

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86425; File No. SR-BX-2019-022]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delete the Exchange's Existing Membership Rules and To Incorporate by Reference the Membership Rules of The Nasdaq Stock Exchange, LLC

July 22, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 10, 2019, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to incorporate by reference into the Exchange's rules the membership rules of The Nasdaq Stock Exchange, LLC.

The text of the proposed rule change is available on the Exchange's website at <http://nasdaqbx.cchwallstreet.com/>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

1. Purpose

The Exchange's Rule 1000 Series prescribes the qualifications and the procedures for applying for membership on the Exchange. The Exchange now proposes to delete and replace these rules, as described below.³

The Exchange proposes to delete most of its existing Rule 1000 Series rules (with certain exceptions identified below) and replace them with the membership rules of The Nasdaq Stock Market, LLC ("Nasdaq"), which exist in the Rule 1000 Series of the Nasdaq Rulebook (the "Nasdaq Rule 1000 Series" or the "Nasdaq Membership Rules"). The Exchange proposes to incorporate the Nasdaq Membership Rules by reference into its own Rule 1000 Series.⁴ In a recent filing,⁵ Nasdaq amended its own Rule 1000 Series; immediately prior to Nasdaq's rule filing, the Nasdaq Rule 1000 Series was the same, in all material respects, as the Exchange's Rule 1000 Series. By incorporating by reference the revised Nasdaq Rule 1000 Series, the Exchange seeks to incorporate the changes that Nasdaq made to the Nasdaq Rule 1000 Series into the BX Rule 1000 Series.

As compared to the Exchange's existing Rule 1000 Series, by virtue of incorporating by reference the Nasdaq Rule 1000 Series into Exchange's Rulebook, the Exchange's revised membership rules (the "Proposed Rule 1000 Series" or the "Proposed Rules") will be organized in a more logical order. The Proposed Rule 1000 Series will eliminate duplicative provisions that exist in the existing Rule 1000 Series, eliminate unnecessary complexity in the membership process, and otherwise streamline the existing membership rules and their associated procedures. The Proposed Rule 1000 Series will relax needlessly rigid

³ The Exchange proposes to separately request an exemption from the rule filing requirements of Section 19(b) of the Act for changes to the Rule 1000 Series to the extent such rules are effected solely by virtue of a change to the Nasdaq Rule 1000 Series. The Exchange's proposed rule change will not become effective unless and until the Commission approves this exemption request.

⁴ The Exchange notes that Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, and Nasdaq PHLX, LLC (together with Nasdaq and Nasdaq BX, the "Affiliated Exchanges") each plan to propose similar changes to their respective membership processes and associated rules that will also render them the same or substantially similar to those of Nasdaq.

⁵ See Securities Exchange Act Release No. 34-85513 (Apr. 4, 2019), 84 FR 14429 (Apr. 10, 2019) (SR-NASDAQ-2019-022).

deadlines that the rules prescribe for taking certain actions with respect to membership applications.⁶

Summary of Proposed Changes

A comparison between the Exchange's existing Rule 1000 Series and the Proposed Rule 1000 Series, is summarized below. For ease of comparison, this summary refers to the deletion of the existing Rule 1000 Series and its replacement with the Proposed Rule 1000 Series, as incorporated by reference, as "amendments" to, "restatements" of, or "moves" of the existing rules. Exhibit 3A to this proposal compares the Exchange's existing Rule 1000 Series to the Nasdaq Rule 1000 Series and shows the changes described below.

Rule 1001

Existing Exchange Rule 1000 includes a reference to the fact that FINRA is in the process of consolidating certain NASD rules into a new FINRA rulebook, and that if a NASD rule that is incorporated by reference into a BX rule is transferred to the FINRA rulebook, then the BX rule will be construed to require Exchange members to comply with the FINRA rule, as it may be renumbered or amended. This same reference exists, not only in existing Rule 1000, but also IM-1002-4, 1012(j), and 1017(g). The Proposed Rule 1000 Series deletes these references in all of these Rules because they will no longer be necessary going forward. The Proposed Rule 1000 Series rules does not cite specific FINRA (or NASD) Rules.

Rule 1002

Proposed Rule 1002 differs from the existing Exchange Rule 1000 in several respects. First, Proposed Rule 1002 deletes existing paragraph (c), which pertains to the payment by Members and Associated Persons of dues, fees, assessments and other charges, because the requirement of Members and Associated Persons to make such payments is set forth elsewhere in the Rules, such that existing paragraph (c) is unnecessary.⁷ The Proposed Rule 1000 Series also moves existing paragraph 1002(d), which governs the reinstatement of membership and registration, to a new Proposed Rule 1018 that will consolidate all provisions

⁶ The Exchange does not believe that any of the proposed changes will adversely impact the existing rights of prospective or existing Members or Associated Persons. Likewise, the Exchange does not believe that the proposed changes will compromise the ability of the Exchange or its Membership Department to scrutinize prospective or existing Members or Associated Persons.

⁷ See Rule 9553.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

of the Rules relating to transfer, resignation, termination, and reinstatement of membership. Additionally, the Proposed Rule 1000 Series consolidates and moves to Proposed Rule 1002, as newly-renumbered paragraph (d), largely duplicative provisions relating to the registration of branch offices and the designation of offices of supervisory jurisdiction, which presently reside in Rule 1012(j) and IM-1002-4, respectively.⁸ Within the new paragraph (d), the Proposed Rule deletes language from existing Rule 1012(j)(1) that requires a Member to pay dues, fees, and charges associated with a branch office—as that provision is superfluous for reasons discussed above. Under paragraph (d)(3)(A) of the Proposed Rule, the Exchange also simplifies the existing rules for determining compliance with branch office registration and supervisory office designation requirements. Whereas the existing processes—as set forth in existing Rule 1012(j) and IM-1002-4—provide that Exchange Members that are also FINRA members are deemed to comply with the branch office and designated supervisory office requirements to the extent that they comply with NASD-1000-4 and Article IV, Section 8 of the NASD's By-Laws, the Proposed Rule 1000 Series states that such Exchange Members are deemed to comply to the extent that they keep current Form BR, which contains the requisite information and which is accessible electronically to the Exchange. Members that are not FINRA members shall continue to submit to the Exchange a Branch Office Disclosure Form, as they have done previously.⁹

Existing Rule 1002(f) provides for broker-dealers who were approved as member organizations and associated

⁸ In subparagraph (d)(3)(B) of the Proposed Rule, the Exchange clarifies the existing rule text in Rule 1012(j) and IM-1002-4, which provide that Members that are not FINRA members shall designate offices of supervisory jurisdiction and branch offices by submitting to the Exchange a “written filing” to the Exchange “in such form as the Exchange may prescribe.” The Proposed Rule clarifies that this written filing is the “Branch Office Disclosure Form.” The Branch Office Disclosure Form is presently in use for this purpose and it is not a new form. Nevertheless, the Exchange believes that it will be helpful in the Rule to identify the specific form that must be filed rather than refer vaguely to a filing in such form as the Exchange may prescribe.

⁹ The existing Rule states that Members that are not FINRA members shall designate offices of supervisory jurisdiction and branch offices by submitting to the Exchange “a written filing in such form as the Exchange may prescribe.” The form that the Exchange presently prescribes for this purpose is the Branch Office Disclosure Form. To improve clarity, the Proposed Rule identifies this form by name in the Rule. The Exchange proposes no substantive changes to this Form.

persons of the Boston Stock Exchange prior to its acquisition by the Nasdaq OMX Group (now, Nasdaq, Inc.) (and its subsequent re-launching as Nasdaq BX) to have their status grandfathered into Nasdaq BX. The Proposed Rule 1000 Series does not have this provision; it is no longer necessary given that Nasdaq acquired the Boston Stock Exchange and launched Nasdaq BX more than ten years ago. All grandfathered Boston Stock Exchange members and associated persons are duly accounted for in the Exchange's membership rolls.

Lastly, the Proposed Rule 1000 Series moves IM-1002-1, which prohibits a Member or an Associated Person from filing with the Exchange misleading information in connection with membership or registration, and requires misleading information to be corrected, to Proposed Rule 1012 (General Application Provisions), where the Exchange believes it more logically fits.¹⁰

Rule 1011

Proposed Rule 1011, which includes definitions for the Proposed Rule 1000 Series, defines the term “Investment banking or securities business” differently from existing Rule 1011 in that the Proposed Rule eliminates the reference to “investment banking.” The Exchange does not accept applications from firms that are engaged in the investment banking business but are not otherwise brokers or dealers in securities. The Exchange believes that references to the investment banking business in the existing Rule and elsewhere in the Exchange's membership rules are unintended errors.

Whereas existing Rule 1011(g) includes the defined term “material change in business operations,” the Proposed Rule 1000 Series omits this definition and instead incorporates its substance into Proposed Rule 1017(a)(5), which is the only context in which it actually applies.

Rule 1012

Existing Rule 1012, which is presently entitled “General Provisions,” differs from the proposed version of the Rule in several ways. Principally, the Proposed Rule limits its scope to include only general provisions relating to applications, and the title of the Rule reflects that narrowed scope (“General Application Provisions”). It also omits several existing provisions that are

¹⁰ The Proposed Rule also amends the definition of a “Proprietary Trading Firm” in paragraph (o) to make clear that such entities may be both Applicants and Members of the Exchange for purposes of the Rules.

outside of this scope, including existing paragraphs (b) (lapses in applications), (c) (ex parte communications), (d) (recusals and disqualifications from membership appeal proceedings), (g) (resignation of Exchange Members), (i) (transfer and termination of Exchange membership), and (j) (registration of branch offices). As is discussed in further detail below, the Proposed Rule 1000 Series locates these provisions in other Rules to which they more logically relate. The Exchange does not believe that relocating these provisions as described will have any substantive effect.

Rule 1012(a) is presently entitled “Filing by Applicant or Service by the Exchange.” Proposed Rule 1012(a) retitles the paragraph for clarity purposes as “Instructions for Filing Application Materials with the Exchange and Requirements for Service of Documents by the Exchange.” Whereas existing subparagraph (a)(1) presently permits an Applicant to file an application only by first-class mail, overnight courier, or hand delivery, the Proposed Rule modernizes this provision by allowing for electronic filing as well. In a new subparagraph (a)(3)(E) of the Proposed Rule, the Exchange states that service by electronic filing shall be deemed complete on the day of transmission, except that service or filing will not be deemed to have occurred if, subsequent to transmission, the serving or filing party receives notice that its attempted transmission was unsuccessful.

Furthermore, Proposed Rule 1012 eliminates existing paragraph (f) (similarity of membership names) because the Exchange believes that it is unnecessary for it to monitor for similarities in the names of prospective Members given that FINRA, through WebCRD, and the SEC monitor this.

Finally, the Proposed Rule 1000 Series relocates and restates IM-1002-1 (regarding misleading information as to membership or registration) and the last paragraph of Rule 1013(a)(1) (requiring Members and Applicants to keep application materials current) to Proposed Rule 1012(c). Rather than state, as does IM-1002-1, that Applicants, Members, and Associated Persons shall not file false or misleading membership information with the Exchange, the Proposed Rule states in paragraph (c)(1) that they shall have an affirmative duty to ensure that their membership information is accurate, complete, and current at the time of filing. The Exchange believes that the proposed formulation is more

comprehensive than the existing one.¹¹ Likewise, rather than merely require, as does existing Rule 1013(a)(1), that Applicants shall keep current their application materials after filing them, the Proposed Rule, in paragraph (c)(2), more broadly requires Applicants, Members, and Associated Persons to ensure that their membership applications and supporting materials remain accurate, complete, and current at all times, by filing supplementary amendments with the Department, as is necessary. (The Proposed Rule omits the language in existing Rule 1013(a)(1) that specifies that supplementary amendments shall be filed by electronic means insofar as Proposed Rule 1012(a) specifies the acceptable methods by which membership materials shall be filed with the Department.)¹²

Rule 1013

Proposed Rule 1013 is a substantial restatement of existing Rule 1013, which sets forth procedures for filing applications for new membership on the Exchange.

In paragraph (a) of Proposed Rule 1013, which describes the contents of new membership applications and procedures for filing, the Proposed Rule amends subparagraphs (a)(1)(A) and (B), which presently require an Applicant to file a copy of its current Form BD as well as an Exchange-approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f-2.¹³ The corresponding subparagraphs in the Proposed Rule provide that the Applicant must provide copies of this Form and card only if the Exchange is not able to access them through the Central Registration Depository (“CRD” or “WebCRD”) or a similar source. The language in the Proposed Rule relieves Applicants of the burden of filing a Form or fingerprint cards that the Exchange can readily retrieve itself.

Whereas subparagraph (a)(1)(C) of the existing Rule requires an Applicant to

provide a “check” for such fees as it may be required to pay under the Exchange’s Rules, the corresponding provision of the Proposed Rule deletes the word “check” and replaces it with a more general term, “payment,” so as to afford an Applicant flexibility to pay the fee through additional means, such as wire transfer.

Subparagraph (a)(1)(G) of the existing Rule requires disclosure of the Applicant’s principal place of business and “all other offices, if any, whether or not such offices would be required to be registered under the Equity Rules.” The corresponding Proposed Rule clarifies this provision by specifying that it applies to “branch” offices. The Proposed Rule also omits the phrase “whether or not such offices would be required to be registered under the Equity Rules,” as the Exchange deems it unnecessary for the Applicant to list offices other than those that must be registered. Finally, the Proposed Rule states that an Applicant need not separately provide this branch office information to the Exchange to the extent that the information is otherwise available to the Exchange electronically through WebCRD or a similar source.

Next, Proposed Rule 1013 consolidates subparagraphs (a)(1)(J) and (a)(1)(K) of the existing Rule. Whereas existing subparagraph (a)(1)(J) presently requires the Applicant to state whether it is currently or has been in the prior ten years the subject of certain investigations or disciplinary proceedings that have not been reported to the CRD, the corresponding provision in the Proposed Rule adds language—in subparagraph (a)(1)(K) of the existing Rule—which states that the obligation to disclose the Applicant’s disciplinary history pertains, not only to the Applicant itself, but also “any person listed on Schedule A of the Applicant’s Form BD.”¹⁴ Proposed Rule 1013 omits subparagraph (a)(1)(K), as it is duplicative of Proposed Rule 1013(a)(1)(J).

Compared to subparagraph (a)(1)(N) of the existing Rule, which requires an Applicant to disclose how it complies with Rule 3011, the corresponding Proposed Rule clarifies that Rule 3011 requires Members to have anti-money laundering compliance programs.

In subparagraph (a)(1)(P) of the Proposed Rule, the Exchange omits language that presently permits an Applicant to submit a Form U-4 for each person conducting and supervising

the conduct of the Applicant’s market making and other trading activities. The Proposed Rule omits the existing requirement that an Applicant submit a Form U-4 because the information that the Form contains is otherwise accessible to the Exchange through WebCRD, such that submission of the Form itself is unnecessary.

In subparagraph (a)(1)(Q) of the Proposed Rule, the Exchange omits the requirement in the corresponding provision of the existing Rule that the Applicant provide to the Exchange a FINRA Entitlement Program agreement and Terms of Use and an Account Administration Entitlement Form, if not previously provided to FINRA. The Proposed Rule omits this requirement because the Exchange has determined that the requirement is unnecessary. Any Applicant for membership will have already completed and submitted this agreement and form prior to applying to the Exchange. The completion and submission of the agreement and form will be evident to the Exchange from the fact that FINRA has granted the Applicant access to WebCRD. The Exchange understands that completion of the Account Administration Entitlement Form is a prerequisite to the creation of a registered BD and receiving WebCRD access.

The Proposed Rule amends subparagraphs (a)(1)(T), (U), and (V) of the existing Rule, which presently require an Applicant to submit to the Exchange an agreement to comply with the federal securities laws, the rules and regulations thereunder, the Exchange’s Rules, and all rulings, orders, directions, decisions, and sanctions thereunder, as well as an agreement to pay such dues, assessments, and other charges in the manner and in the amount as the Exchange prescribes. The Proposed Rule prefaces these requirements with a more general requirement that an Applicant submit a duly executed copy of the Exchange’s Membership Agreement. The Membership Agreement comprises the foregoing commitments, among others, and Applicants presently submit an executed copy of the Membership Agreement to satisfy existing subparagraphs (a)(1)(T) and (U). The Proposed Rule inserts the new language in subparagraph (a)(1)(T) and moves the language in existing subparagraphs (a)(1)(T) and (U) to new subparagraphs (a)(1)(T)(1) and (2). The Proposed Rule renumbers existing subparagraph (a)(1)(V) as subparagraph (a)(1)(U).

The Proposed Rule omits existing subparagraph (a)(2) of the existing Rule, which presently requires an Applicant to submit uniform registration forms,

¹¹ The reformatted text of the Proposed Rule also omits the references in IM-1002-1 to registration decisions (which are now covered elsewhere in the Exchange’s Rules).

¹² The language of existing Rule 1013(a)(1)(V), which provides that amendments to a membership application must be filed with the Exchange not later than 15 business days after a Member “knew or should have known” of the facts or circumstances giving rise to the need for the amendment, differs from the corresponding Proposed Rule 1012(c), which provides that the amendment must be filed not later than 15 business days after a Member “learns of” the facts or circumstances giving rise to the amendment. The Exchange believes that this difference between the two provisions is immaterial.

¹³ The existing provision exempts Applicants from filing fingerprint cards if it has already filed them with another self-regulatory organization.

¹⁴ Such persons listed on Form BD include the Applicant’s direct owners (as that term is defined on Form BD), and certain partners, trusts and trustees, and limited liability company members, and executive officers of the Applicant.

due to the fact that the information that these forms contain is readily accessible to the Exchange through WebCRD.

Next, the Proposed Rule restates the Exchange's requirements and procedures for deeming applications to be filed, for dealing with incomplete applications, and for requesting additional information from an Applicant or a third party in connection with a pending application. The Proposed Rule restates these requirements and procedures to improve their clarity, to relax certain procedural deadlines that are needlessly rigid, and to provide additional due process to Applicants.

First, in lieu of the omitted text in subparagraph (a)(2) of the existing Rule, the Proposed Rule includes a new provision, entitled "When an Application is Deemed to be Filed," which states expressly what is now only implied in existing Rule 1013—that the Department will deem an application to be filed on the date when it is "substantially complete," meaning the date on which the Department receives from the Applicant all material documentation and information required under Rule 1013. The Exchange believes that Applicants will benefit from this clarification, particularly because it affords the Department discretion to deem an application to be filed when it obtains sufficient information or documentation from the Applicant to enable the Department to commence processing the application. The new provision in the Proposed Rule also requires the Department to inform the Applicant in writing when the Exchange deems an application to be substantially complete so that there will be no ambiguity as to when the Department will begin to process the application.

Second, the Proposed Rule omits existing subparagraph (a)(3), which presently governs the rejection of applications that are not substantially complete. In lieu of the omitted text, the Proposed Rule contains two new provisions that deal with lapses in applications that are not substantially complete, and the rejection of filed applications that remain or become incomplete after filing.

Subparagraph (a)(3)(A) of the Proposed Rule, which governs lapses of applications, also replaces existing Rule 1012(b). This provision of the Proposed Rule states that if the Department does not deem an application to be substantially complete (and thereby filed, in accordance with proposed subparagraph (a)(2)) within 90 calendar days after an Applicant initiates it, then absent a showing of good cause by the

Applicant, the Department may, at its discretion, deem the application to have lapsed without filing, such the Department will take no action in furtherance of the application. The Proposed Rule is conceptually different from existing Rule 1012(b). The Proposed Rule conceives of a lapsed application as one that an Applicant initiates but does not substantially complete even after a prolonged period of time, such that the Department treats it as having been abandoned prior to filing. Under existing Rule 1012(b), by contrast, the Exchange treats lapses more broadly as any unexcused failure of an Applicant to complete an application, to respond to the Department's requests for information or documents, to participate in a membership interview, or to file with the Exchange an executed membership agreement. As is discussed below, the Proposed Rule treats an Applicant's post-filing non-responsiveness to the Department's requirements as a basis for rejection of an application, not a lapse of an application, because once an application is deemed filed, the Department will begin to take action in furtherance of the application. Also unlike the existing Rule, the Proposed Rule provides that the Department merely has discretion to, but need not deem an application to have lapsed once it meets the requirements of the subparagraph. Moreover, the Proposed Rule requires that once the Department deems an application to have lapsed, then the Department must serve a written notice of that determination on the Applicant and refund any application fees that the Applicant paid to the Exchange (provided that the Exchange did not, in fact, take action in furtherance of the lapsed application). Finally, the Proposed Rule states that an Applicant that still wishes to apply for membership on the Exchange after receiving notice of a lapse in its application must submit a new application pursuant to these Rules and pay a new application fee for doing so, if applicable.

Subparagraph (a)(3)(B) of the Proposed Rule governs the circumstances in which the Department may reject an application that it already has deemed to be "substantially complete" and thus filed. Specifically, the Proposed Rule states that if a pending application remains incomplete after filing, or becomes incomplete after filing due to the fact that the Applicant has not timely responded to the Department's request for supplemental information or documents, then the Department will serve notice on the

Applicant of the nature of the incompleteness and afford the Applicant a reasonable time period in which to address it. If the Applicant fails to address the incompleteness within the time period that the Department prescribes in the notice, then, absent a showing of good cause by the Applicant, the Department may—but again it is not required to—deem the application to be rejected and it must serve written notice of any such determination upon the Applicant. The Proposed Rule states, moreover, that if the Department deems an application to be rejected, then the Applicant shall not be entitled to a refund of any fees that the Applicant may have paid in connection with its application so that the Exchange can recover its costs associated with processing the filed application prior to rejecting it. Finally, the Proposed Rule states that if an Applicant chooses to continue to pursue membership following a rejection of its application, then it must submit a new application and pay any associated fees that are required under the Rule.

Third, the Proposed Rule restates subparagraph (a)(4) of the existing Rule, which governs requests made by the Department for additional information or documents during its consideration of an application. The Proposed Rule also restates and consolidates into subparagraph (a)(4) the provision of existing Rule 1013 that governs membership interviews and information pertinent to the application that the Department gathers from third party sources other than the Applicant (existing paragraph (b)). The Exchange believes that rules governing supplemental information and document requests, membership interviews, and third party information are related and should be consolidated into a single provision. Moreover, the Exchange notes that it does not, as a practical matter, opt to conduct formal membership interviews because it is more efficient and less onerous for all parties to instead engage in informal discussions when questions and concerns arise. Because the Exchange does not exercise its discretion to conduct formal interviews the Exchange believes that it is reasonable to eliminate the concept and the procedures that govern such interviews in the new subparagraph.

In particular, the subparagraph, as restated in the Proposed Rule, provides that at any time before the Department serves its decision on a membership application,¹⁵ it may issue a request for

¹⁵ The restated provision of the Proposed Rule eliminates the requirement in the existing Rule that

additional information or documents—either from the Applicant or from a third party—if the Department deems such information or documentation to be necessary to clarify, verify, or supplement the application materials. The Proposed Rule states that the Department may request that the information or documentation be provided in writing or through an in-person or telephonic interview. The Proposed Rule furthermore states that the Department shall serve its request in writing. The Proposed Rule states that the Department must afford the recipient a reasonable amount of time within which to respond to the request¹⁶ and that the failure of an Applicant to respond within the allotted time may serve as a basis for the Department to reject an application under subparagraph (a)(3)(B), described above. Finally, the Proposed Rule for the first time affords the Applicant due process in the event that the Department obtains information or documentation about the Applicant from a third party that the Department reasonably believes could adversely impact its decision on an application.¹⁷ In such a circumstance, the Proposed Rule requires the Department to promptly inform the Applicant in writing and describe the third party information or documentation that the Department obtained. The Department must also afford the Applicant a reasonable opportunity to discuss with it or object to the Department's use of the third party information or documentation in its application decision prior to the Department rendering the decision.

Fourth, the Proposed Rule 1000 Series includes a new Rule 1013(b), entitled

the Department must serve an initial supplemental request for information or documents within 15 business days after an application is deemed to be filed. The Exchange finds no good reason to distinguish in the rule between an “initial” and a subsequent supplemental Departmental request or to impose a specific deadline for the Department to issue any such requests; the Department has a shared interest with the Applicant in issuing supplemental requests expeditiously such that no artificial deadline is necessary.

¹⁶ Rather than impose a minimum time period for a response, the Proposed Rule requires only that the Department prescribe a reasonable deadline for a response. The Exchange believes that the appropriate response period will vary depending upon the nature of the information or documentation requested. Moreover, the Exchange again believes that the Department and the Applicant have a shared interest in ensuring that the Applicant has adequate time to respond to a request.

¹⁷ The Department may consult third parties, such as other SROs of which an Applicant is or was a member previously, to obtain additional information about or to confirm aspects of an application or the Applicant's character or history. The Department might also consult third party services to investigate or verify the Applicant's financial condition or history.

“Special Application Procedures,” which restates and expands upon the special application procedures set forth in subparagraph (a)(5) of the existing Rule 1013. Presently, subparagraph (a)(5)(A) states that when an Applicant is applying for FINRA membership and Exchange membership at the same time, then the Exchange will wait to process the application until the applicant becomes a FINRA member.¹⁸ Presently, subparagraph (a)(5)(C) states that expedited application procedures will apply to Applicants that are already members of FINRA and Nasdaq, or Nasdaq PHLX LLC. The Proposed Rule omits subparagraph (a)(5)(A) and (B) because the Exchange believes that these provision add little value, especially in light of other changes that the Exchange adopted in the Proposed Rules. Likewise, the Proposed Rule omits subparagraph (a)(5)(C) because it has become outdated in that it does not provide expedited application procedures for Applicants that are members of the Exchange's other affiliates; this provision also does not explain what an “expedited” application process entails.

In lieu of the existing subparagraph (a)(5), the Proposed Rule includes two types of special applications in Rule 1013(b). First, Proposed Rule 1013(b)(1) prescribes a special application process for Applicants that are already FINRA members. Specifically, the Proposed Rule states that such an Applicant will have the option to “waive-in” to become an Exchange Member and to register with the Exchange all persons associated with it whose registrations FINRA has approved (in categories recognized by the Exchange's rules). The Proposed Rule defines the term “waive-in” to mean that the Department will rely substantially upon FINRA's prior determination to approve the Applicant for FINRA membership when the Department evaluates the Applicant for Exchange membership. That is, the Department will normally permit a FINRA member to waive-into Exchange membership without conducting an independent examination of the Applicant's qualifications for membership on the Exchange, provided that the Department is not otherwise aware of any basis set forth in Rule 1014 to deny or condition approval of the application.

Procedurally, the Proposed Rule states that a FINRA member that wishes to waive-into Exchange membership must

¹⁸ Existing subparagraph (a)(5)(B) also specifies that Applicants that are already members of another registered securities association or exchange must submit a regular application form.

do so by submitting to the Department an application form (the standard application form contains an option to select waive-in membership) and an executed Exchange Membership Agreement. The Department, in turn, will act upon a duly submitted waive-in application within a reasonable time frame not to exceed 20 days from submission of the application, unless the Department and the Applicant agree to a longer time frame for issuing a decision.¹⁹ If the Department fails to issue a decision on a waive-in application within the prescribed time frame, then the Applicant may petition the Exchange's Board of Directors to force the Department to act, as set forth in Rule 1014(c)(3). Finally, the Proposed Rule states that a decision issued under this provision shall have the same effectiveness as set forth in Rule 1014 and shall be subject to review as set forth in Rules 1015 and 1016.

The second special application process, which is set forth in Proposed Rule 1013(b)(2), permits Applicants for Exchange membership that are already approved members of one or more of the Affiliated Exchanges to waive-into the Exchange membership. In this context, “waive-in” means that the Department will rely substantially upon an Affiliated Exchange's prior determination to approve the Applicant for membership on the Affiliated Exchange when the Department evaluates the Applicant for Exchange membership. The procedures in the Proposed Rule for an Applicant to submit a waive-in application under this provision and for the Department to issue a decision based upon such an application are identical to the procedures described above for FINRA members that seek to waive-into Exchange membership. The Exchange amends its application form to reflect the fact that Applicants may waive-into membership on the Exchange based upon their membership on any of the other five Affiliated Exchanges.

Rule 1014

In several respects, Proposed Rule 1014 differs from the existing Rule, which governs the issuance of membership application decisions by the Department.

First, to improve clarity, the Proposed Rule is reorganized relative to the existing Rule. Rather than begin the

¹⁹ The Proposed Rule prescribes this time frame to accommodate FINRA, which will review waive-in applications on behalf of the Exchange to verify that the Applicants are FINRA members in good standing. As a practical matter, the Exchange expects to act on waive-in applications prior to the 20 day deadline.

Rule with a paragraph that describes the bases for the Department to issue a decision on an application, as is the case presently, the Proposed Rule begins with a paragraph (a) entitled “Authority of Department to Approve, Approve with Restrictions, or Deny an Application.” This new paragraph sets forth the general authority of the Department to act on an application by approving it, denying it, or approving it subject to restrictions: (1) That are reasonably designed to address a specific (financial, operational, supervisory, disciplinary, investigatory, or other regulatory) concern; or (2) that mirror a restriction placed upon the Applicant by FINRA or an Affiliated Exchange. It incorporates elements of what is now Rule 1014(b) (which the Exchange proposes to delete going forward).

Second, the Proposed Rule renumbers existing paragraph (a) as new paragraph (b). This paragraph is retitled “Bases for Approval, Conditional Approval, or Denial” but otherwise is the same.

Third, as noted above, existing paragraph (b) is omitted from the Proposed Rule.

Fourth, the Proposed Rule amends paragraph (c), which prescribes the time period within which the Department must issue and serve a written decision on a membership application. Presently, the provision requires the Department to serve a written decision within 15 business days after the Applicant concludes its membership interview (if any) or files all of its required information or documents, whichever is later. The Proposed Rule relaxes this requirement by stating that the Department must respond in a reasonable time period, not to exceed 45 (calendar) days after the Applicant files and provides to the Exchange all required and requested information or documents in connection with the application, unless the Department and the Applicant agree to further extend the decision deadline.²⁰ The Proposed Rule includes these amendments because the Exchange adjudges the existing timeframe to be needlessly short and inflexible. In certain instances where the Department has outstanding questions or concerns associated with an application, the existing Rule may force the parties to rush to address outstanding questions and resolve outstanding issues. The Proposed Rule allows for such questions and issues to be addressed with less time pressure

²⁰ The Proposed Rule also contains conforming amendments to Rule 1014(c)(3), which addresses failures of the Department to serve a decision within the prescribed time frame.

involved. The Exchange notes that it does not intend for the Proposed Rule to routinely lengthen the Department’s timeframe for serving application decisions. Under the existing Rule, the Exchange typically issues decisions far in advance of the 15 business day deadline and the Exchange expects that it will continue to do so in most instances. Indeed, the Exchange has a self-interest in issuing decisions as soon as is possible. The 45 day decision period in the Proposed Rule is merely intended to allow for the parties to have flexibility in unusual circumstances.

Fifth, the Proposed Rule omits existing paragraph (d), which states that a decision by the Department to approve an application is contingent upon the Applicant filing with the Department an executed written membership agreement that contains the Applicant’s agreement to abide by any restriction specified in the Department’s decision and to obtain the Department’s approval prior to undertaking a change in ownership, control, or business operations, or prior to modifying or removing a membership restriction. The Proposed Rule omits this provision because, as explained above, the Exchange expressly requires, in Proposed Rule 1013, that an Applicant must file a duly executed copy of the Membership Agreement as part of its application. The existing Membership Agreement contains the undertakings described in existing paragraph (d). Accordingly, existing paragraph (d) is superfluous.

Rule 1015

The Proposed Rule 1000 Series amends existing Rule 1015, which states that the Department’s membership decisions are subject to review by the Exchange Review Council. Specifically, the Proposed Rule 1000 Series moves from existing Rule 1012(c) to Proposed Rule 1015(k) a provision that prohibits *ex parte* communications involving membership decisions subject to review among certain Exchange staff, members of the Exchange Review Council, members of a Subcommittee of the Council, and the Board of Directors. Similarly, the Proposed Rule 1000 Series moves from existing Rule 1012(d) to Proposed Rule 1015(l) a provision that governs the recusal and disqualification of a member of the Exchange Review Council, a Subcommittee thereof, or the Board of Directors from participating in a review of a membership decision. The Proposed Rule 1000 Series moves these provisions because the Exchange believes that they fit logically within the section of the membership rules that

govern appeals of membership decisions. The Proposed Rules contain no substantive changes to these provisions²¹ and the Exchange does not believe that moving them will have any substantive effect.

Rule 1017

The Proposed Rule 1000 Series contains substantial changes to existing Rule 1017, which requires Members to obtain approval prior to effecting a change in ownership, control, or business operations. These changes are generally intended to streamline and simplify the existing Rule, which the Exchange believes are unnecessary onerous and complex. As much as possible, the Proposed Rule applies the same procedures to these applications for approval as it does to its applications for membership under Proposed Rules 1013 and 1014.

The first difference between the existing and Proposed Rule 1017 concerns Rule 1017(a), which presently defines the events that require Members to file applications. The existing paragraph states that a Member shall file an application for approval prior to effecting the following changes: (1) A merger of the Member with another Member (unless both are members or the surviving member will continue to be a member of the New York Stock Exchange (“NYSE”)); (2) a direct or indirect acquisition by the Member of another Member (unless the acquiring Member is a member of the NYSE); (3) direct or indirect acquisitions or transfers of 25% or more in the aggregate of the Member’s assets or any asset, business line or line of operations that generates revenues comprising 25% or more in the aggregate of the Member’s earnings measured on a rolling 36 month basis (unless both the seller and acquirer are members of the NYSE); (4) a change in the equity ownership or partnership capital of the Member that results in one person or entity directly or indirectly owning or controlling 25 percent or more of the equity or partnership capital; or (5) a “material change in business operations.” Existing Rule 1011(g), in turn, defines a “material change in business operations” to mean, among other things: (1) Removing or modifying a membership restriction; (2) acting as a dealer for the first time; (3) market making for the first time on the Exchange (except when the member’s market making has been approved

²¹ The Proposed Rule omits the requirement in existing Rule 1015(a) that an applicant file a request for review “by first-class mail.” Proposed Rule 1012(a) now provides for a more modern array of filing options that includes electronic submission.

previously by FINRA or Nasdaq); (4) adding business activities that require higher minimum net capital under SEC Rule 15c3-1; and (5) adding business activities that would cause a proprietary trading firm no longer to meet the definition of that term contained in the rule.

For ease of reference, the Proposed Rule 1000 Series incorporates into Proposed Rule 1017(a)(5) the definition of a “material change in business operations” rather than define it separately in Rule 1011(g). The Proposed Rule 1000 Series also takes the existing exclusion from that definition—excluding first time market makers on the Exchange whose market making activities have been approved previously by FINRA or Nasdaq—and applies it more broadly to all of Rule 1017(a). That is, none of the changes enumerated in Proposed Rule 1017(a) require prior Departmental approval to the extent that the Member’s Designated Examining Authority (“DEA”), or an Affiliated Exchange, has approved the change previously in accordance with their respective rules and provided that the Member provides written evidence to the Department of such prior approval. The Exchange believes that this is prudent because in all instances in which a Member’s DEA or any Affiliated Exchange²² have already approved a change, the Exchange can be reasonably confident that such prior approval would be consistent with its own judgment on the matter, such that no purpose would be served in requiring the Department to independently approve the same change.²³ The Proposed Rule 1000 Series also eases burdens on Members that wish to make changes to their businesses and which presently require multiple approvals to do so. The Exchange notes that in the Proposed Rules, it retains authority to require approval of a proposed change where the nature, terms, or conditions of the change have altered since the Member’s

²² Exchange notes that the existing Rule is under-inclusive in that it does not account for prior approvals granted by all of the Affiliated Exchanges. The Exchange believes that there is no reasonable basis for it to defer to a prior approval granted by Nasdaq and to not do the same with respect to prior approvals granted by the other Affiliated Exchanges.

²³ Proposed Rule 1017(a) eliminates exceptions relating to NYSE membership. The Exchange believes that this proposal is reasonable insofar as the NYSE’s rules may, at times, diverge with those of the Exchange. Going forward, the Exchange feels more confident deferring to the prior judgment of a Member’s DEA or of an Affiliated Exchange as to the specific change event at issue than it does to the mere fact that a Member or its counterparty in a business transaction are NYSE members.

DEA or an Affiliated Exchange approved it.

Next, the Proposed Rule 1000 Series makes several organizational and clarifying amendments to existing Rule 1017(b), which governs the filing and content of applications filed under Rule 1017. to the Proposed Rule prefaces subparagraph (b)(2)—which presently states vaguely that the “application” shall contain certain items—with language clarifying that the provision pertains to applications for approval of a change in ownership or control or a material change in the business operations of a member. It also breaks out the last sentence of (b)(2) into new subparagraphs (2)(A) and (2)(B). Furthermore, the Proposed Rule contains clarifying changes in (2)(A) (specifying that a description of a “change in ownership, control, or business operations” means a “proposed” change in ownership, control, or “material” business operations) and (2)(B) (specifying that the Member must “attach” rather than “include” a business plan, pro forma financials, an organizational chart, and written supervisory procedures relating to the “proposed” change). Finally, the Proposed Rule renumbers the remainder of the existing Rule.

Proposed Rule 1017(c) is more limited in its scope than is existing Rule 1017(c). Specifically, the proposed Rule omits from subparagraph (c)(1) the ability of a Member to effect a change in ownership or control prior to receiving approval from the Department and the ability of the Department to impose interim restrictions on the Member pending final Department approval. The Exchange believes that the concepts of interim changes and restrictions are overly complex, potentially disruptive, and ultimately unnecessary given the short time frames that the Rules prescribe for the Department to act on applications.²⁴ Additionally, the Exchange notes that in its experience reviewing applications under Rule 1017, these provisions never have been invoked. Finally, the Proposed Rule changes the title of this provision to reflect the omission of the foregoing. Whereas now, the title is “Effecting Change and Imposition of Interim Restrictions,” the Proposed Rule

²⁴ The Exchange also notes that FINRA is also publicly contemplating eliminating the concept of allowing its members to effect business changes on an interim basis. See FINRA, Regulatory Notice 18-23: Membership Application Proceedings (Request for Public Comment), Attachment B (July 26, 2018), available at http://www.finra.org/sites/default/files/Attachment-B_Regulatory-Notice-18-23.pdf.

is entitled “When Applications Shall or May Be Filed.”

Existing paragraphs (d), (e), and (f) of Rule 1017, prescribe standards for rejecting applications that are not substantially complete, authorize the Department to serve a request for additional documents and information, and permit the Department to conduct interviews of Applicants, respectively. Proposed Rule 1017 omits these provisions and replaces them with provisions that are more consistent with Proposed Rule 1013(a)(2), (3), and (4). That is, Proposed Rule 1017(d) states that the Department will deem an application to be filed on the date when it is substantially complete, meaning the date on which the Department receives from the Applicant all material documentation and information required under the Rule. It also requires the Department to inform the Applicant in writing when the Department deems an application to be substantially complete. Proposed Rule 1017(d) states that the Department may treat an application filed under this Rule as having lapsed, and the Department may reject an application filed under this Rule, in accordance with Proposed Rule 1013(a)(3), except that the Department may treat an application as having lapsed if it is not substantially complete for 30 days or more after the applicant initiates it.²⁵ Finally, Proposed Rule 1017(f) states that at any time before the Department serves its decision on an application filed under Rule 1017, the Department may request additional information or documentation from the Applicant or from a third party in accordance with Rule 1013(a)(4).²⁶

Existing Rule 1017(g) prescribes a complex system for the Department to issue decisions in response to applications filed under Rule 1017. For example, it differentiates between decisions issued with respect to Members that are and are not FINRA members (or required to be FINRA members). With respect to Members that are FINRA members, the Rule requires the Department to consider whether the Applicant and its Associated Persons meet the standards set forth in NASD (FINRA) Rule 1014(a). It also prescribes specific criteria for issuing decisions where the Applicant seeks a

²⁵ The Exchange notes that this 30 day time period for deeming an application to have lapsed derives from existing Rule 1017(d).

²⁶ As stated previously, circumstances where the Department may consult a third party include to seek additional information about or to verify aspects of an application. For example, the Department may consult another SRO to verify the financial status or prior disciplinary history of a Member’s prospective new ownership.

modification or removal of a membership restriction. The Exchange believes that this complex system is unnecessary and can be simplified considerably, particularly in light of the proposal described above to exempt a Member from obtaining the Exchange's approval to effect a change in ownership or control or a material change in its business operations when FINRA has already approved the change previously. That is, there is no reason for the Exchange to make an independent assessment of whether the proposed change complies with FINRA rules if FINRA has already made that determination.

In lieu of the existing provisions, Proposed Rule 1017 states that the Department will render a decision on an application filed under Rule 1017 in accordance with the standards set forth in Rule 1014, except with respect to applications to modify or remove a membership restriction, in which case the Department will consider the factors presently set forth in existing Rule 1017(g)(1)(D) (Proposed Rule 1017 rennumbers this provision as subparagraph (g)(1)).

Additionally, in lieu of existing Rule 1017(g)(2), which requires the Department to serve a written decision on an application filed under Rule 1017 within 30 (calendar days) after conclusion of a membership interview or the filing of additional information or documents (whichever is later), Proposed Rule 1017 states that the Department will serve a written decision in accordance with Rule 1013(c).²⁷ The Proposed Rule 1000 Series makes this change to 1017(g)(2) for the same reasons that it discussed above with respect to Rule 1013(c).

Finally, the Proposed Rule 1000 Series omits existing Rule 1017(k). This provision presently states that if an application for approval of a change in ownership lapses or is denied and all appeals are exhausted or waived, the Member must, within 60 days, submit a new application, unwind the transaction, or file a Form BDW. It also provides for the Department to shorten or lengthen the 60 day period under certain circumstances. Due to the fact that the Exchange—as explained previously—will eliminate the ability of a Member to effect a change in ownership while its application for Departmental approval is pending, this

²⁷ The Exchange notes that the cross-reference to Rule 1013(c) in the Proposed Rules also addresses the Applicant's rights in the event that the Department does not serve it with a timely written decision. Accordingly, the Proposed Rule omits existing subparagraph (g)(3), which covers the same topic.

provision is no longer necessary. That is, there will be no interim change in ownership that will need to be unwound or otherwise addressed if the Department denies an application or it lapses.

Rule 1018

The Proposed Rule 1000 Series consolidates within Proposed Rule 1018, which is reserved under the existing Rules, existing provisions of the Rules pertaining to the resignation of members (existing Rule 1012(g), transfer of membership (existing Rule 1012(i)(1)), termination of membership (existing Rule 1012(i)(2)), and reinstatement of membership (existing Rule 1002(d)). The Exchange believes that these provisions are logically related and belong together in a single Rule. Proposed Rule 1018 maintains the substance of these consolidated provisions unchanged from their existing state, except that resignations no longer require a 30 day time period to become effective. Also, the provision on reinstatement applies to membership only and not to registration, which is covered separately in the Exchange's Rules.

Other Miscellaneous Changes

The Proposed Rule 1000 Series contains other non-substantive differences from the existing Rule 1000 Series, as follows. Where the existing Rules refer specifically to "Nasdaq BX" or "BX," the Proposed Rules replace such references with more general term "Exchange." This difference makes it easier in the future to harmonize the Exchange's membership rules with those of the other Affiliated Exchanges. The Proposed Rule 1000 Series also updates obsolete references to the "NASD" to reflect the fact that the NASD is now known as "FINRA." Finally, where applicable, the Proposed Rule 1000 Series rennumbers the Rules and updates or corrects cross-references.

Proposed Introductory Paragraph to the BX Rule 1000 Series

The Exchange proposes to include an introductory paragraph to the BX Rule 1000 Series which states that it incorporates by reference the Nasdaq Rule 1000 Series (other than Nasdaq Rules 1031, 1050, 1090, 1130, 1150, 1160, and 1170),²⁸ and that such Nasdaq Rules shall be applicable to Exchange Members, Associated Persons, and other

²⁸ The Exchange notes that these rules, both for BX and Nasdaq, are separate from the membership rules. The proposal will not supplant or amend BX Rules 1031, 1050, 1090, 1130, 1150, 1160, or 1170.

persons subject to the Exchange's jurisdiction.

These proposed introductory paragraphs also list instances in which cross references in the Nasdaq Rule 1000 Series to other Nasdaq rules should be read to refer instead to the Exchange rules, and references to defined Nasdaq terms shall be read to refer to the Exchange-related meanings of those terms. For example, references in the Nasdaq Rule 1000 Series to the following defined terms shall be read to refer to the Exchange-specific meanings of those terms: "Exchange" or "Nasdaq" shall be read to refer to the Nasdaq BX Exchange; "Rule" or "Exchange Rule" shall be read to refer to the Exchange Rules; the defined term "Applicant" in the Nasdaq Rule 1000 Series shall be read to refer to an Applicant to the Nasdaq BX Exchange; the defined terms "Board" or "Exchange Board" in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq BX Board of Directors; the defined term "Director" in the Nasdaq Rule 1000 Series shall be read to refer to a Director of the Board of the Nasdaq BX Exchange; the defined term "Exchange Review Council" in the Nasdaq Rule 1000 Series shall be read to refer to the Nasdaq BX Exchange Review Council; the defined term "Subcommittee" in the Nasdaq Rule 1000 Series shall be read to refer to a Subcommittee of the Nasdaq BX Exchange Review Council; the defined term "Interested Staff" in the Nasdaq Rule 1000 Series shall be read to refer to Interested Staff of Nasdaq BX; the defined term "Member" in the Nasdaq Rule 1000 Series shall be read to refer to a Nasdaq BX Member; the defined term "Associated Person" shall be read to refer to a Nasdaq BX Associated Person; the defined terms "Exchange Membership Department" or "Membership Department" shall be read to refer to the Nasdaq BX Membership Department; and the defined term "Exchange Regulation Department" shall be read to refer to the Nasdaq BX Regulation Department.

Additionally, the proposed introduction to the BX Rule 1000 Series states that cross references in the Nasdaq Rule 1000 Series to "Rule 0120" shall refer to Nasdaq BX Rule 0120, cross references in the Nasdaq Rule 1000 Series to Rule 3010 shall refer to Nasdaq BX Rule 3010; cross references in the Nasdaq Rule 1000 Series to Rule 3011 shall refer to Nasdaq BX Rule 3011; and cross references to "General 4, Section 1.1200 Series" shall be read to refer to the Nasdaq BX Rule 1200 Series.

Conclusion

The changes proposed herein will allow the Exchange to harmonize its membership rules and processes with those of Nasdaq and, ultimately, with the other Affiliated Exchanges,²⁹ thus providing a uniform criteria across the Affiliated Exchanges for membership qualifications and a uniform process across the Affiliated Exchanges for processing membership applications. The proposal will also provide for full membership reciprocity between Nasdaq and the Exchange—and hopefully, in time, across all of the Affiliated Exchanges—so that a member of one Affiliated Exchange would receive expedited treatment in applying for membership on any other Affiliated Exchange. Harmonizing the membership rules and processes of the Affiliated Exchanges will render administration of the Affiliated Exchanges' responsibilities more efficient in that the Membership Department will only need to administer a single set of criteria and processes, rather than six sets thereof. Similarly, harmonized membership rules and processes will benefit Exchange Applicants and Members by reducing the number of requirements that must be met and the processes that must be followed to apply for membership on the Affiliated Exchanges.

Moreover, as to the Exchange itself, the proposed changes described herein will render the Exchange's membership rules and processes clearer, better organized, simpler, and easier to comply with. Again, such changes will provide benefits both to the Exchange's Membership Department and to Exchange Applicants.

The proposed membership rules and processes are substantially similar to the existing rules and process, and where there are differences between the new and old processes, the Exchange believes that the new process does not disadvantage its Members or Associated Persons. To the contrary, the Exchange believes that the new rules and processes will benefit all parties as it again provides greater clarity, simplicity, and efficiency than the retired rules and processes.

Implementation

To facilitate an orderly transition from the existing Rule 1000 Series to the Proposed Rule 1000 Series, the Exchange is proposing to apply the existing Rules to all applications which have been submitted to the Exchange (including applications that are not yet

complete) and are pending approval prior to the operative date. The Exchange also will apply the existing Rules to any appeal of an Exchange membership decision or any request for the Board to direct action on an application pending before the Exchange Review Council, the Board, or the Commission, as applicable. As a consequence of this transition process, the Exchange will retain the existing processes during the transition period until such time that there are no longer any applications or matters proceeding under the existing rules. To facilitate this transition process, the Exchange will retain a transitional Rulebook that will contain the Exchange's membership rules as they are at the time that this proposal is filed with the Commission. This transitional Rulebook will apply only to matters initiated prior to the operational date of the changes proposed herein and it will be posted to the Exchange's public rules website. When the transition is complete, the Exchange will remove the transitional Rulebook from its public rules website.

The Exchange will announce and explain this transition process in a regulatory alert.

The Exchange notes that Nasdaq applied the same process described above to govern its transition to its amended membership rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,³⁰ in general, and furthers the objectives of Section 6(b)(5) and of the Act,³¹ in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. It is also consistent with Section 6(b)(7) of the Act in that it provides for a fair procedure for denying Exchange membership to any person who seeks it, barring any person from becoming associated with an Exchange Member, and prohibiting or limiting any person with respect to access to services offered by the Exchange or a Member thereof.³²

As a general matter, the Exchange believes that its proposal to delete its existing membership rules and incorporate by reference the Nasdaq Membership Rules will promote a free and open market, and will benefit investors, the public, and the markets,

because the new rules will be clearer, better organized, and simpler.

The proposal is just and equitable because it will render the Exchange's membership rules easier for Applicants and Members to read and understand, including by doing the following:

- Establishing a "roadmap" paragraph in proposed Rule 1014(a) that sets forth the basic authority of the Department to approve, approve with conditions, or deny applications for membership before the Rule goes on to enumerate criteria for the Department to apply when taking each of those actions;

- Making the titles of the rules more accurate and descriptive (e.g., Proposed Rule 1014(b) (amending the existing title "Bases for Denial" to also include bases for approval and conditional approval to make it more accurate and complete));

- Grouping logically-related provisions together in the Rules (e.g., provisions governing resignation, termination, transfer, and reinstatement of membership (moving them from Rule 1002(d) and 1012(g) and (i) to Proposed Rule 1018); provisions relating to *ex parte* communications (existing Rule 1012(c)) and recusals and disqualifications (existing Rule 1012(d) (moving them into Proposed Rule 1015, which governs reviews of membership decisions));

- Rationalizing and consolidating provisions that presently govern lapses and rejections of applications, including by making clearer conceptual distinctions between lapses (*i.e.*, applications that are not substantially complete and which the Department may deem to be abandoned, such that the Department will refund any application fees paid by the Applicant) and rejections (*i.e.*, applications that the Department deemed to be filed but which it refuses to act upon due to lingering incompleteness, in which case the Department will not refund application fees paid to it), and by consolidating Rules 1012(b) and 1013(a)(3) into Proposed Rule 1013(a)(3)(A) and (B);

- Consolidating overlapping provisions that govern the registration of branch offices and office of supervisory jurisdiction into a single provision (consolidating Rule 1012(j) and IM-1002-4 into Proposed Rule 1002(d));

- Omitting from the Proposed Rule references in existing Rule 1002(c), Rule 1012(j), and Rule 1013(a)(1)(U) to the obligation of Members (and their branch offices) to pay fees, charges, dues, and assessments to the Exchange insofar as those obligations are duplicative of Rule 9553;

³⁰ 15 U.S.C. 78f(b).

³¹ 15 U.S.C. 78f(b)(5).

³² 15 U.S.C. 78f(b)(7).

²⁹ See n.4, *supra*.

- Converting IM-1002-1 and IM-1002-4 into rule text in the Proposed Rule 1000 Series;

- Clarifying when the Membership Department will deem an application to be filed (when the application is “substantially complete,” as set forth in Proposed Rule 1013(a)(2)) and by requiring the Department to notify an Applicant in writing of the filing date;

- Clarifying what the Exchange means when it states that an Applicant may “waive-in” to Exchange membership (as set forth in Proposed Rule 1013(b)); and

- Updating obsolete cross-references throughout the Rules from NASD to FINRA.

The proposal will also make compliance with the membership rules simpler and less burdensome for Applicants and Members by doing the following:

- Eliminating obsolete requirements to submit paper copies of Forms U-4 and BD or explain information listed on the forms (Rule 1013(a)(1)(A), (J), (K), and (P) and Rule 1013(a)(2)) where the Department already has electronic access to the Forms and the information contained therein;

- Permitting electronic filing of applications (proposed Rule 1012(a)(1));

- Allowing payment of application fees by means other than paper check (Proposed Rule 1013(a)(1)(C));

- Relaxing deadlines that needlessly rush the process of responding to the Department’s questions and concerns about an application³³ or that force the Department to render a decision when the Applicant is not ready for the Department to do so;³⁴

³³ Rather than require an Applicant to file a response to a supplemental request for documents or information within 15 business days, Proposed Rule 1013(a)(3) states that the Applicant must respond within a “reasonable period of time” to be prescribed by the Department. Even then, Rule 1013(a)(3)(B) states that the Department must serve upon the Applicant a notice of incompleteness if it fails to respond to a supplemental request and then afford the Applicant an additional reasonable time period to remedy the failure before it may reject the Applicant’s application.

³⁴ Rather than require the Department to serve a written decision within 15 business days, Proposed Rule 1014(c) states that it must issue a decision within a reasonable period of time, not to exceed 45 calendar days after the application is filed and complete, unless the parties agree to a later date. The Exchange does not intend for this change to result in the Department routinely issuing decisions later than it does presently. The Exchange presently issues decisions, in most instances, well in advance of the current 15 business day deadline and it has a self-interest in continuing to do so whenever possible. However, the Exchange believes that it is in the interest of Applicants for the Department to have discretion to respond at a later time in the event that the Applicant needs to address or resolve outstanding questions or concerns associated with its application.

- Eliminating formal membership interviews and procedures related thereto, which the Exchange has not utilized historically (Rule 1013(b));³⁵

- Harmonizing disparate procedures under Rules 1013 and 1017 for filing, evaluating, and responding to initial membership applications and applications for approval of business changes, including by streamlining the Rule 1017 procedures;

- Broadening the circumstances in which an Applicant may waive-into Exchange membership to include the Applicant’s membership in any of the Affiliated Exchanges³⁶ and defining procedures for processing and responding to waive-in applications (Proposed Rule 1013(b));

- Narrowing the circumstances in which a Member must obtain prior Department approval before effecting a change in ownership, control, or material business operations by excluding changes for which a Member has obtained prior approval from the Member’s DEA, or an Affiliated Exchange (Proposed Rule 1017(a));³⁷

- Eliminating the unused, unnecessary, and potentially disruptive ability of Members, pursuant to Rule 1017(c), to effect ownership changes on an interim basis while an application for Department approval is pending; and
- Eliminating the 30 day waiting period for Members that seek to resign their memberships under proposed Rule 1018(a).

In sum, the foregoing changes will update, rationalize, and streamline the

³⁵ The elimination of the formal membership interview process will have no practical effect on the membership process insofar as the Department otherwise has authority to request additional information from the Applicant. Under Proposed Rule 1014(a)(4), this authority may include a request for the Applicant to provide information or documents in-person or by telephone. In other words, the Department will retain authority to conduct an informal interview of the Applicant.

³⁶ As noted above, the Exchange believes that it is reasonable to permit reciprocity in membership among all of the Affiliated Exchanges. The Exchange believes that there is no reasonable basis for it to defer to a prior approval granted by Nasdaq and to not do the same with respect to prior approvals granted by the other Affiliated Exchanges.

³⁷ As is discussed above, the Exchange believes that deference to prior approvals of a proposed business change made by an Affiliated Exchange or the Exchange’s DEA is reasonable because the judgment of these entities on such matters is likely to be the same as that which the Exchange would itself employ. The Exchange assesses that any marginal benefit that might be gained from it applying its own independent judgment outweighs the burden to Applicants of obtaining multiple approvals for the same proposed change. The Exchange notes that it will require a Member to obtain approval for such a change if the nature, terms, or conditions of the proposed change have altered since its DEA or an Affiliated Exchange approved it.

Exchange’s membership rules and processes, all to the benefit of Applicants and Members. Moreover, these changes will not adversely impact the rights of Applicants or Members to appeal adverse Departmental decisions under these Rules or to request Board action to compel the Department to render decisions on applications.

Last, the Exchange believes that its proposal to phase-in the implementation of the new membership rules and processes is consistent with Section 6(b)(7) of the Act³⁸ because both the current and proposed processes provide fair procedures for granting and denying applications for becoming an Exchange Member, becoming an Associated Person, and making material changes to the business operations of a Member. The Exchange is proposing to provide advanced notice of the implementation date of the new processes, and will apply the new processes to new applications, appeals, and requests for Board action that are initiated on or after that implementation date. Any application, appeal, or request for Board action initiated prior to the implementation date will be completed using the current processes. As a consequence, the Exchange will maintain a transitional Rulebook on the Exchange’s public rules website which will contain the Exchange Rules as they are at the time of filing this rule change. These transitional rules will apply exclusively to applications, appeals, and requests for Board action initiated prior to the implementation date. Upon conclusion of the last decision on a matter to which the transitional rules apply, the Exchange will remove the defunct transitional rules from its public rules website. Thus, the transition will be conducted in a fair, orderly, and transparent manner. Lastly, the proposed transition process is the same process that Nasdaq implemented during its transition to new membership 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 not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not expect that its proposed changes to the membership rules will have any competitive impact on its existing or prospective membership. The proposed changes will apply equally to all similarly situated Applicants and Members and they will confer no relative advantage or

³⁸ 15 U.S.C. 78f(b)(7).

disadvantage upon any category of Exchange Applicant or Member. Moreover, the Exchange does not expect that its proposal will have an adverse impact on competition among exchanges for members; to the contrary, the Exchange hopes that by clarifying, reorganizing, and streamlining its membership rules, and by making the Exchange's membership process less burdensome for Applicants and Members, the Exchange will improve its competitive standing relative to other exchanges.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act³⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.⁴⁰

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-BX-2019-022 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-BX-2019-022. 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-BX-2019-022, and should be submitted on or before August 16, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁴¹

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-86423; File No. SR-NYSEARCA-2019-50]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Rule 9.21-O, Delete Current Rules 9.21-O through 9.25-O, and Amend Rule 10.9551

July 22, 2019.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that, on July 9, 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 (1) adopt a new Rule 9.21-O (Communications with the Public) based on NYSE American Rule 991, (2) delete current Rules 9.21-O through 9.25-O, and (3) amend Rule 10.9551 to add references to proposed Rule 9.21-O. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

³⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴⁰ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

⁴¹ 17 CFR 200.30-3(a)(12).