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• *Federal Rulemaking website: Go to http://www.regulations.gov* and search for Docket ID NRC–2016–0126. Address questions about NRC docket IDs in *Regulations.gov* to Krupskaya Castellon; telephone: 301–287–9221; email: *Krupskaya.Castellon@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

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• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Mark D. Notich, Office of New Reactors, U. S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3053, email: *Mark.Notich@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

On September 11, 2018 (83 FR 45992), the NRC published for public comment a proposed revision of Section 13.6, ''Physical Security'' of NUREG–0800, ''Standard Review Plan (SRP) for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition.'' The public comment period closed on November 13, 2018. No public comments were received concerning Revision 4 of SRP 13.6.

## II. Backfitting and Issue Finality

Chapter 13 of the SRP provides guidance to the staff for conduct of operations under part 52 of title 10 of the *Code of Federal Regulations* (10 CFR). Section 13.6 of the SRP provides an introduction for the remainder of the Chapter 13 SRP sections addressing physical security for the review of combined license (COL), early site permit (ESP), standard design certification, and operating license (OL) applications and amendments for physical security.

Issuance of this SRP section revision does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) nor is it inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations:

1. *The SRP positions do not constitute backfitting, inasmuch as the SRP is guidance direct to the NRC staff with respect to its regulatory responsibilities.*

The SRP provides guidance to the NRC staff on how to review an application for NRC regulatory approval in the form of licensing. Changes in guidance intended for use by only the staff are not matters that constitute backfitting as that term is defined in 10 CFR 50.109(a)(1) or involve the issue finality provisions of 10 CFR part 52.

*2. Backfitting and issue finality—with certain exceptions discussed belowe—do not apply to current or future applicants.*

Applicants and potential applicants are not, with certain exceptions, the subject of either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52 were intended to apply to every NRC action that substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever a 10 CFR part 50 operating license applicant references a construction permit or a 10 CFR part 52 combined license applicant references a license (*e.g.,* an early site permit) or an NRC regulatory approval (*e.g.,* a design certification rule) for which specified issue finality provisions apply.

The NRC staff does not currently intend to impose the positions represented in this final SRP section in a manner that constitutes backfitting or is inconsistent with any issue finality provision of 10 CFR part 52. If in the future the NRC staff seeks to impose a position stated in this SRP section in a manner that would constitute backfitting or be inconsistent with these issue finality provisions, the NRC staff must make the showing as set forth in the Backfit Rule or address the regulatory criteria set forth in the applicable issue finality provision, as applicable, that would allow the staff to impose the position.

*3. The NRC staff has no intention to impose the SRP positions on existing nuclear power plant licensees either now or in the future (absent a voluntary request for a change from the licensee, holder of a regulatory approval or a design certification applicant).*

The NRC staff does not intend to impose or apply the positions described in this final SRP section to existing (already issued) licenses (*e.g.,* operating licenses and combined licenses) and regulatory approvals. Hence, the issuance of this SRP guidance—even if considered guidance subject to the Backfit Rule or the issue finality provisions in 10 CFR part 52—would not need to be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner that would constitute backfitting or does not provide issue finality as described in the applicable issue finality provision, then the staff must make a showing as set forth in the Backfit Rule or address the criteria in the applicable issue finality provision, as applicable, that would allow the staff to impose the position.

## III. Congressional Review Act

The Office of Management and Budget makes the determination that the United States Nuclear Regulatory Commission action titled 'NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants; LWR Edition,'' Revision 4 of Standard Review Plan Section 13.6, ''Physical Security''' is non-major under the Congressional Review Act.

Dated at Rockville, Maryland, on February 27, 2019.

For the Nuclear Regulatory Commission.

**Jennivine K. Rankin,**

*Chief (Acting), Division of Licensing, Siting, and Environmental Analysis, Licensing Branch 3, Office of New Reactors.*

[FR Doc. 2019–03862 Filed 3–4–19; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–85209; File No. SR–FINRA–2018–039]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change Relating to FINRA Rule 4570 (Custodian of Books and Records)

February 27, 2019.

## I. Introduction

On November 15, 2018, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''),

pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) provide a member that is filing a Form BDW (Uniform Request for Broker-Dealer Withdrawal) the option of designating another FINRA member as the custodian of its books and records on the form; (2) clarify the obligations of the designated custodian; and (3) require the designated custodian to consent to act in such a capacity. The proposed rule change was published for comment in the **Federal Register** on November 30, 2018.[3] On January 11, 2019, the Commission extended until February 28, 2019 the time period to approve the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved.[4] The Commission received one comment letter on the proposed rule change.[5] FINRA submitted a response to the comment on February 26, 2019.[6] This order approves the proposed rule change.

## II. Description of the Proposal

Pursuant to Rule 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) under the Exchange Act,[7] broker-dealers are required to retain their books and records for specified retention periods.[8] Paragraph (g) of Rule 17a–4 [9] provides that an entity that stops doing business as a registered broker-dealer has a continuing obligation to preserve its required books and records for the remainder of the specified retention periods. Form BDW requires that a firm that is withdrawing its registration identify and provide the contact information of the person who will have custody of the firm's books and records after the firm has discontinued its business operations. Form BDW also requires that the firm provide the address where the books and records will be located, if different than the custodian's address. In addition, the Form BDW provides that the firm and person signing the form on behalf of the firm must certify that the firm's books and records will be preserved and made available for inspection.

Currently, FINRA Rule 4570 requires a member firm to designate as the custodian of its required books and records on the Form BDW a person who is associated with the firm at the time the Form BDW is filed.[10] FINRA has noted that the current rule is intended to enhance the ability of FINRA to obtain a firm's required books and records upon dissolution of the firm.[11]

### *A. Permitting Another Member To Act as the Designated Custodian*

To provide greater flexibility to its members, FINRA has proposed to amend Rule 4570 to provide a member that is filing a Form BDW the option of designating another FINRA member as the custodian of its books and records on the Form BDW. The proposed rule change would not require members to designate another FINRA member as the custodian of their books and records, but would give them the option to do so, at their discretion.

### *B. Clarifying the Obligations of the Designated Custodian*

In addition to permitting another member to act as the designated custodian, FINRA has proposed to amend Rule 4570 to clarify the obligations of the designated custodian. Specifically, the proposed rule change would clarify that the custodian designated on the Form BDW must preserve books and records on behalf of the member that filed the Form BDW for the remainder of the applicable retention periods and make them available for inspection by FINRA upon request. Further, FINRA's proposed rule change would clarify that a custodian is required to preserve and produce a former member's books and records in the same manner in which they were received. However, the proposed rule change would provide that a custodian would not be precluded from converting the books and records in its possession into another format acceptable under the Exchange Act (*e.g.,* convert from paper format to an electronic storage media), so long as such records are not altered or deleted during the conversion process.

In addition, the proposed rule change would provide that where a member is acting as custodian, such member would not be required to verify the completeness or accuracy of the books and records that it receives.[12]

Further, FINRA has proposed to amend Rule 4570 to require that where a FINRA member has agreed to act as custodian of the books and records of another member that has filed a Form BDW, the member acting as custodian must: (1) Treat such books and records as if they were its own books and records; and (2) arrange upon its dissolution for such books and records to continue to be retained for the remainder of the applicable retention periods under FINRA and Exchange Act rules in the same manner as its own books and records consistent with Rule 4570.

### *C. Requiring the Consent of the Designated Custodian*

FINRA's proposed rule change would also require a member to obtain the affirmative, written or verbal, consent of the custodian of books and records identified in the firm's Form BDW. In addition, the proposed rule change would require a member that is withdrawing its registration to inform its custodian of the obligations under FINRA and Exchange Act rules, including FINRA Rule 4570, prior to obtaining the custodian's consent. The proposed rule change would also require the designated custodian to represent to FINRA, in a method prescribed by FINRA, that the custodian: (1) Has consented to act in the capacity of a custodian; (2) understands the responsibilities of a custodian; and (3) agrees to provide the books and records of the member for which it is acting as custodian to FINRA upon request during the course of the required retention periods.

FINRA has stated that it will announce the effective date of the rule change in a Regulatory Notice to be published no later than 60 days following a Commission approval, and the effective date will be no later than 120 days following publication of that Regulatory Notice.[13]

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85646 (Nov. 30, 2018), 83 FR 61689 (''Notice'').

[4] *See* Securities Exchange Act Release No. 84982 (Feb. 4, 2019), 84 FR 1525 (''Extension'').

[5] *See* letter to Robert W. Errett, Deputy Secretary, Commission, from Richard J. O'Brien, Senior Vice President, Compliance, National Financial Services LLC, dated February 5, 2019 (''NFS Letter'').

[6] *See* letter to Brent J. Fields, Secretary, Commission, from Julia Bogolin, FINRA, dated February 26, 2019 (''FINRA Response'').

[7] 17 CFR 240.17a–4.

[8] *See also* FINRA Rule 4511 (General Requirements).

[9] 17 CFR 240.17a–4(g).

[10] For purposes of FINRA's rule, an associated person is a natural person. *See* FINRA By-Laws, Article I, paragraph (rr).

[11] FINRA has jurisdiction over, and has the ability to obtain information from, a former associated person of a member for generally two years after: (1) The effective date of the person's termination of registration; (2) the effective date of revocation or cancellation of the person's registration; or (3) in the case of an unregistered person, the date upon which such person ceased to be associated with the member. *See* FINRA By-Laws, Article V, Section 4 (Retention of Jurisdiction) and FINRA Rule 8210 (Provision of Information and Testimony and Inspection and Copying of Books).

[12] However, FINRA believed that an associated person who is acting as custodian of a member's books and records is in a position to verify the completeness and accuracy of the member's books and records based on his or her existing relationship with the member.

[13] *See* Notice, 83 FR at 61690.

## III. Summary of Comment and FINRA's Response

The Commission received one comment letter regarding the proposal.[14] The commenter generally believed that the proposed rule would place undue financial and operational burdens on clearing firms.[15] More specifically, the commenter warned that there are far fewer fully disclosed clearing firms that could act as custodians for purposes of the rule change than FINRA indicated, and that therefore the resulting burden on competition would not be reasonable and appropriate.[16] Furthermore, the proposed rule requirement for a custodian to treat the withdrawing firm's books and records as if they were the custodian's own ''would add to a clearing firm's existing complex and voluminous record storage practice'' and would require ''sizable additional technology and human resources, not to mention the costs of paying for additional storage.'' [17] The commenter also warned that, as custodian of a BDW firm's books and records, it would be subject to additional regulatory requests and potentially become the subject of litigation, if either it must retain books and records for a longer period of time due to a litigation hold or if it becomes the logical defendant for an end customer with a grievance deciding to pursue litigation after their introducing firm has filed a BDW.[18] Despite these ''significant regulatory and litigation burdens,'' the commenter noted that it would be unpractical to expect correspondent clients to pay for the additional costs, because ''clearing firms will have little leverage to force such an additional cost'' and introducing broker-dealers are ''looking to reduce costs and increase efficiency and it is unlikely that they would agree to pay in advance for a service that would be necessary only in a worst-case scenario, which they do not believe will ever occur.'' [19] Finally, the commenter stated that if the Commission approves the proposed rule change, the rule should be modified as follows: (1) The rule should require written consent from the person identified as custodian on the firm's BDW; (2) clearing firms must be granted limitations on liability under the rule with respect to recordkeeping or related deficiencies that are attributable to the withdrawing broker-dealer; and (3) the Commission should consider enacting a rule to provide for a comprehensive and orderly process for unwinding a broker-dealer.[20]

In its response letter, FINRA clarified that the proposed rule change ''would have no impact on clearing firms or any other firms or individuals that choose not to consent to becoming a Rule 4570 custodian for another firm.'' [21] FINRA also acknowledged that a member that chooses to assume the role of custodian would likely incur additional costs, but noted that FINRA ''expects that a member would weigh the extent of the burden and ability to recover costs in determining whether to consent to become a custodian of books and records.'' [22] In addition, FINRA stated that it developed the rule change ''in response to feedback from some members that expressed difficulty in identifying and designating an associated person as the books and records custodian on their Form BDW'' and that these members ''indicated that other members are willing to function as custodians for purposes of FINRA Rule 4570, but they cannot do so currently because of the limitations in the rule.'' [23] Furthermore, FINRA noted that it vetted the proposed rule change with several of its advisory committees, including the Clearing Firm Advisory Committee, and that ''ultimately each committee supported the Proposal going forward, given its optional nature.'' [24] Furthermore, FINRA stated that the commenter ''provided no basis for its contention that it will be 'pressured' to take on the custodian role without compensation'' and that FINRA believed that ''market forces will determine whether a third party will consent to acting as custodian.'' [25] In addition to clarifying the number of clearing firms that appear to have fully disclosed relationships with introducing broker-dealers,[26] FINRA also clarified, with respect to the commenter's modifications to the proposal, that: (1) Oral consent is an option under the proposed rule because ''sometimes firms wind down business operations under expedited circumstances,'' but there is nothing in the proposed rule that would prevent a clearing firm from ''having an internal policy that would require written consent be given'' in order to establish the required consent; and (2) the proposed rule did not contemplate that a member acting as custodian ''would be liable for deficiencies in the records that it receives,'' but ''any limitations on liability that would affect the maintenance, preservation or availability of the records received by the custodian would be contrary to the purpose of the rule.'' [27]

## IV. Discussion and Commission Findings

After careful consideration of the proposal, the comment submitted, and FINRA's response to the comment, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.[28] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,[29] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposal is reasonably designed to facilitate compliance with recordkeeping requirements pursuant to FINRA rules and the Exchange Act. First, the proposed rule will provide greater flexibility for members, particularly introducing-only firms with established relationships with clearing firms, as FINRA has stated that some members have had difficulty in identifying and designating an associated person as the books and records custodian on their Form BDWs when they are in the process of winding down. This change will also enhance FINRA's ability to obtain the member's required books and records upon the member's dissolution, as FINRA's jurisdiction over former associated persons is more limited than its jurisdiction over current members. Second, the proposed rule change will clarify the obligations of the designated custodian to ensure that the custodian is preserving the former firm's books and records for the applicable retention periods. Such clarification will help ensure that the former firm's books and records are available for FINRA staff to conduct its work and so that customers who wish to bring a claim against the firm are not unnecessarily limited in their ability to obtain restitution. Third, the proposed rule change will require

[14] *See supra* note 5.

[15] *See* NFS Letter at 1.

[16] *See id.* at 2.

[17] *See id.* at 3.

[18] *See id.* at 3–4.

[19] *See id.*

[20] *See id.* at 5–6.

[21] *See* FINRA Response at 1.

[22] *See id.* at 1–2.

[23] *See id.* at 2.

[24] *See id.*

[25] *See id.*

[26] *See id.* at 2–3.

[27] *See* FINRA Response at 3.

[28] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 15 U.S.C. 78*o*–3(b)(6).

the designated custodian to consent to act in such a capacity, which will address the potentially problematic situation where the person named as the custodian on the Form BDW was not aware that the member was designating the person as a custodian and did not have access to the former firm's books and records. Furthermore, given the optional nature of the proposed rule change, the Commission has no reason to believe that this proposal will impose undue burdens on FINRA member firms.

The Commission acknowledges the concerns of the commenter who argued that ''a considerable amount of work'' would be required of a clearing broker-dealer that agrees to be designated as a custodian under the proposed rule change and that such firm would bear additional financial and operational costs.[30] The Commission believes, nevertheless, that the comment does not preclude approval of the proposal. The proposed changes to FINRA Rule 4570 would permit, but not obligate, a member firm to take on the responsibilities associated with being designated as a custodian by another FINRA member on the Form BDW.[31] This change will allow member firms that have already indicated their willingness to be named as custodian for other broker-dealers the ability to be designated as such. The Commission also notes that FINRA vetted the proposal with several advisory committees, including the Clearing Firm Advisory Committee. These committees would be aware of the concerns expressed by the commenter, but they supported the proposal given its optional nature. With respect to the commenter's assumption that the costs for custodial services provided by clearing firms could not be priced into contracts with introducing broker-dealers, the commenter did not offer data or other analysis to support its position. In the absence of such data or analysis, and given that the proposal does not create any mandate for any member to become a custodian of books and records of another member, it is difficult for the Commission to understand the commenter's contention that the proposed rule change would impose substantial operational and financial burdens on clearing firms. The Commission further notes that the optional nature of the proposed rule change would permit a clearing firm to avoid taking on the responsibilities and burdens associated with becoming a custodian for an introducing member until such time that the market allows it to price such custodial services into its contracts with introducing firms.

The Commission also acknowledges the commenter's requested clarifications to the proposed rule change.[32] The Commission notes that while the proposal requires that the broker-dealer filing the Form BDW receive written or oral consent from the custodian, it also requires that the custodian follow up with a written confirmation to FINRA stating that the custodian agrees to this designation and that it understands its obligations under the rule.[33] This second step effectively ensures that there is written confirmation from the custodian before it can be designated as such. Furthermore, the Commission notes that the current proposal makes clear that any member firm that undertakes custodial responsibilities for another member firm would not be expected to verify the completeness or accuracy of any books and records it receives as part of its custodial duties.[34] However, the Commission believes that a limitation on liability with respect to the custodian's maintenance or preservation of records would frustrate the policy objectives of Rule 17a–4 under the Exchange Act and FINRA Rule 4570.

As discussed above, the proposed rule change will facilitate compliance with recordkeeping requirements for member firms and preserve FINRA's ability to have jurisdiction over, and obtain information from, the member that has agreed to act as custodian.

## V. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Exchange Act,[35] that the proposed rule change (SR–FINRA–2018–039) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–03879 Filed 3–4–19; 8:45 am]

**BILLING CODE 8011–01–P**

[30] *See* NFS Letter at 1–2.

[31] *See* Notice, 83 FR at 61690.

[32] *See* NFS Letter at 5–6.

[33] *See* Notice, 83 FR at 61690.

[34] *See id.*

[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–85213; File No. SR–BX–2018–066]**

## Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend the Exchange's Port Fee Schedule

February 27, 2019.

On December 20, 2018, Nasdaq BX, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its port fee schedule. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on January 31, 2019.[4] On February 15, 2019, pursuant to Section 19(b)(3)(C) of the Act, the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] The Commission has received no comment letters on the proposed rule change. On February 25, 2019, the Exchange withdrew its proposed rule change (SR–BX–2018–066).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2019–03892 Filed 3–4–19; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–85212; File No. SR–Phlx–2018–83]**

## Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Withdrawal of a Proposed Rule Change To Amend the Exchange's Port Fee Schedule

February 27, 2019.

On December 20, 2018, Nasdaq PHLX LLC (''Exchange'') filed with the Securities and Exchange Commission

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

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release No. 84965 (December 26, 2018), 84 FR 842.

[5] *See* Securities Exchange Act Release No. 85152, 84 FR 5737 (February 22, 2019).

[6] 17 CFR 200.30–3(a)(12).