory plan, if the supervisory plan is accepted; any right to claim bias or prejudice by Member Regulation or the CRO in connection with such person's or body's participation in discussions regarding the terms and conditions of Member Regulation's recommended supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such recommendation or supervisory plan; and any right to claim that a person violated the ex parte prohibitions of proposed Rule 10.9143 or the separation of functions prohibitions of proposed Rule 10.9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of the supervisory plan, or other consideration of the supervisory plan, including acceptance or rejection of such supervisory plan. If the supervisory plan is rejected, the Disqualified Person would be bound by the waivers made under proposed paragraph (b)(1) for conduct by persons or bodies occurring during the period beginning on the date the supervisory plan was submitted and ending upon the rejection of the supervisory plan and would have the right to proceed under proposed Rule 10.9524 (Exchange Board of Directors Consideration), which would allow a request for review by the applicant to the Exchange Board of Directors. Proposed Rule 10.9527 would provide that a filing of an application for review would not stay the effectiveness of final action by the Exchange unless the Commission otherwise ordered. To maintain consistency with NYSE American's rule numbering, proposed Rules 10.9525 and 10.9526 would be designated "Reserved."

Proposed Rules 10.9550 Through 10.9559

Proposed Rules 10.9550 through 10.9559 would govern expedited proceedings.

Under proposed Rule 10.9551 (Failure to Comply with Public Communication Standards), Regulatory Staff could issue a written notice requiring an ETP Holder, OTP Holder or OTP Firm to file communications with FINRA's Advertising Regulation Department at least 10 days prior to use if the staff determined that the ETP Holder [sic] had departed from the standards of Rule 9.21-E (Communications with the Public) and any applicable options rule.<sup>62</sup> The notice would state the specific grounds and include the factual basis for the action as well as the effective date. The ETP Holder, OTP Holder or OTP Firm could file a written request for a hearing with the Office of Hearing Officers pursuant to proposed Rule 10.9559. An ETP Holder, OTP Holder or OTP Firm would be required to set forth with specificity any and all defenses to the action in its request for a hearing. Pursuant to proposed Rules 10.8310(a) and 10.9559(n), a Hearing Officer or, if applicable, Hearing Panel, could approve, modify or withdraw any and all sanctions or limitations imposed by the staff's notice, and impose any other fitting sanction. An ETP Holder, OTP Holder or OTP Firm subject to a pre-use filing requirement also could file a written request for modification or termination of the requirement. Current Rule 9.21-E references the procedures in FINRA Rules 9551 and 9559, which are substantially the same as proposed Rules 10.9551 and 10.9559. As discussed below, Rule 9.21-E would be amended to replace references to the FINRA rules with references to proposed Rules 10.9551 and 10.9559.

Proposed Rule 10.9552 (Failure to Provide Information or Keep Information Current) would establish procedures in the event that an ETP Holder, OTP Holder, OTP Firm or covered person failed to provide any information, report, material, data, or testimony requested or required to be filed under the Exchange's rules, or failed to keep its membership application or supporting documents

<sup>62</sup> The Exchange does not currently have a comparable rule for the options market and will be submitting a rule filing to adopt Rule 9.21-O based on NYSE American Rule 991 (Options Communications) and amend proposed Rule 10.9551 [sic]. Accordingly, the Exchange added the phrase "and any applicable options rule" following "Pursuant to Rule 9.21-E(c)(5)(B)" in proposed Rules 10.9551(a) and (d) and also included references to OTP Holders and OTP Firms throughout proposed Rule 10.9551 in anticipation of adopting Rule 9.21-O.

current. In the event of the foregoing, under proposed Rule 10.9552, the ETP Holder, OTP Holder, OTP Firm or covered person could be suspended if corrective action were not taken within 21 days after service of notice. An ETP Holder, OTP Holder, OTP Firm or covered person served with a notice could request a hearing within the 21-day period. An ETP Holder, OTP Holder, OTP Firm or covered person subject to a suspension could file a written request for termination of the suspension on the ground [sic] of full compliance. An ETP Holder, OTP Holder, OTP Firm or covered person suspended under the proposed rule that failed to request termination of the suspension within three months of issuance of the original notice of suspension would automatically be expelled or barred.<sup>63</sup> Proposed Rule 10.9552 is substantially the same as its NYSE American counterpart except for references reflecting the Exchange's membership.

Under the Exchange's current rules, there is no procedure that relates to failure to keep a membership application or supporting documents current. Under current Rule 13.2(a)(2), an ETP Holder, OTP Holder or OTP Firm that fails to submit requested documents or information is subject to a non-summary action canceling (rather than suspending) its trading privileges after written notice, after passage of any grace and/or cure period, and after opportunity for a hearing; the rule does not provide for reinstatement following a cancellation. The Exchange's current rules do not authorize it to institute an expedited proceeding against persons who fail to submit documents or information.

Proposed Rule 10.9554 (Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution)<sup>64</sup> would contain similar procedures and consequences as proposed Rule 10.9552 relating to a failure to comply with an arbitration award or related settlement or an

<sup>63</sup> The Exchange believes that the provision for automatic expulsion or bar after three months is consistent with Section 6 of the Act because the respondent would have ample notice and opportunity to be heard under proposed Rule 10.9552, the proposed rule is substantially the same as NYSE American's and FINRA's counterpart rules, and the Commission has upheld at least one bar under a prior version of FINRA's rule. *See, e.g.,* Dennis A. Pearson, Jr., Securities Exchange Act Rel. Nos. 54913 (December 11, 2006) (dismissing application for review by associated person barred under NASD Rule 9552(h)) and 55597A (April 6, 2007) (denying motion for reconsideration).

<sup>64</sup> Proposed Rule 10.9553 would be designated "Reserved" to maintain consistency with NYSE American's rule numbering.

Exchange order of restitution or Exchange settlement agreement providing for restitution. Under proposed Rule 10.9554, if an ETP Holder, OTP Holder, OTP Firm or covered person fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under the Exchange's rules, or an Exchange order of restitution or Exchange settlement agreement providing for restitution, Regulatory Staff could provide written notice to such ETP Holder, OTP Holder, OTP Firm or covered person stating that the failure to comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any ETP Holder, OTP Holder or OTP Firm. Under current Rule 13.2(a)(2), after written notice, passage of any grace and/or cure period, and opportunity for a hearing, the Exchange can suspend or cancel trading privileges of an ETP Holder, OTP Holder or OTP Firm for failure to comply with an arbitration award or settlement agreement related to an arbitration or mediation under Rule 12. The proposed rule would be broader than the current rule in that it would apply to covered persons, and more specific in that it would provide a uniform 21-day notice period and specific procedures to be followed in the event of suspension or cancellation. Proposed Rule 10.9554 is substantially the same as NYSE American Rule 9554 except for references reflecting the Exchange's membership.

Proposed Rule 10.9555 (Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services) would govern the failure to meet the eligibility or qualification standards or prerequisites for access to services offered by the Exchange. Under proposed Rule 10.9555, if an ETP Holder, OTP Holder, OTP Firm or covered person did not meet the eligibility or qualification standards set forth in the Exchange's rules, Exchange staff could provide written notice to such ETP Holder, OTP Holder, OTP Firm or covered person that the failure to become eligible or qualified will result in a suspension or cancellation of membership or a suspension or bar from associating with any ETP Holder, OTP Holder or OTP Firm. Similarly, if an ETP Holder, OTP Holder, OTP Firm or covered person did not meet the prerequisites for access to services offered by the Exchange or an ETP Holder, OTP Holder or OTP Firm thereof or could not be permitted to continue to have access to services

offered by the Exchange or an ETP Holder, OTP Holder or OTP Firm thereof with safety to investors, creditors, ETP Holders, OTP Holders, OTP Firms or the Exchange, Exchange staff could provide written notice to such ETP Holder, OTP Holder, OTP Firm or covered person limiting or prohibiting access to services offered by the Exchange or an ETP Holder, OTP Holder, or OTP Firm thereof. The limitation, prohibition, suspension, cancellation, or bar referenced in the notice would become effective 14 days after service of the notice except that the effective date for a notice of a limitation or prohibition on access to services offered by the Exchange or an ETP Holder, OTP Holder, or OTP Firm thereof with respect to services to which the ETP Holder, OTP Holder, OTP Firm or covered person does not have access would be upon service of the notice. Current Rule 13.9 was modeled on NYSE and NYSE American Rule 9555 and incorporated the procedural rules of NYSE and NYSE American Rule 9559.<sup>65</sup> Proposed Rule 10.9555 would govern suspension, cancellation, bars or limitation or prohibition on access to services following the effective date of the proposed new rules.

Proposed Rule 10.9556 (Failure to Comply with Temporary and Permanent Cease and Desist Orders) would provide procedures and set forth consequences for a failure to comply with temporary and permanent cease and desist orders issued under the Rule 10.9200, 10.9300 or 10.9800 Series. Although Exchange rules currently permit issuance of cease and desist orders in certain circumstances under Rule 10.18,<sup>66</sup> the Exchange does not currently have a rule that sets forth procedures and consequences for a failure to comply with a cease and desist order issued pursuant to Rule 10.18. The proposed rule is substantially the same as NYSE American Rule 9556 except for references reflecting the Exchange's membership.

Proposed Rule 10.9557 (Procedures for Regulating Activities Under Rules 4.1–E, 4.4–E, 4.1–O and 4.3–O Regarding an ETP Holder, OTP Holder or OTP Firm Experiencing Financial or Operational Difficulties) would allow the Exchange to issue a notice directing an ETP Holder, OTP Holder or OTP

Firm to comply with the provisions of Rule 4.1–E (Minimum Net Capital), Rule 4.4–E (Restrictions on ETP Holder Activities), Rule 4.1–O (Minimum Net Capital) or Rule 4.3–O (Restrictions on OTP Activities) or otherwise directing it to restrict its business activities.<sup>67</sup> The requirements and/or restrictions imposed by a notice issued and served under the proposed Rule would be immediately effective, except that a timely request for a hearing would stay the effective date for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under proposed Rule 10.9559(o)(4)(A) (whichever period is less), unless the Exchange's CRO (or such other senior officer as the CRO may designate) determines that such a stay cannot be permitted with safety to investors, creditors or other ETP Holders, OTP Holders or OTP Firms. Such a determination by the Exchange's CRO (or such other senior officer as the CRO may designate) would not be appealable and an extension of the stay period would not be permitted. Under the proposed Rule, where a timely request for a hearing stays the action for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 10.9559(o)(4)(A) (whichever period is less), the notice would not be deemed to have taken effect during that entire period. Any requirements and/or restrictions imposed by an effective notice would remain in effect unless Exchange staff removes or reduces the requirements and/or restrictions pursuant to a letter of withdrawal of the notice issued as set forth in proposed Rule 10.9557(g)(2).

Proposed Rule 10.9558 (Summary Proceedings for Actions Authorized by Section 6(d)(3) of the Exchange Act) would allow the Exchange's CRO to provide written authorization to Exchange staff to issue a written notice for a summary proceeding for an action

<sup>67</sup> The Exchange does not have rules analogous to NYSE American rules 4110—Equities (Capital Compliance), 4120—Equities (Regulatory Notification and Business Curtailment), or 4130—Equities (Regulation of Activities of Section 15C Member Organizations Experiencing Financial and/or Operational Difficulties) referenced in NYSE American Rule 9557. The Exchange proposes to reference Rules 4.1–E, 4.4–E, 4.1–O and 4.3–O in proposed Rule 10.9557, which establish minimum net capital for ETP Holders, OTP Holders and OTP Firms and permit the Exchange to restrict the activities of an ETP Holder, OTP Holder or OTP Firm if at any time the ETP Holder, OTP Holder or OTP Firm appears to be approaching financial difficulties or appears to be experiencing difficulties in its daily operations. Except for these rule references and references to reflect the Exchange's membership, the proposed rule is otherwise substantially the same as NYSE American Rule 9557.

<sup>65</sup> See note 28, *supra*.

<sup>66</sup> As noted above, Rule 10.18 governs expedited client suspension proceedings and sets forth procedures for issuing suspension orders, immediately prohibiting a Respondent from conducting continued disruptive quoting and trading activity on the Exchange in violation of Rule 11.21. The rule is substantially the same as proposed Rule 10.9560.

authorized by Section 6(d)(3) of the Act. The list of proceedings in the proposed Rule would track the four types of proceedings currently provided for in Rule 13.2(a)(1)(A)–(D), which governs summary proceedings in accordance with Section 6(d)(3) of the Act.<sup>68</sup> The notice issued under the proposed Rule would be immediately effective; an ETP Holder, OTP Holder, OTP Firm or covered person would have seven days to request a hearing. Such summary proceedings are currently authorized under Rule 13.2(a)(1), under which the Exchange has authority to, in part, (i) suspend an ETP Holder, OTP Holder or OTP Firm or Associated Person that is expelled or suspended by another SRO or an Associated Person that is barred or suspended from being associated with a member of an SRO; (ii) suspend an ETP Holder, OTP Holder, OTP Firm, or any other Associated Person of an ETP Holder or OTP Firm who is in financial or operating difficulty; or (iii) limit or prohibit any person with respect to access to Exchange services in certain circumstances. Rule 13.2(c) also provides for notice and an opportunity for a hearing by referencing Rule 10.14, which gives the ETP Holder, OTP Holder, OTP Firm or person 30 days to request a hearing. The Exchange believes that the shorter period to request a hearing is adequate and appropriate in light of the summary nature of the action. The proposed rule is substantially the same as its NYSE American counterpart except for references reflecting the Exchange's membership.

Proposed Rule 10.9559 (Hearing Procedures for Expedited Proceedings Under the Rule 10.9550 Series) would set forth uniform hearing procedures for all expedited proceedings under the proposed Rule 10.9550 Series. Currently, the Exchange does not have a comparable rule. The proposed rule is substantially the same as its NYSE American counterpart except for references reflecting the Exchange's membership.

Proposed Rule 10.9560 (Expedited Suspension Proceeding) would set forth procedures for issuing suspension orders, immediately prohibiting an ETP Holder, OTP Holder, OTP Firm or covered person from conducting continued disruptive quoting and

trading activity on the Exchange and would also provide the Exchange the authority to order an ETP Holder, OTP Holder, OTP Firm or covered person to cease and desist from providing access to the Exchange to a client that is conducting disruptive quoting and trading activity. The proposed Rule is substantially the same as NYSE American Rule 9560 except for references reflecting the Exchange's membership and use of the phrase "Chief Hearing Officer" rather than "Chairman of the Hearing Panel" and one reference to proposed Rule 10.9234 in proposed Rule 10.9560(b)(2).

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

Proposed Rule 10.9560(b) would govern the appointment of a Hearing Panel as well as potential disqualification or recusal of Hearing Officers or Panelists.<sup>69</sup> The proposed provision is consistent with proposed Rule 10.9231(b) and (c), which govern the appointment of a Hearing Panel or Extended Hearing Panel to conduct disciplinary proceedings, and proposed Rules 10.9233 (Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Hearing Officers) and 10.9234 (Hearing Panel or Extended Hearing Panel: Recusal and Disqualification of Panelists), which would establish the processes for recusal and disqualification of Hearing Officers or Panelists. Proposed Rule 10.9233 provides for a Hearing Officer to be recused in the event he or she has a conflict of interest or bias or other circumstances exist where his or her

fairness might reasonably be questioned. In addition to recusal initiated by such a Hearing Officer, a party to the proceeding would be permitted to file a motion to disqualify a Hearing Officer. This is similar to the requirements under proposed Rule 10.9234 for Panelists. However, due to the compressed schedule pursuant to which the process would operate under Rule 10.9560, the proposed rule would require such motion to be filed no later than 5 days after the announcement of the Hearing Panel and the Exchange's brief in opposition to such motion would be required to be filed no later than 5 days after service thereof.

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

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

Finally, as proposed, if Enforcement fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

Under proposed Rule 10.9560(d)(1), the Hearing Panel would be required to issue a written decision stating whether a suspension order would be imposed. The Hearing Panel would be required to

<sup>68</sup> The first three proceedings in proposed Rule 10.9558(a)(1)–(3) are substantially the same as NYSE American Rule 9558(a)(1)–(3). Proposed Rule 10.9558(a)(4) incorporates proceedings to summarily suspend the trading privileges of ETP Holders, OTP Holders, OTP Firms or covered persons found in violation of any of the prohibited acts as specified in Rule 11.2(a)–(f), which are currently set forth in Rule 13.2(a)(1)(C).

<sup>69</sup> Proposed Rule 10.9560 is based on the NYSE American version, which was in turn based on Cboe BZX Exchange, Inc. ("Cboe BZX") Rule 8.17 and NASDAQ Rule 9400. Cboe BZX Rule 8.17 uses the term "Hearing Officers" and does not separately define "Hearing Officer" and "Panelist." See proposed Rules 10.9120(r) (Hearing Officer) and (v) (Panelist); Cboe BZX Rule 8.6(a)(2) ("Hearing Officers" include the professional hearing officer who serves as Chairman of the Hearing Panel and the Industry member and the Member Representative member, as such terms are defined therein). In order to provide for the recusal of both Hearing Officers and Panelists in expedited suspension hearings, proposed Rules 10.9560(b)(2) and (c) will accordingly refer to both "Hearing Officer and "Panelist" where appropriate. The Exchange's affiliates NYSE, NYSE American and NYSE National will be submitting rule filings to harmonize their rule with proposed Rule 10.9560.

issue the decision not later than 10 days after receipt of the hearing transcript, unless otherwise extended by the Chief Hearing Officer with the consent of the Parties for good cause shown. The proposed Rule would state that a suspension order shall be imposed if the Hearing Panel finds by a preponderance of the evidence that the alleged violation specified in the notice has occurred and that the violative conduct or continuation thereof is likely to result in significant market disruption or other significant harm to investors.

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

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

For example, if a suspension order suspends Respondent unless and until Respondent ceases and desists providing access to the Exchange to a client of Respondent, and after the order is entered the Respondent complies, the Hearing Panel can modify the order to lift the suspension portion of the order

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

Proposed Rule 10.9560(f) would describe the call for review process by the Exchange Board of Directors. Specifically, the proposed Rule would provide that if there is no pending application to the Hearing Panel to have a suspension order modified, set aside, limited, or revoked, the Board of Directors, in accordance with proposed Rule 10.9310 (Review by Exchange Board of Directors), may call for review the Hearing Panel decision on whether to issue a suspension order. Further, the proposed Rule would provide that a call for review by the Exchange Board of Directors shall not stay the effectiveness of a suspension order.

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

#### Proposed Rule 10.9600 Series (Procedures for Exemptions)

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

Under proposed Rule 10.9610 (Application), an ETP Holder, OTP Holder or OTP Firm could seek exemptive relief as permitted under Rule 2.5(c) (Denial of or Conditions to Trading Permits), proposed Rule 10.8211 (Automated Submission of Trading Data Requested by the Exchange) or Rule 9.21–E (Communications with the Public) by filing a written application with the appropriate department or staff of the

Exchange and provide a copy of the application to the CRO.<sup>70</sup>

Under proposed Rule 10.9620 (Decision), after considering the application, the Exchange staff would be required to issue a written decision setting forth its findings and conclusions. The decision would be served on the Applicant pursuant to proposed Rules 10.9132 and 10.9134. After the decision is served on the Applicant, the application and decision may be publicly available. Under proposed Rule 10.9630 (Appeal), an Applicant that wished to appeal the decision would be required to file a written notice of appeal with the Exchange's CRO within 15 days after service of the decision.

Under proposed Rule 10.9630(e), the CRO would affirm, modify, or reverse the decision issued under proposed Rule 10.9620 and issue a written decision setting forth his or her findings and conclusions and serve the decision on the Applicant. The decision would be served pursuant to proposed Rules 10.9132 and 10.9134, would be effective upon service, and would constitute final action of the Exchange. Currently, under Rule 10.2, Commentary .01(D), the Exchange may grant exceptions, in such cases and for such time periods as it deems appropriate, from the requirement that the data elements prescribed in paragraphs (A) and (B) above be submitted to the Exchange in an automated format, but the Rule does not set forth specific procedures for doing so.

#### Proposed Rule 10.9700 Series

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

#### Proposed Rule 10.9800 Series (Temporary Cease and Desist Orders)

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

<sup>70</sup> Exchange rules providing for exemptive relief are Rules 2.5 and 9.21–E; proposed Rule 10.8211 would provide for certain exemptions from the submission of automated trading data. The Exchange does not have rules analogous to NYSE American Rule 341.05 of Section 4 of the Office Rules, Rule 345.15—Equities, Rule 2210—Equities, Rule 3170—Equities, Rule 4311—Equities, or Rule 4360—Equities. Except for references to Exchange rules specifying exemptions and references to reflect the Exchange's membership, the proposed rule is otherwise substantially the same as NYSE American Rule 9610.

Series is substantially the same as the NYSE American Rule 9800 Series.

Under proposed Rule 10.9810 (Initiation of Proceeding), with the prior written authorization of the Exchange's CRO or such other senior officers as the CRO may designate, Enforcement may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Act and Rule 10b-5 thereunder; Exchange Act Rules 15g-1 through 15g-9; Rule 11.1 or Rule 9.2010-E (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act); or Rule 11.5 or Rule 9.2020-E by serving a notice (as described in proposed Rule 10.9810(b)) on an ETP Holder, OTP Holder, OTP Firm or covered person or upon counsel or other person authorized to represent others under Rule 10.9141, and filing a copy thereof with the Office of Hearing Officers. The notice issued under the proposed Rule would be effective when service is complete. Proposed Rule 10.9810(c) would provide that if the parties agree to the terms of the proposed temporary cease and desist order, the Hearing Officer shall have the authority to approve and issue the order. Finally, proposed Rule 10.9810(d) would provide that if Enforcement has not issued a complaint under Rule 10.9211 relating to the subject matter of the temporary cease and desist proceeding and alleging violations of the rule or statutory provision specified in the notice described in proposed paragraph (b), Enforcement shall serve and file such a complaint with the notice initiating the temporary cease and desist proceeding. Service of the complaint can be made in accordance with the service provisions in proposed Rule 10.9810(a). The proposed rule is substantially the same as its NYSE American counterpart except for references reflecting the Exchange's membership and the underlying rule references.<sup>71</sup>

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

Under proposed Rule 10.9830 (Hearing), the hearing would be held not later than 15 days after service of the

<sup>71</sup> NYSE American Rule 9810 references Section 10(b) of the Act and Rule 10b-5 thereunder and Exchange Act Rules 15g-1 through 15g-9. Exchange Rules 9.2010-E and 9.2020-E are the Exchange's version of NYSE American Rule 2010-Equities and 2020-Equities, respectively. The Exchange proposes to omit a reference to NYSE American Rule 476(a)(6), which is NYSE American's legacy rule for failure to observe high standards of commercial honor and just and equitable principles of trade.

notice and filing initiating the temporary cease and desist proceeding, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. Proposed Rule 10.9830 would govern how the hearing was conducted.

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

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

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

#### Technical and Conforming Changes

The Exchange proposes to make technical and conforming changes to Rules 2.5, 3.2, 3.3, 3.6, 3.8, 3.10, 4.11-O, 6.2-O, 6.17-O, 6.24-O, 6.35-O, 6.44-O, 6.67-O, 6.69-O, 6.82-O, 4.11-E [sic], 7.20-E, 7.22-E, 7.23-E, 9.21-E, 10, 12, 13.2 and 13.4, as described below and herein.

Rule 2.5(c) provides that the Exchange may, at its discretion in exceptional

cases where good cause is shown, waive the applicable examination requirement and accept other standards as evidence of an applicant's qualifications for registration. The rule would be amended to provide that the Exchange may waive the applicable examination requirement pursuant to the Rule 10.9600 Series. The second paragraph of the Rule describing the timeframe for the Exchange to provide a written determination of a waiver request would be replaced with "The Exchange will issue its decision pursuant to Rule 10.9620." Finally, the reference to Rule 10.14 in the last sentence of the Rule describing appeals of waiver denials would be replaced with Rule 10.9630, which governs appeals of applications for exemptions under the Rule 10.9600 Series.

Rule 2.5(f) provides that the EBCC or BCC may take action against an OTP Firm or OTP Holder or ETP Holder, as applicable, under Rule 10.0 when certain reasons for denying or conditioning the issuance of an OTP or ETP come into existence after an application has been approved and an OTP or ETP has been issued. The rule would be amended to provide that the Exchange may take such action under Rule 10.0 or the Rule 10.9000 Series, as applicable. As noted above, the Exchange proposes to retain the EBCC and the BCC to effectuate it [sic] current responsibilities.

Rule 3.6,<sup>72</sup> which authorizes the Exchange to enter into agreements with domestic and foreign SROs, would be deleted in connection with the adoption of proposed Rule 10.8210(b), as discussed above. Rule 3.6 would be marked "Reserved."

As discussed above, Rule 3.8, which authorizes suspension of an ETP Holder, OTP Holder or OTP Firm for failing to pay any dues, fees, charges or fines to the Exchange, would be amended to delete the current text and heading and adopt the heading and text of NYSE American Rule 41. As amended, Rule 3.8 would govern failure to pay a fee or any other sums due to the Exchange. Suspension of an ETP Holder, OTP Holder or OTP Firm for failure to pay fees or any other sums due to the Exchange under amended Rule 3.8 would be governed by Rule 13.2(a)(2)(B), which would be amended to delete the reference to "fines" because failure to pay any fine levied in connection with a disciplinary action

<sup>72</sup> The proposed changes to Rules 3.2 and 3.3 are discussed above.

would be governed by proposed Rule 10.8320.<sup>73</sup>

Rule 3.10 precludes an ETP Holder, OTP Holder or OTP Firm from being affiliated with NYSE Group, Inc., unless the Commission otherwise approves. The rule further provides that any failure by an ETP Holder, OTP Holder or OTP Firm to comply with Rule 3.10 subjects it to the disciplinary actions prescribed by Rule 13.2(a)(2)(F), which authorizes non-summary suspensions. Rule 3.10 would be amended to include a reference to the proposed Rule 10.9000 Series, as applicable.

Rule 4.11–O(b)(2), which concerns certain SIPC filings and payments, includes references to Rules 10.12 and 10.4; conforming references to Rule 10.9216(b) and the Rule 10.9000 Series would be added. Commentary .02 would be amended to delete a reference to the “Ethics and Business Conduct Committee” in connection with referring the failure to file a SIPC form and assessment for appropriate disciplinary action because the specific reference is unnecessary.

Rule 6.2–O, which concerns admission to and conduct on the options trading floor, would be amended to include (1) a reference to Rule 10.0 and the proposed Rule 10.9000 Series in subsection (b), and (2) a cross-reference to Rule 10.8210, which would govern the inspection of telephone records, where the reference to Rule 10.2 appears in subsection (h)(5).

Rule 6.17–O concerns the verification of compared trades and reconciliation of uncomparing trades. Commentary .01 would be amended to add a cross-reference to the Rule 10.9000 Series following the reference to Rule 10, which would be changed to “Rule 10.0.”

Rule 6.24–O governs the exercise of options contracts. Commentary .08 would be amended to include a conforming reference to Rule 10.9216(b) and to delete references to the EBCC and “the Committee” in connection with a formal disciplinary proceeding because the specific references are unnecessary.

Rule 6.35–O governs appointment of market makers. Rule 6.35–O(h) would be amended to change the current reference to Rule 10 to Rule 10.0 and add “or the Rule 10.9000 Series.”

Rule 6.35–O(i), which concerns the appointment trading requirement, includes references to Rule 10.4 and 10.12; conforming references to the Rule

10.9000 Series and Rule 10.9216(b) would be added.

Rule 6.35–O(j)(1), which concerns certain performance standards, includes a reference to Rule 10.5; a conforming reference to the Rule 10.9000 Series would be added. Finally, the Exchange would clarify that formal disciplinary action would be taken when aggravating circumstances are present by replacing the word “may” with “will.”

Rule 6.44–O, which concerns the registration of Floor Brokers, would be amended to change the current reference to Rule 10 to Rule 10.0 and to add “or the Rule 10.9000 Series, as applicable.”

Rule 6.67–O, which governs order format and system entry requirements, would be amended to add a cross-reference to the Rule 10.9000 Series where the reference to Rule 10 appears in subsection (d)(2)(C). The current reference to Rule 10 would be changed to “Rule 10.0.”

Rule 6.69–O, which governs reporting duties for option transactions, would be amended to add a cross-reference to Rule 10.9216(b) where the reference to Rule 10.12 appears in subsection (a). Commentary .01 would be amended to add a cross-reference to the Rule 10.9000 Series where the reference to Rule 10 appears, which would be changed to “Rule 10.0.”

Rule 6.82–O, which concerns Lead Market Makers, would be amended as follows. In subsection (b)(3), the reference to Rule 11.2(a) would be replaced with a reference to Rule 10.0 followed by “or the Rule 10.9000 Series, as applicable.” The Exchange also proposes to correct an incorrect reference in Rule 6.82–O(b)(3) to disciplinary actions under Rule 11.2 (which doesn’t address disciplinary actions) and a typographical error in Rule 6.82–O(g)(1)(D).

Rule 4.11–E(b), which concerns certain SIPC filings and payments, includes references to issuance of a minor rule violation fine under Rule 10.12(i)(2) and formal disciplinary action pursuant to 10.4; conforming references to Rule 10.9216(b) and the Rule 10.9000 Series, respectively, would be added and the incorrect reference to subsection (i)(2) of Rule 10.12 would be replaced with a reference to subsection (j)(2). Commentary .02 would be amended to delete a reference to the “Business Conduct Committee” in connection with referring the failure to file a SIPC form and assessment for appropriate disciplinary action because the specific reference is unnecessary.

Rule 7.20–E(e), which provides that the Exchange may take formal disciplinary action against a Market

Maker that fails to give a ten-day written notice of the withdrawal of its registration to the Exchange, would be amended to include a reference to the proposed Rule 10.9000 Series. Further, the reference to Rule 10 in subsection (e) would be changed to “Rule 10.0.”

Rule 7.22–E, which governs market maker registration in a security, would be amended to change the reference to Rule 10 in subsection (e) to “Rule 10.0” and add “or the Rule 10.9000 Series, as applicable” immediately after.

Rule 7.23–E governs market maker obligations and would be amended to change the reference to Rule 10 in subsection (c) to Rule 10.0 and add “or the Rule 10.9000 Series, as applicable” immediately after.

Rule 9.21–E, which governs communications with the public, would be amended to eliminate references to FINRA. Specifically, in Rule 9.21–E(c)(5)(B), “FINRA” would be deleted before “Rules 9551 and 9559” and before “Rule 9600 Series” in Rule 9.21–E(c)(10). Also in Rule 9.21–E(c)(10), “FINRA” would be replaced with “the Exchange” in connection with the exemption of an ETP Holder or person associated with an ETP Holder from the pre-filing requirements of paragraph (c). In both subsection (c)(5)(B) and subsection (c)(10), the Exchange would also add “10.” before “9551” and “9559” and before “9600,” respectively.

The heading to the Exchange’s current disciplinary Rule 10 would be amended to add the word “Legacy” before “Disciplinary Proceedings.” The Exchange would also add an introduction setting forth the transitional provisions that are included in proposed Rule 10.9001 described above. A similar introduction would be added to current Rule 13, governing cancellation, suspension and reinstatement.

Rule 12(c), which describes the consequences of a failure to arbitrate or pay an arbitration award, would be amended to change the reference to Rule 10 to Rule 10.0 and to add a conforming reference to the Rule 10.8000 and 10.9000 Series, which would govern actions for failing to submit to arbitration a matter required to be arbitrated or that fails to honor an arbitration award after the implementation of the proposed rule change.

Subsection (a)(2)(B) of Rule 13.2 (Procedures for Suspension) would be amended to delete “–E or 3.7–O” after Rule 3.8. The correct reference should be to Rule 3.8, which governs failure to

<sup>73</sup> Rule 13.2(a)(2)(B) would also be amended to delete “–E” following 3.8 and “–O” following 3.7 so that the correct rule reference would be to “Rule 3.8 or 3.7.”

pay any fees, charges, assessments, or fines with respect to both markets.<sup>74</sup>

Finally, Rule 13.4 (Disciplinary Measures During Suspension) would be amended to replace the incorrect reference to Rule 13.3(a)(1) with Rule 13.2(a)(1).

#### Certain Current Exchange Disciplinary Rules Not Included in Proposed Rule Text

Certain provisions in the Exchange's current disciplinary rules would not be included in the proposed rule change for the reasons described below.

Rule 10.5(e) permits third parties to intervene in Exchange disciplinary proceedings. The Exchange believes that this authority has rarely, if ever, been invoked. FINRA, NYSE, NYSE American, and NASDAQ rules do not permit such intervention, and as such, the Exchange would not include such permission in the proposed rule change.

Rule 10.6(k) authorizes the BCC or EBCC and the CFR to review settled disciplinary actions under Rule 10.6(g) and provide guidance to the General Counsel and Enforcement about future settlement practices and sanction amounts. Currently, Rule 3.3(a)(2) provides that the CFR is responsible for, among other things, acting in an advisory capacity to the Board with respect to disciplinary matters, the listing and delisting of securities, regulatory programs, rulemaking, and regulatory rules, including trading rules. The Exchange accordingly believes that including this provision in the proposed rule change is unnecessary.

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>75</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>76</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule furthers the objectives of Section 6(b)(7) of the Act,<sup>77</sup> in particular, in that it provides fair

procedures for the disciplining of members<sup>78</sup> 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,<sup>79</sup> in particular, in that it supports the fair representation of members in the administration of the Exchange's affairs.

The proposed changes will provide greater harmonization among SRO's resulting in less burdensome and more efficient regulatory compliance for common members of the Exchange, the Exchange's affiliates, and FINRA. As previously noted, the proposed rule text is substantially the same as the NYSE and NYSE American disciplinary rules, which were in turn modeled on the FINRA rules. The proposed rule change will enhance the Exchange's ability to have a direct and meaningful impact on the end-to-end quality of its regulatory program, from detection and investigation of potential violations through the efficient initiation and completion of disciplinary measures where appropriate. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

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 permit holders and covered persons, some of which are not subject to FINRA jurisdiction. As such, Hearing Panelists cannot be drawn solely from a pool of FINRA members and associated persons but rather must include NYSE Arca-only permit holders and persons with experience in NYSE Arca Floor matters in order for the Exchange's members to have a fair representation in its affairs. For the same reasons, the Exchange also believes that its Board of Directors remains the appropriate body for appeals or reviews of initial disciplinary

decisions because the Board of Directors includes fair representation candidates from its membership.

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

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

The Exchange would retain its list of minor rule violations with certain technical and conforming amendments, while adopting NYSE's, NYSE American's and FINRA's process for imposing minor rule violation fines.<sup>80</sup> The Exchange would also retain the Exchange's current process for Floor citations applicable to its options permit holders.

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

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues, but is rather designed to (i) provide greater harmonization among Exchange, NYSE, NYSE American, and FINRA rules of similar purpose for investigations and disciplinary matters; and (ii) enhance the quality of the Exchange's regulatory

<sup>74</sup> As noted, Rule 3.8 would be amended to delete the reference to fines because payment of pay fines would be governed by proposed Rule 10.8320.

<sup>75</sup> 15 U.S.C. 78f(b).

<sup>76</sup> 15 U.S.C. 78f(b)(5).

<sup>77</sup> 15 U.S.C. 78f(b)(7).

<sup>78</sup> The Exchange's equivalent to the term "member" in this context is "ETP Holder," "OTP Holder" and "OTP Firm."

<sup>79</sup> 15 U.S.C. 78f(b)(3).

<sup>80</sup> See NYSE Rule 9216(b), NYSE American Rule 9216(b), and FINRA Rule 9216(b).

program, from detection of violations through disciplinary actions, resulting in less burdensome and more efficient regulatory compliance and facilitating performance of regulatory functions.

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

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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>81</sup> and Rule 19b-4(f)(6) thereunder.<sup>82</sup> Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>83</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

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

*Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2019-15 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-NYSEARCA-2019-15. 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 available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEARCA-2019-15 and should be submitted on or before May 9, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>84</sup>

**Eduardo A. Aleman,**  
*Deputy Secretary.*

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<sup>81</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>82</sup> 17 CFR 240.19b-4(f)(6).

<sup>83</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>84</sup> 17 CFR 200.30-3(a)(12).