

should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-BYX-2015-35 and should be submitted on or before September 14, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>17</sup>

**Robert W. Errett,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-75721; File No. SR-NYSE-2015-35]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1, Amending Certain of Its Disciplinary Rules To Facilitate the Reintegration of Certain Regulatory Functions From Financial Industry Regulatory Authority, Inc.

August 18, 2015.

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 August 5, 2015, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On August 14, 2015, the exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend certain of its disciplinary rules to facilitate the reintegration of certain regulatory functions from Financial Industry Regulatory Authority, Inc. (“FINRA”). This Amendment No. 1 supersedes the original filing in its entirety. The text of the proposed rule change is available on the Exchange's Web site 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 amend certain of its disciplinary rules to permit the reintegration of certain regulatory functions from FINRA as of January 1, 2016.

#### Background of Proposed Rule Change

On June 14, 2010, the NYSE, NYSE Regulation, Inc. (“NYSE Regulation”),<sup>4</sup> and FINRA entered into a Regulatory Services Agreement (“RSA”), whereby FINRA was retained to perform the market surveillance and enforcement functions that had previously been performed by NYSE, through its wholly-owned subsidiary NYSE Regulation. Pursuant to the RSA, FINRA has been performing Exchange enforcement-related regulatory services, including investigating and enforcing violations of Exchange rules, and conducting disciplinary proceedings arising out of such enforcement actions, including those relating to NYSE-only rules and against dual members and non-FINRA members. To facilitate FINRA's performance of these functions, the Exchange amended its rules to provide that Exchange rules that refer to NYSE Regulation or its staff, Exchange staff, and Exchange departments should be understood to also refer to FINRA staff and FINRA departments acting on behalf of the Exchange pursuant to the RSA.<sup>5</sup>

In 2013, the Exchange adopted new disciplinary rules that are, with certain exceptions, substantially the same as the text of the FINRA Rule 8000 Series and Rule 9000 Series, which set forth rules for conducting investigations and enforcement actions.<sup>6</sup> Those rules were implemented on July 1, 2013<sup>7</sup> and, among other things: (1) Identify FINRA's Department of Enforcement and Department of Market Regulation as the departments permitted to commence disciplinary proceedings, when authorized by FINRA's Office of Disciplinary Affairs (“ODA”); (2)

<sup>4</sup> NYSE Regulation, a not-for-profit subsidiary of the Exchange, performs the Exchange's regulatory functions pursuant to a delegation agreement. See note 7 [sic], *infra*. The Exchange recently filed to, among other things, terminate the delegation agreement, establish a regulatory oversight committee (“ROC”) as a committee of the board of directors of the Exchange, and reintegrate its regulatory and market functions. See Release No. 75288 (June 24, 2015), 80 FR 37316 (June 30, 2015) (SR-NYSE-2015-27) (the “NYSE ROC Filing”). The amendments proposed herein are consistent with, and not dependent on approval of, the NYSE ROC Filing.

<sup>5</sup> See Rule 0. Notwithstanding the RSA, the Exchange retains ultimate legal responsibility for, and control of, the Exchange's regulatory functions performed by FINRA. See Securities Exchange Act Release No. 62355 (June 22, 2010), 75 FR 36729 (June 28, 2010) (SR-NYSE-2010-46).

<sup>6</sup> See Securities Exchange Act Release Nos. 68678 (January 16, 2013), 78 FR 5213 (January 24, 2013) (SR-NYSE-2013-02), 69045 (March 5, 2013), 78 FR 15394 (March 11, 2013) (SR-NYSE-2013-02), and 69963 (July 10, 2013), 78 FR 42573 (July 16, 2013) (SR-NYSE-2013-49).

<sup>7</sup> See NYSE Information Memorandum 13-8 (May 24, 2013).

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

<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.

identify ODA as the office permitted to accept or reject a letter of acceptance, waiver, and consent (“AWC”) or minor rule violation plan letter on behalf of the Board; and (3) identify ODA as the office permitted to accept or reject an offer of settlement if not opposed by FINRA’s Department of Enforcement or Department of Market Regulation. Those rules do not, however, specify whether Exchange staff or departments, or staff of the Exchange’s wholly-owned subsidiary NYSE Regulation, to which the Exchange currently delegates certain regulatory functions,<sup>8</sup> may perform the functions described in the rules.

In October 2014, the Exchange announced that, upon expiration of the current RSA on December 31, 2015, certain market surveillance, investigation and enforcement functions performed on behalf of the Exchange would be reintegrated.<sup>9</sup> Accordingly, effective January 1, 2016, the Exchange will perform certain of the market surveillance, investigation and enforcement functions FINRA was retained to perform in 2010. The proposed changes to the disciplinary rules in the present filing are necessary to permit the Exchange to perform certain regulatory functions currently performed on the Exchange’s behalf by FINRA.

The Exchange proposes the following changes to facilitate the reintegration of certain regulatory functions from FINRA by providing that investigative and

enforcement functions of the Exchange under the Rule 8000 and 9000 Series would be performed by personnel and departments reporting to the Chief Regulatory Officer of the Exchange<sup>10</sup> or by FINRA personnel and departments:

- (1) Amend Rule 9120 to include two new defined terms: “Enforcement,” referring to any department reporting to the CRO of the Exchange with responsibility for investigating or imposing sanctions on a member organization or covered person, in addition to FINRA’s departments of Enforcement and Market Regulation; and “Regulatory Staff,” referring to any officer or employee reporting directly or indirectly to the CRO of the Exchange, in addition to FINRA staff acting on behalf of the Exchange in connection with the Rule 8000 and 9000 Series;
- (2) amend Rules 9120, 9131, 9146, 9211, 9212, 9213, 9215, 9216, 9251, 9253, 9264, 9269, 9270, 9551, 9552, 9554, 9556, 9810, 9820 and 9830 to replace references to Exchange and FINRA departments and personnel with references to “Enforcement” and “Regulatory Staff”;
- (3) amend Rules 8210 and 9110 to provide that in performing functions under the disciplinary code, the CRO and Regulatory Staff shall function independently of the commercial interests of the Exchange and of the member organizations;
- (4) amend Rules 9141 and 9242 to prohibit former Regulatory Staff from appearing in a proceeding under the Rule 9000 Series and from providing expert testimony in a proceeding under the Rule 9000 Series within one year of termination, respectively;
- (5) amend Rules 9211, 9216 and 9270 to provide that the CRO would be responsible for authorizing complaints; approving letters of acceptance, waiver, and consent; approving minor rule violation plan letters; and approving offers of settlement in place of FINRA’s ODA; and
- (6) amend Rules 476, 8120, 9001, 9110, 9217, 9232, 9310 and 9810 to make certain technical changes and correct a typographical error.

The Exchange proposes that the changes described herein would be operative on January 1, 2016, following the reintegration of certain regulatory functions from FINRA as described below.

#### Replacement of References To Exchange and FINRA Departments and Personnel With References to Enforcement and Regulatory Staff

The Exchange proposes to amend Rules 9120, 9131, 9146, 9211, 9212, 9213, 9215, 9216, 9251, 9253, 9264,

9269, 9270, 9551, 9552, 9554, 9556, 9810, 9820 and 9830 to replace references to Exchange and FINRA departments and personnel with references to the defined terms “Enforcement” and “Regulatory Staff.”

The proposed amendments would allow disciplinary actions to be investigated and prosecuted on the Exchange’s behalf by officers or employees reporting to the CRO beginning on January 1, 2016, while still enabling FINRA staff to continue to perform investigative and disciplinary activities that FINRA is authorized to perform on the Exchange’s behalf.

More specifically, the Exchange proposes to make the following amendments:

- Rule 9120 (Definitions) sets forth the definitions applicable to the disciplinary code. The Exchange proposes to add definitions of “Enforcement,” referring to any department reporting to the CRO of the Exchange with responsibility for investigating or imposing sanctions on a member organization or covered person, in addition to FINRA’s departments of Enforcement and Market Regulation; and “Regulatory Staff,” referring to any officer or employee reporting, directly or indirectly, to the CRO of the Exchange, in addition to FINRA staff acting on behalf of the Exchange in connection with the Rule 8000 and 9000 Series.<sup>11</sup>

The Exchange also proposes to delete the definitions of “Head of Enforcement” (Rule 9120(q)) and “Head of Market Regulation” (Rule 9120(r)), which refer to the FINRA department heads.<sup>12</sup>

Similarly, the Exchange proposes to replace the reference to the “Department of Enforcement or the Department of Market Regulation” in Rule 9120(y) (definition of the term “Party”) with “Enforcement.” The Exchange further proposes to streamline the definition of “Interested Staff” (Rule 9120(u)) to eliminate references to Exchange and FINRA departments and staff, and provide that “Interested Staff” under any proceeding brought under the Code

<sup>11</sup> Certain rules in the Rule 8000 and 9000 Series currently refer to “Exchange staff,” a term which includes NYSE employees, NYSE Regulation staff that administers rules under the Delegation Agreement, and authorized FINRA staff pursuant to Rules 0 and 1. The proposed definition of “Regulatory Staff” provides that for purposes of the Rule 8000 Series and Rule 9000 Series (except for Rule 9557), the term “Exchange staff” shall have the same meaning as “Regulatory Staff.”

<sup>12</sup> The Exchange also proposes to delete the definition of ODA (Rule 9120(v)) and replace all references to ODA in the Exchange’s rules with “CRO,” for the reasons discussed in “Substitution of CRO for ODA in Rules 9211, 9216 and 9270,” *infra*.

<sup>8</sup> The Exchange currently delegates to NYSE Regulation certain responsibilities and functions of the Exchange, including taking “action to assure compliance with the rules, interpretations, policies and procedures of [the Exchange], the federal securities laws, or other laws, rules and regulations that [the Exchange] has the authority to administer or enforce, through examination, surveillance, investigation, enforcement, disciplinary and other programs.” Delegation Agreement by and among New York Stock Exchange LLC, NYSE Regulation, Inc. and NYSE Market, Inc. (the “Delegation Agreement”), Section II, A.2. The Exchange, however, retains ultimate responsibility for such delegated responsibilities and functions. See Securities Exchange Act Release No. 53382, 71 FR 11251, 11264 (February 27, 2006) (SR–NYSE–2005–77). Actions taken by NYSE Regulation pursuant to delegated authority remain subject to review, approval or rejection by the board of directors of the Exchange. The one exception is that actions taken by NYSE Regulation upon review of disciplinary decisions by the NYSE Regulation board of directors is not subject to review, approval or rejection by the Exchange and constitutes a final action of the Exchange. See Delegation Agreement, Section I. The Exchange is not proposing in this filing any changes to its rules that impact the review of disciplinary decisions by the NYSE Regulation board of directors.

<sup>9</sup> It is anticipated that FINRA, under a new RSA currently being negotiated, would continue to conduct, *inter alia*, the registration, testing and examination of broker-dealer members of the Exchange, and certain cross-market surveillance and related investigation and enforcement activities.

<sup>10</sup> NYSE Regulation staff report to the Chief Executive Officer of NYSE Regulation, who is also the Chief Regulatory Officer (“CRO”) of the Exchange.

of Procedure means Regulatory Staff or Exchange staff who (i) report, directly or indirectly, to any Enforcement employee, or to the head of any department or office that issues a notice or decision or is designated as a Party under the Rule 9000 Series, (ii) directly participated in the authorization or initiation of a complaint or proceeding, or (iii) directly participated in the proceeding, or directly participated in an examination, investigation, prosecution, or litigation related to a proceeding, as well as any person(s) who supervise such staff. Thus, as in the current definition, the new definition of "Interested Staff" in a particular matter encompasses supervisory personnel up to the most senior level, including the CRO, when staff reporting to such supervisory personnel directly participated in the matter.

Finally, the Exchange proposes to renumber the remaining definitions in Rule 9120.

- Rule 9131 (Service of Complaint) provides that the "Department of Enforcement or the Department of Market Regulation" shall serve a complaint on both a party and counsel for a party. The Exchange proposes to replace these references with "Enforcement." The proposed change would enable Enforcement to serve disciplinary complaints beginning January 1, 2016.

- Rule 9146 (Motions) governs motion practice under the disciplinary rules. The Exchange proposes to amend Rule 9146(k)(1) to replace a reference to the "Department of Enforcement and the Department of Market Regulation and other Exchange staff" with "Regulatory Staff." The Exchange also proposes to replace a reference to "Exchange staff" in subsection (k)(2) with "Regulatory Staff." The proposed changes would identify the staff that may receive or use documents subject to a protective order.

- Rule 9211 (Authorization of Complaint) sets forth the process for authorizing issuance of a complaint against a member organization or covered person. The Exchange proposes to replace references to the "Department of Enforcement or the Department of Market Regulation" with "Enforcement" in Rules 9211(a)(1) and (a)(2). The Exchange proposes to add the phrase "has reason to believe" in subsection (a)(1) with reference to Enforcement to make the construction consistent with other disciplinary rules (e.g., Rule 9216). The proposed change would enable the Exchange, in addition to FINRA, to authorize and issue disciplinary complaints beginning January 1, 2016. As discussed below, the Exchange also proposes to amend

Rule 9211 to provide that the Exchange's CRO would authorize issuance of a complaint.

- Rule 9212 (Complaint Issuance) sets forth the requirements of the complaint. In subsection (a)(1), the Exchange proposes to delete the first sentence as redundant, and to delete two references to "Department of Enforcement or the Department of Market Regulation." The proposed change would permit "authorized Enforcement staff" to sign a complaint that would be served by "Enforcement."

The Exchange also proposes to replace "Department of Enforcement or the Department of Market Regulation" with "Enforcement" in Rule 9212(a)(2) to permit, in addition to the relevant FINRA departments, any department reporting to the CRO that meets the definition of "Enforcement" to propose a hearing location or that the Chief Hearing Officer select a Floor-Based Panelist as provided for therein.

Similarly, the Exchange proposes to replace "Department of Enforcement or the Department of Market Regulation" with "Enforcement" in Rule 9212(b) and Rule 9212(c)(1) and (2) to enable any department reporting to the CRO that meets the definition of "Enforcement," in addition to the relevant FINRA departments, to amend and withdraw complaints.

- Rule 9213(a) (Assignment of Hearing Officer) provides for the appointment of a Hearing Officer and Panelists by the Chief Hearing Officer as soon as practicable after the filing of a complaint by the "Department of Enforcement or the Department of Market Regulation." The Exchange proposes to replace this reference with "Enforcement" to include complaints filed by any department reporting to the CRO that meets the definition of "Enforcement," in addition to the relevant FINRA departments.

- Rule 9215(f) (Answer to Complaint) sets forth the requirements for answering a complaint. The Exchange proposes to replace "Department of Enforcement or the Department of Market Regulation" with "Enforcement" in Rule 9215(f) to enable any department reporting to the CRO that meets the definition of "Enforcement," in addition to the relevant FINRA departments, to send a second notice if a respondent does not file an answer or timely respond to the complaint.

- Rule 9216(a) (Acceptance, Waiver, and Consent Procedures) sets forth the procedures by which a respondent can execute an AWC letter prior to the issuance of a complaint. Under the current rule, FINRA's Department of Enforcement or Department of Market

Regulation prepares and requests that a member organization or covered person execute an AWC letter, and "Exchange staff" may determine the effective date of sanctions unless the letter states otherwise. The Exchange proposes to replace "Department of Enforcement or the Department of Market Regulation" in Rule 9216(a)(1) with "Enforcement" to permit any department reporting to the CRO that meets the definition of "Enforcement," in addition to the relevant FINRA departments, to prepare and request execution of AWC letters. The Exchange also proposes to replace "Exchange staff" with "Regulatory Staff" to identify the staff that may determine the effective date of sanctions.

Rule 9216(b) (Procedure for Violation Under Plan Pursuant to SEA Rule 19d-1(c)(2)) sets forth the procedures for executing a minor rule violation plan letter.<sup>13</sup> Under the current rule, FINRA's Department of Enforcement or Department of Market Regulation may prepare and request that a member organization or covered person execute a minor rule violation plan letter, and "Exchange staff" may determine the effective date of sanctions unless the letter states otherwise. The Exchange proposes to replace references to "the Department of Enforcement or the Department of Market Regulation" in Rule 9216(b)(1) with "Enforcement" so that any department reporting to the CRO that meets the definition of "Enforcement," in addition to FINRA, may prepare and request such letters. The Exchange also proposes to replace "Exchange staff" with "Regulatory Staff" to identify the staff that may determine the effective date of sanctions.

- Rule 9251 (Inspection and Copying of Documents in Possession of Staff) requires that documents prepared or obtained in connection with an investigation be made available to a respondent. The Exchange proposes to amend subsections (a) (documents that must be made available for inspection and copying), (b) (documents withheld from inspection and copying), (c) (list of documents withheld), (d) (timing of inspection and copying), and (g) (failure to make documents available) to replace references to "the Department of Enforcement or the Department of Market Regulation" with "Enforcement" to bring departments reporting to the CRO that meet the definition of

<sup>13</sup> A minor rule violation plan letter under the Exchange's rules permits a fine not to exceed \$2,500 and/or a censure to be imposed with respect to certain specifically enumerated rules. See Rules 9216(b)(1) and 9217.

“Enforcement” within the scope of this rule.

- Rule 9253 (Production of Witness Statements) sets forth the procedures for filing motions to obtain witness statements. The Exchange proposes to amend Rule 9253(a) and (b) to replace “Department of Enforcement or the Department of Market Regulation” with “Enforcement” to bring departments reporting to the CRO that meet the definition of “Enforcement” within the scope of this Rule.

- Rule 9264 (Motion for Summary Disposition) sets forth the procedures for filing summary disposition motions. The Exchange proposes to replace “Department of Enforcement or the Department of Market Regulation” with “Enforcement” to bring departments reporting to the CRO that meet the definition of “Enforcement” within the scope of this Rule.

- Rule 9269 (Default Decisions) sets forth the process for issuance and review of default decisions. The Exchange proposes to replace “Department of Enforcement or the Department of Market Regulation” in subsection (a)(2) with “Enforcement” in order to bring departments reporting to the CRO that meet the definition of “Enforcement” within the scope of this Rule. The Exchange also proposes to replace “Exchange staff” with “Regulatory Staff” in subsection (d) to identify the staff that may determine the effective date of certain sanctions.

- Rule 9270 (Settlement Procedure) governs offers of settlement. The Exchange proposes to replace “the Department of Enforcement or the Department of Market Regulation” in subsections (e) and (f) with “Enforcement” in order to permit a department reporting to the CRO that meets the definition of “Enforcement” to consider offers of settlement by respondents. The Exchange also proposes to replace “Exchange staff” with “Regulatory Staff” in subsection (c)(5) to identify the staff that may determine the effective date of sanctions when provided in an offer of settlement.<sup>14</sup>

- Rule 9551 (Failure to Comply with Public Communication Standards) governs expedited proceedings relating to a member organization’s departure from the public communication standards of Rule 2210. The Exchange proposes to replace “Exchange staff” with “Regulatory Staff” to identify the staff that initiates and otherwise participates in such proceedings.

- Rule 9552 (Failure to Provide Information or Keep Information Current) sets forth procedures for expedited proceedings relating to a member organization or covered person’s failure to provide information or keep information current. The Exchange proposes to replace “Exchange staff” with “Regulatory Staff” to identify the staff that initiates and otherwise participates in such proceedings.

- Rule 9554 (Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution) governs expedited proceedings relating to noncompliance with an arbitration award, settlement agreement, or restitution order. The Exchange proposes to replace “Exchange staff” with “Regulatory Staff” to identify the staff that initiates and otherwise participates in such proceedings.

- Rule 9556 (Failure to Comply with Temporary and Permanent Cease and Desist Orders) governs expedited proceedings relating to noncompliance with a temporary or permanent cease and desist order. The Exchange proposes to replace “Exchange staff” with “Regulatory Staff” to identify the staff that initiates and otherwise participates in such proceedings.

- Rule 9810 (Initiation of Proceeding) sets forth procedures for initiating temporary cease and desist proceedings. The Exchange proposes to replace “Department of Enforcement or the Department of Market Regulation” with “Enforcement” in the title and the text of the rule to permit a department reporting to the CRO that meets the definition of “Enforcement” to initiate such proceedings.

- The Exchange proposes to replace references to “Department of Enforcement or the Department of Market Regulation” with “Enforcement” in Rule 9820 (Appointment of Hearing Officer and Hearing Panel), which governs the appointment of Hearing Officers and Panelists for temporary cease and desist proceedings, to bring departments reporting to the CRO that meet the definition of “Enforcement” within the scope of this Rule.

- Rule 9830 (Hearing) sets forth hearing procedures for temporary cease and desist proceedings. The Exchange proposes to amend Rule 9830(b) and (h) to replace “Department of Enforcement or the Department of Market Regulation” with “Enforcement” to permit service of a notice in a temporary cease and desist proceeding on a department reporting to the CRO that meets the definition of “Enforcement,” and to describe available remedies in

the event Enforcement fails to appear at a hearing.

#### Independence of the CRO and Staff in the Disciplinary Process

The Exchange proposes to amend Rules 8210 and 9110 to add rule text providing that in performing functions under the disciplinary code, the CRO and Regulatory Staff would function independently of the commercial interests of the Exchange and the commercial interests of the member organizations. This requirement is already being met and is consistent with longstanding policies and practices at the Exchange. The proposed change would also be consistent with rules currently in effect for the equities and options markets of the Exchange’s affiliate NYSE Arca, Inc., and would reflect the Exchange’s ongoing commitment to performing its regulatory functions under its disciplinary rules in an independent and impartial manner.<sup>15</sup>

#### One Year Revolving Door Restriction and Prohibition on Serving as Expert Witness

Rule 9141 governs appearances in a proceeding. The Exchange proposes to amend Rule 9141 by adding a new section (c) that would prohibit former Regulatory Staff from making an appearance before an Adjudicator on behalf of any other person in any proceeding under the Rule 9000 Series within one year immediately following termination of employment with the Exchange or FINRA. The rule text is broader than FINRA’s counterpart rule in that it covers not only former FINRA staff but also former Regulatory Staff that reported to the CRO, and covers both officers and employees. The rule text is otherwise substantially the same as the text of FINRA Rule 9141(c), which the Exchange declined to adopt in 2013.<sup>16</sup> At the time, the Exchange did not believe it was necessary to bar former employees from such appearances because its employees were not conducting disciplinary functions and their appearance would not create the same type of potential conflict of interest. Once Regulatory Staff reporting to the CRO again directly perform market surveillance, investigation and enforcement functions following expiration of the current RSA, that would no longer be the case and the Exchange therefore believes that such a prohibition would help prevent

<sup>14</sup> As discussed below, the Exchange further proposes to amend Rule 9270 to have certain offers of settlement submitted to the CRO and not ODA.

<sup>15</sup> See Arca Equities Rule 10.2(a); Arca Options Rule 10.2(a).

<sup>16</sup> See Securities Exchange Act Release No. 69045, 78 FR at 15395 n.14.

potential conflicts or appearance of conflicts of interest.

Similarly, the Exchange proposes to amend Rule 9242, which governs pre-hearing submissions, to add a new section (b) prohibiting former Regulatory Staff from providing expert testimony on behalf of any other person in any proceeding under the Rule 9000 Series within one year immediately following termination of employment with the Exchange or FINRA. The Exchange also proposes that nothing in proposed Rule 9242(b) would prohibit former Regulatory Staff from testifying as a witness on behalf of the Exchange or FINRA. The rule text is broader than FINRA's counterpart rule in that it covers not only former FINRA staff but also former Regulatory Staff that reported to the CRO, and covers both officers and employees. The rule text is otherwise substantially the same as the text of FINRA Rule 9242(b), which the Exchange declined to adopt in 2013 for the same reasons it did not adopt the one year prohibition of FINRA Rule 9141(c). Given the Exchange's anticipated resumption of certain regulatory functions, the Exchange believes that a prohibition on former Regulatory Staff providing expert testimony would help prevent potential conflicts or appearance of conflicts of interest. The Exchange also believes that, consistent with FINRA Rule 9242(b), permitting a former Regulatory Staff member to testify as a witness on behalf of the Exchange does not pose potential conflicts of interest.

Substitution of CRO for ODA in Rules 9211, 9216 and 9270

The Exchange proposes that the CRO rather than FINRA's ODA would be responsible for: (1) Authorizing issuance of a complaint; (2) accepting or rejecting AWC letters and minor rule violation plan letters; and (3) accepting or rejecting uncontested offers of settlement.

The Exchange believes that providing for the CRO to authorize issuance of complaints and approve settlements would be consistent with the Exchange's reintegration of regulatory functions and the rules of other SROs.<sup>17</sup>

<sup>17</sup> See e.g., BATS Exchange Rules 8.4 and 8.8; Chicago Stock Exchange Article 12, Rules 1(b) and (d) (providing that the CRO shall direct written charges and approve or reject offers of settlement). The International Securities Exchange ("ISE"), Miami International Securities Exchange ("MIAX") and BOX Options Exchange ("BOX") also provide that complaints are to be approved by the CRO. Each also requires offers of settlement to be authorized by the CRO if a hearing panel has not yet been appointed, and requires letters of consent to be authorized by the CRO and approved by a business conduct committee. See ISE Rules 1603,

The proposed change is also consistent with certain powers the CRO currently has under the disciplinary rules.<sup>18</sup> Moreover, as noted above, by rule the CRO would be required to operate independently of the commercial interests of the Exchange and of member organizations.

To accomplish these changes, the Exchange proposes to amend Rules 9211, 9216 and 9270 as follows:

- Rule 9211(a)(1) and (a)(2) would be amended to replace "Office of Disciplinary Affairs" with "CRO." This proposed change would identify the CRO rather than ODA as being responsible for authorizing Enforcement to issue a complaint.

- Rule 9216(a)(3) and (a)(4) would be amended to replace references to "Office of Disciplinary Affairs" with "CRO." The proposed change would permit the CRO to accept or reject an AWC letter and, if accepted, to be deemed final.

- Rule 9216(a)(4) would be amended to provide that if the CRO rejects an AWC letter, the Exchange may take other appropriate disciplinary action with respect to the alleged violation or violations. This is consistent with the current rule as it relates to an AWC letter that is rejected by FINRA's ODA.

- Rule 9216(b)(3) and (b)(4) would be amended to replace "Office of Disciplinary Affairs" with "CRO." This proposed change would allow an executed minor rule violation plan letter to be submitted to the CRO, which, on behalf of the SRO Board, may accept or reject it. If accepted, it would be deemed final; if the CRO rejects the letter, the Exchange may take other appropriate disciplinary action with respect to the alleged violation or violations. This is consistent with the current rule as it relates to a minor rule violation plan letter that is accepted or rejected by ODA.

- Finally, Rule 9270(e), (f), (h), and (j) would also be amended to replace "Office of Disciplinary Affairs" with "CRO." The proposed change to subsection (f) would provide that uncontested offers of settlement would be transmitted to the CRO and, if accepted under proposed Rule

1604 and 1609; MIAX Rules 1003, 1004 and 1009; BOX Rules 12030, 12040 and 12090.

<sup>18</sup> In adopting FINRA's disciplinary rules, the Exchange provided that the CRO, rather than FINRA's CEO, would authorize the initiation of temporary cease and desist proceedings and the initiation of suspension or cancellation proceedings for a violation of a temporary cease and desist order. The Exchange also retained the ability of the CRO to resolve certain procedural matters in connection with settlements under Rule 9270(d). See Securities Exchange Act Release No. 69045, 78 FR at 15394, 15398-15400 & n.24.

9270(f)(3), would be issued and become final. Under proposed Rule 9270(h), if the CRO does not accept an uncontested offer of settlement, the respondent would be notified in writing and the offer of settlement and proposed order of acceptance would be deemed withdrawn.<sup>19</sup> Under proposed Rule 9270(j), an offer of settlement rejected by the CRO would not prejudice a respondent and would not be introduced into evidence in connection with the determination of the issues involved in the pending complaint or in any other proceeding. This is consistent with the current rule as it relates to an offer of settlement that is not accepted by ODA.

Miscellaneous Amendments to Rules 476, 8120, 9001, 9110, 9217, 9232, 9310 and 9810

The Exchange proposes several miscellaneous amendments to make certain technical changes and correct a typographical error.

First, the Exchange proposes to insert a reference to the Rule 8000 Series in Rule 476 in order to clarify that both the Rule 8000 Series and the Rule 9000 Series would apply to proceedings for which no Charge Memorandum was filed with the hearing board under Rule 476(d) prior to July 1, 2013 and for which no written Stipulation and Consent was submitted to a Hearing Officer prior to July 1, 2013.<sup>20</sup> The Exchange proposes the same change to Rule 9001, which specifies the effective date of the Rule 9000 Series.

Second, the Exchange proposes to delete the last sentence in Rule 476 as obsolete. By its terms, that sentence relates only to orders issued on or before July 1, 2013.

Third, the Exchange proposes to add a reference to the term "Regulatory Staff" in Rule 8120, because, as set forth above, that new defined term is referenced in certain proposed changes to the Rule 8000 Series.

Fourth, the Exchange proposes to delete the last sentence in Rule 9110(c) as obsolete.

<sup>19</sup> Because the Exchange does not have sanction guidelines, 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 or not to accept a settlement offer under Rule 9270. See Securities Exchange Act Release No. 68678 at 43 n.38 (January 16, 2013), 78 FR 5213 at 5229 n.39 (January 24, 2013) (SR-NYSE-2013-02).

<sup>20</sup> Rule 476 is the Exchange's legacy disciplinary rule that applies to a Charge Memorandum filed under Rule 476(d) prior to July 1, 2013 or for which a written Stipulation and Consent was submitted prior to July 1, 2013. See Securities Exchange Act Release Nos. 68678, 78 FR at 5213 and 69045, 78 FR at 15394.

Fifth, the Exchange proposes to correct a typographical error in Rule 9217, which sets forth the rules eligible for minor rule plan fines, by adding a dash in the rule text describing Rule 123C.

Sixth, the Exchange proposes to amend Rule 9232(b), which governs appointment of panelists, to provide that the Board shall from time to time appoint a Hearing Board as set forth in the rule. Under the current rule, the Chairman of the Board, subject to Board approval, has this responsibility. The Exchange believes that because the approval of the Board is required for appointment of the Hearing Board, it is not necessary to specify that the Chairman of the Exchange Board would appoint the Hearing Board subject to such approval.

Seventh, the Exchange proposes two [sic] technical, clarifying amendments to Rule 9310. The Exchange proposes to amend Rule 9310 to provide that none of the persons referenced in the Rule, *i.e.*, Board directors, members of the Committee for Review, and the parties, may request Board review of a decision concerning an Exchange member that is an affiliate. Under the current Rule, only the parties are prohibited from requesting Board review of a decision in such circumstances.<sup>21</sup>

Finally, the Exchange proposes to add the phrase "Service and Filing of Notice" to the title of Rule 9810(a) in order to identify the subject matter covered by the rule.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>22</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>23</sup> in particular, in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(7) of the Act,<sup>24</sup> in particular, in that it provides fair procedures for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and

the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof. In addition, the Exchange believes that the proposed rule change furthers the objectives of Section 6(b)(3) of the Act,<sup>25</sup> in particular, in that it supports the fair representation of members in the administration of the Exchange's affairs.

The Exchange believes that eliminating references to FINRA departments and replacing them with "Enforcement," a new defined term that includes any department reporting to the CRO of the Exchange with responsibility for investigating or imposing sanctions on a member organization or covered person, in addition to FINRA's departments of Enforcement and Market Regulation, in Rules 9120, 9131, 9146, 9211, 9212, 9213, 9215, 9216, 9251, 9253, 9264, 9269, 9270, 9810, 9820 and 9830 would facilitate the Exchange's ability to directly conduct investigations and bring disciplinary actions for matters it will be conducting after the reintegration of certain functions next year. The Exchange believes that defining "Regulatory Staff" as including any officer or employee reporting directly or indirectly to the CRO of the Exchange in addition to FINRA staff acting on behalf of the Exchange in connection with the Rule 8000 and 9000 Series, in Rules 9120, 9146, 9216, 9269, 9270, 9551, 9552, 9554, and 9556 would similarly facilitate the Exchange's ability to directly conduct investigations and bring disciplinary actions, as well as FINRA.

Because the substance of the rules would remain unchanged, the Exchange believes that the proposed change would provide fair procedures for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a member thereof. Further, removing references to Exchange and FINRA offices and departments in the Exchange's Rules that are unnecessary in light of Rule 0 removes impediments to and perfects a national market system because it would reduce potential confusion that may result from retaining different designations in the Exchange's rulebook. Removing potentially confusing conflicting designations would also further the goal of

transparency and add consistency to the Exchange's Rules.

The Exchange believes that adding rule text to Rules 8210 and 9110 stating that the CRO and Regulatory Staff would function independently of the commercial interests of the Exchange and the commercial interests of member organizations in performing functions under the disciplinary rules would further ensure the integrity and independence of the disciplinary process and further provide fair procedures for the disciplining of members and persons associated with members. For the same reasons, addition of the proposed rule text would protect investors and the public interest and would therefore be consistent with Section 6(b)(5) of the Exchange Act.

The Exchange believes that prohibiting former Regulatory Staff from representing respondents and providing expert testimony in Exchange disciplinary matters within one year immediately following termination of employment would provide greater harmonization between Exchange and FINRA rules of similar purpose. As previously noted, the proposed rule text is based on FINRA's current rule text, which already has been approved by the Commission. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange also believes that making the CRO responsible for authorizing complaints and approving AWC letters, minor rule violation plan letters and offers of settlement in place of FINRA's ODA is fair and reasonable, and provides adequate procedural protections. In particular, requiring approval of complaints and settlements by an independent CRO will serve as an appropriate check on the authority of the investigative and enforcement staff at both the Exchange and FINRA to bring and resolve such actions.

Further, the Exchange believes that by having decisions regarding initiating and resolving formal disciplinary actions and resolving minor rule violations made by an individual with the most direct expertise relevant to the NYSE's markets,<sup>26</sup> the proposal promotes efficiency and consistency and aligns the Exchange's process with other SROs. As noted above, the proposed change is consistent with the reintegration of regulatory functions by the Exchange and the practices at other

<sup>21</sup> A decision with respect to an Exchange member that is an affiliate of the Exchange constitutes final Exchange disciplinary action pursuant to SEC Rule 19d-1(c)(1) and may not be reviewed by the Board. See Rule 9268(e)(2).

<sup>22</sup> 15 U.S.C. 78f(b).

<sup>23</sup> 15 U.S.C. 78f(b)(5).

<sup>24</sup> 15 U.S.C. 78f(b)(7).

<sup>25</sup> 15 U.S.C. 78f(b)(3).

<sup>26</sup> See, e.g., Securities Exchange Act Release No. 69045, 78 FR at 15401.

SROs where CROs authorize issuance of complaints and approve settlements.

Finally, making technical amendments and correcting a typographical error in Rules 476, 8120, 9001, 9110, 9217, 9232, 9310 and 9810 removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having incorrect or redundant material in the Exchange's rulebook. The Exchange believes that eliminating incorrect or redundant material would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. Removing such references will also remove impediments to and perfects the mechanism of a free and open market by ensuring that persons subject to the Exchange's jurisdiction, regulators, and the investing public can more easily navigate and understand the Exchange's rulebook. The Exchange believes that eliminating incorrect or redundant material would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased transparency, thereby reducing potential confusion. Removing such references will also further the goal of transparency and add clarity to the Exchange's rules.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather to enable the Exchange to directly investigate and initiate disciplinary actions following and facilitate the reintegration of certain regulatory functions from FINRA.

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

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

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period

to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) by order approve or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

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

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSE-2015-35 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2015-35. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-

2015-35, and should be submitted on or before September 14, 2015.

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

**Robert W. Errett,**  
*Deputy Secretary.*

[FR Doc. 2015-20792 Filed 8-21-15; 8:45 am]

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-75723; File No. SR-BATS-2015-60]

### **Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.**

August 18, 2015.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 7, 2015, BATS Exchange, Inc. (the "Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange filed a proposal to amend the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to BATS Rules 15.1(a) and (c) ("Fee Schedule") to remove fees for BATS Investor Pro and BATS Investor RT, as the Exchange will no longer make these products available as of August 29, 2015.

The text of the proposed rule change is available at the Exchange's Web site

<sup>27</sup> 17 CFR 200.30-3(a)(12).

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

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

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

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

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