

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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-CboeEDGA-2020-013 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-CboeEDGA-2020-013. 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-CboeEDGA-2020-013 and should be submitted on or before June 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88839; File No. SR-FINRA-2020-014]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend FINRA Rule 9231 To Provide for the Compensation of All Panelists That Serve in Connection With a FINRA Disciplinary Hearing

May 8, 2020.

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 May 5, 2020, Financial Industry Regulatory Authority, Inc. ("FINRA") 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 FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by 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

FINRA is proposing to amend FINRA Rule 9231 to provide for the compensation of all panelists that serve in connection with a FINRA

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6). 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. FINRA has satisfied this requirement.

disciplinary hearing, regardless of whether it is an Extended or non-Extended Hearing.⁴

The text of the proposed rule change is available on FINRA's website at <http://www.finra.org>, at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA Rule 9231 governs the appointment by FINRA's Chief Hearing Officer of Hearing Panels, both Extended and Non-Extended, and replacement Hearing Officers.

A Hearing Panel consists of a Hearing Officer and two Panelists.⁵ Each Panelist must be associated with a FINRA member or retired therefrom.⁶ Service as a Panelist is voluntary.

Rule 9231 authorizes the Chief Hearing Officer to exercise his or her discretion to compensate Panelists who serve on Extended Hearing Panels only. The proposed rule change would amend Rule 9231 to provide for the compensation of all Panelists, irrespective of whether they serve on Extended or non-Extended Hearing Panels, and without the exercise of discretion by the Chief Hearing Officer. FINRA believes the proposed rule change will encourage a greater and more diverse pool of eligible individuals

⁴ FINRA Rule 9231(c) sets forth the circumstances in which a hearing may be designated an Extended Hearing. Matters that require an Extended Hearing are assigned an Extended Hearing Panel. For the purposes of this proposal only, the term "Hearing Panel" collectively refers to both Extended and non-Extended Hearing Panels.

⁵ See FINRA Rule 9231(b) and (c). If, after appointment, a Panelist withdraws, is unable to serve, or is disqualified, the Chief Hearing Officer may, in his or her discretion, determine whether to appoint a replacement Panelist. If two Panelists withdraw, are unable to serve, or are disqualified, the Chief Hearing Officer must appoint two replacement Panelists. See FINRA Rule 9234.

⁶ See FINRA Rule 9231(b) and (c).

to agree to serve on Hearing Panels. A larger and more diverse pool of eligible individuals willing to serve as Panelists will facilitate the Chief Hearing Officer's ability readily to appoint Hearing Panels with appropriate experience and expertise as needed.

Background

FINRA's disciplinary process begins with the Department of Enforcement filing a complaint with the Office of Hearing Officers ("OHO") alleging that a Respondent⁷ is violating or has violated a rule, regulation, or statutory provision, including the federal securities laws and related regulations, that FINRA has jurisdiction to enforce.⁸ Following the filing of a complaint, the Chief Hearing Officer assigns a Hearing Officer to preside over the disciplinary proceeding⁹ and appoints Panelists to an Extended or non-Extended Hearing Panel to conduct the disciplinary proceeding. Disciplinary matters are assigned to an Extended Hearing Panel if, upon consideration of the complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material, the Chief Hearing Officer determines that a matter shall be an Extended Hearing.¹⁰

Responsibilities of Hearing Panelists; Criteria for Appointment

Panelists are essential to FINRA's disciplinary process. The Hearing Panel listens to the presentation of evidence and issues a written decision setting forth findings as to whether a Respondent engaged in violative conduct and describing the sanctions, if any, imposed.¹¹ In addition to traveling to hearing locations and attending hearings, Panelists are expected to review materials in preparation for the hearing, participate in conference calls with the Hearing Officer, review post-hearing briefs, participate in deliberations (which may require a full

day or several days of shorter sessions), and review and comment on a draft Hearing Panel decision. Hearing Panel decisions generally may be appealed to, and are subject to discretionary review by, the National Adjudicatory Council ("NAC").¹² Hearing Panel decisions are also subject to discretionary review by FINRA's Board of Governors, and final disciplinary action by FINRA may be appealed to the Commission.¹³

The appointment of Panelists is subject to specific criteria under Rules 9231 and 9232. These criteria help ensure that Panelists possess the requisite experience and expertise to fulfill their responsibilities in a manner that results in fair, deliberative disciplinary proceedings. The Chief Hearing Officer appoints Panelists from a pool that generally includes persons who: (1) Previously served on a District Committee;¹⁴ (2) currently serve or previously served on a Regional Committee;¹⁵ (3) previously served on the NAC;¹⁶ (4) previously served on a disciplinary subcommittee of the NAC or the National Business Conduct Committee;¹⁷ (5) previously served as a FINRA Governor or Director, but do not currently serve in either of these positions;¹⁵ or (6) currently serve or previously served on a committee appointed or approved by the FINRA Board, but does not serve currently on the NAC or as a Director or a Governor of the FINRA Board.¹⁶ If the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120(u), the Chief Hearing Officer may select one Panelist who currently serves or previously served on the Market Regulation Committee.¹⁷

The selection of Panelists from among those eligible under Rule 9231 is subject to criteria set forth in Rule 9232. The Chief Hearing Officer must determine which Regional Committee shall be the Primary Regional Committee from which he or she will first seek Panelists.¹⁸ Once a Primary Regional Committee has been designated, the Chief Hearing Officer selects Panelists from (1) the current members of the Primary Regional Committee; (2) the categories of persons eligible to serve as Panelists under FINRA Rule 9231 who are located in the same geographic area as the Primary Regional Committee; and, if applicable, (3) current or former members of the Market Regulation Committee.¹⁹ Selection is based on (1) expertise; (2) the absence of any conflict of interest or bias, and any appearance thereof; (3) availability; and (4) the frequency with which a person has served as a Panelist during the past two years, favoring the selection of a person as a Panelist who has never served or served infrequently as a Panelist during that period.²⁰

Rule 9232 does not preclude the Chief Hearing Officer from appointing Panelists from other categories of those eligible under Rule 9231. The Chief Hearing Officer may make such an appointment if he or she determines that one or more persons from other categories of eligible Panelists more clearly meet the criteria of paragraph (d)(1) through (4) of Rule 9232 and the public interest or the administration of FINRA's regulatory and enforcement

of transactions; and (iv) trading practices, including rules prohibiting manipulation and insider trading, and trading-related rules such as FINRA Rule 4560 and FINRA Rule 5200, 6000, 7100, 7200, 7300 and 7400 Series.

¹⁸ See FINRA Rule 9232(a). The Chief Hearing Officer designates a Regional Committee as the Primary Regional Committee based on the relevant facts and circumstances of the case, including but not limited to (1) the location of a Respondent's principal office if the Respondent is or was a member firm; (2) the location of a Respondent's office at the time of the alleged misconduct if the Respondent is or was an associated person; (3) the location of the office of a member or an associated person, or a former member or associated person, where the alleged misconduct occurred; (4) the location of witnesses at the time of the filing of the complaint, especially the location of witnesses who are or were customers of a Respondent; (5) the location, at the time of the alleged misconduct, of the main, branch, or other office in which supervisory personnel, who are or were responsible for the supervision of a Respondent, were employed; and (6) the location, at the time of the alleged misconduct, of the main, branch, or other office in which supervisory personnel, who are or were responsible for the supervision of the office, division, function, or segment of the member where the alleged misconduct occurred, were employed. See FINRA Rule 9232(c).

¹⁹ See FINRA Rule 9232(d).

²⁰ See *supra* footnote 19.

⁷ A Respondent is a FINRA member or associated person against whom a complaint is filed. See FINRA Rule 9120(aa).

⁸ See FINRA Rule 9211.

⁹ See FINRA Rule 9213. A Hearing Officer must be an attorney who is an employee of FINRA or former employee of FINRA who previously acted as a Hearing Officer. See FINRA Rule 9120(r). Among other things, a Hearing Officer administers pre-hearing matters, including most motions, resolves procedural and evidentiary matters, oversees the settlement and discovery process, regulates the course of the proceeding, and drafts a decision that represents the view of the majority of the Hearing Panel. See FINRA Rule 9235.

¹⁰ See FINRA Rule 9231(c). Rule 9231 does not establish a minimum number of hearing days required to make a hearing an Extended Hearing. OHO's policy is to treat any hearing scheduled to last five or more days as an Extended Hearing.

¹¹ See FINRA Rule 9260 Series.

¹² See FINRA Rules 9311 and 9312. In addition, a member of FINRA's Board of Governors may call a disciplinary proceeding for review by the FINRA Board. See FINRA Rule 9351. A Respondent may appeal a final disciplinary action by FINRA to the SEC pursuant to Section 19(d)(2) of the Exchange Act and FINRA Rule 9370.

¹³ See FINRA Rules 9351 and 9370.

¹⁴ In 2018, FINRA reorganized its 11 District Committees into five Regional Committees.

¹⁵ FINRA, Inc. (FINRA), a securities association registered under Section 15A of the Exchange Act, is the parent company of FINRA Regulation, Inc. (FINRA Regulation). "Governor" refers to a member of the Board of Governors of FINRA. "Director" refers to a member of the Board of Directors of FINRA Regulation.

¹⁶ See FINRA Rule 9231(b)(1)(A) to (F).

¹⁷ See FINRA Rule 9231(b)(2). A former Market Regulation Committee member must have served no earlier than four years before the date the complaint was served upon the Respondent who was the first Respondent served in the disciplinary proceeding. See also FINRA Rule 9232(b).

FINRA Rule 9120(u) refers to the federal securities laws and the rules and regulations adopted thereunder and various FINRA rules and policies relating to (i) the quotations of securities; (ii) the execution of transactions; (iii) the reporting

program would be enhanced by the selection of such Panelists.²¹

Compensation of Panelists

The Chief Hearing Officer has discretion to compensate any or all Panelists of an Extended Hearing Panel at the rate then in effect for arbitrators appointed under the Rule 12000 Series.²² In practice, the Chief Hearing Officer exercises his or her discretion to compensate all Panelists on all Extended Hearing Panels. The Chief Hearing Officer does not have the authority to compensate Panelists on non-Extended Hearing Panels. In practice, because only hearings that are scheduled to last five or more days are designated Extended Hearings, Panelists who serve on hearings that are scheduled to last four or fewer days are not compensated.²³

OHO has encountered increasing difficulty in finding eligible individuals willing to serve on Hearing Panels. At the same time, the number, length and complexity of hearings are increasing. Some eligible individuals have indicated that they are only willing to serve on Extended Hearing Panels because they want to be compensated for their time. Others have indicated that they should be compensated for their time in the case of a hearing lasting more than one or two days.

FINRA places a high value on a fair, efficient, and expeditious adjudicatory process. OHO therefore must be able to quickly and efficiently assign adjudicated matters to Hearing Panels, both Extended and non-Extended, and schedule cases for hearing. FINRA believes OHO's ability to identify willing and eligible Panelists will be improved if all Hearing Panelists are compensated.

As is the case with Extended Hearing Panelists, the Chief Hearing Officer would compensate all non-Extended Hearing Panelists if granted discretion to do so. Rather than adding a grant of discretion to cover non-Extended Hearing Panels, FINRA instead proposes to amend Rule 9231 to provide that all Panelists—*i.e.*, both Extended and non-Extended Hearing Panelists—will be compensated at the rate then in effect for arbitrators set forth in FINRA Rule 12214(a)(1), (3) and (4). The proposed rule change does not establish or change

a fee in connection with FINRA disciplinary proceedings. Extended Hearing Panelists are currently paid pursuant to the payment provisions set forth in Rule 12214(a)(1), (3) and (4). The proposed rule change merely extends those payment provisions to Panelists who serve in connection with non-Extended Hearings.

Payments to arbitrators is established in Rule 12214. The payments that non-Extended Hearing Panelists would be eligible to receive are set forth in Rule 12214(a)(1), (3) and (4). Rule 12214(a)(1) provides for a \$300 payment to an arbitrator for each hearing session in which he or she participates. A typical hearing day may consist of two four-hour hearing sessions.²⁴ Rule 12214(a)(3) establishes a \$50 payment to an arbitrator for travel to a hearing session that is postponed. Rule 12214(a)(4) provides for a \$600 payment to an arbitrator if a hearing session other than a prehearing conference is postponed within ten days before the scheduled date.

Other honoraria provided for by Rule 12214 are inapplicable to Hearing Panelists. Rule 12214(a)(2) provides for an additional \$125 per day to the chairperson for each hearing on the merits. An OHO Hearing Officer who is a FINRA employee serves as the chair of each Hearing Panel. Thus, the provision in Rule 12214(a)(2) has no effect in the case of Hearing Panelists.

Rule 12214(a)(5) provides for a \$100 payment to each arbitrator for a prehearing conference that is cancelled by agreement of the parties, or is requested by one or more of the parties, within three business days of its scheduled date. Hearing Panelists, however, typically do not participate in prehearing conferences.²⁵ In most cases, the OHO Hearing Officer handles a prehearing conference alone. In the limited cases where Hearing Panelists participate in a prehearing conference, those conferences are set by the OHO Hearing Officer and are not scheduled at the request of a party. Therefore, the provision in Rule 12214(a)(5) is likewise inapplicable to Hearing Panelists.

In addition, the honoraria established in Rule 12214(b), (c) and (d) do not apply to Hearing Panelists. Rule 12214(b) authorizes a higher or

additional honorarium in the case of a foreign hearing location; all FINRA disciplinary hearings, however, occur at U.S. locations. Rule 12214(c) provides for honorarium payments to arbitrators for deciding motions concerning discovery, contested subpoena requests, and contested orders for production or appearance without a hearing session. Subpoenas are not issued in FINRA disciplinary hearings, however, and discovery-related motions are decided by the OHO Hearing Officer alone.²⁶ Rule 12214(d) provides an additional honorarium for explained decisions written in support of arbitration awards. This provision does not apply to Hearing Panel decisions written in connection with FINRA disciplinary proceedings, which are governed by Rule 9268, and is therefore inapplicable to Hearing Panelists.

FINRA notes that, except in limited circumstances, Rule 12214 does not provide for payments for time spent on travel or preparation. Non-Extended Hearing Panelists, like Extended Hearing Panelists, therefore still may accrue not-insubstantial amounts of uncompensated time in connection with service on a Hearing Panel.

FINRA has filed the proposed rule change for immediate effectiveness. The proposed rule change will become operative 30 days after the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(8) of the Act,²⁷ which requires, among other things, that FINRA rules provide a fair procedure for the disciplining of members and persons associated with members. FINRA believes that the proposed rule change, consistent with this purpose of the Act, will help assure that complaints filed with OHO continue to be heard and resolved in a timely manner by Panelists with the expertise, experience, and perspective necessary to render a fair and informed judgment and, where necessary, to impose appropriately remedial sanctions. By compensating all Panelists, the proposed rule change will encourage a greater number of eligible individuals to agree to devote their time and experience in service as Panelists. This will enable the Chief Hearing Officer to appoint Hearing Panels from a larger and potentially more diverse group of eligible individuals willing to serve and capable of responding to the complex issues and time demands presented by disciplinary hearings.

²⁶ See FINRA Rules 9252 and 9253.

²⁷ 15 U.S.C. 78o-3(b)(8).

²¹ See FINRA Rule 9232(e).

²² See FINRA Rule 9231(c). The FINRA Rule 12000 Series is the Code of Arbitration Procedure for Customer Disputes.

²³ OHO conducts disciplinary hearings in all 50 states, thereby requiring most Panelists to travel to FINRA hearings. FINRA covers all travel-related expenses for Panelists regardless of the length of the hearing.

²⁴ A hearing session is a meeting of four hours or less. See FINRA Rule 12100(p). Occasionally, a Panelist may prepare for and travel to a hearing only to discover just prior to a hearing session that he or she cannot participate. This may occur, for example, if a Panelist discovers just prior to the commencement of a hearing session that she must recuse herself because of her connection to a witness. In such a case, the Panelist will be compensated for one hearing session.

²⁵ See FINRA Rule 9241.

FINRA also believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁸ which requires, among other things, that FINRA rules must 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. FINRA believes that encouraging a greater number of eligible individuals to serve as Panelists by compensating them for their time and expertise will enhance FINRA's disciplinary processes, promote high business standards for FINRA members, and allow for the prompt adjudication of allegations of misconduct by FINRA members and their associated persons. It is in the public interest, and consistent with the Act's purpose, that FINRA disciplinary proceedings be timely resolved and that appropriate sanctions be imposed where necessary to redress customer harm and deter future misconduct.

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

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is intended solely to enhance the administration of FINRA's process for the disciplining of members and persons associated with members. FINRA believes the proposed rule change will allow the Chief Hearing Officer flexibility to appoint Panelists and thereby maintain the timely progress of cases to a hearing. FINRA does not believe that the proposed rule change will have any negative effect on members or impose any new costs.

Economic Impact Assessment

As described above, under current FINRA rules, the Chief Hearing Officer may pay honoraria only to individuals who serve as Panelists at Extended Hearings. The rules do not allow OHO to pay honoraria to Panelists at non-Extended Hearings. As a result, potential Panelists may lack sufficient incentive to serve on non-Extended Hearing Panels, which impairs OHO's ability to assemble Hearing Panels for non-Extended Hearings expeditiously. FINRA believes that paying honoraria to all Hearing Panelists, regardless of whether the hearing is designated as an Extended Hearing, will expand the number of qualified current or retired industry members willing to serve on Hearing Panels.

Economic Baseline

The baseline for the proposal is Rule 9231, which allows for payments to Panelists serving on Extended Hearing Panels only. Based on FINRA's experience, this inequity creates a preference among eligible individuals to serve on Extended Hearing Panels. This can limit the pool of Panelists available to serve for non-Extended Hearings.

Of the 59 hearings that occurred between 2017 and 2019, 51% were Extended Hearings, and thus generated payments to Panelists.²⁹ In the three-year sample period, OHO conducted hearings, on average, 82 days per year, of which 57 days were for Extended Hearings. FINRA spent, on average, \$68,400 annually to pay Extended Hearing Panelists.³⁰

Anticipated Benefits

The proposal provides a monetary benefit of \$600 per day to Hearing Panelists serving on non-Extended Hearing Panels, among other potential payments. This proposed honorarium may potentially create a new incentive for industry members to serve (or continue to serve) on non-Extended Hearing Panels. The proposal may also benefit FINRA as it should increase the number of eligible individuals willing to serve as Panelists and make it easier for FINRA to assemble Hearing Panels with appropriate experience and expertise, which is the regulatory objective.

Both industry members and investors share an incentive to have enforcement actions timely brought before a suitably qualified panel. To the extent that the proposal expands the pool of willing Panelists, and thereby improves FINRA's ability to expeditiously organize expert Hearing Panels, both of these groups will benefit.

Anticipated Costs

The proposed rule change, which expands honoraria to non-Extended Hearing Panelists, would not impose any additional requirements or fees on firms or respondents in FINRA disciplinary hearings. Direct costs associated with this proposal will be incurred by FINRA only. FINRA estimates these costs at approximately \$26,400 per year. Based on its experience with paying honoraria to Panelists in Extended Hearings, OHO does not anticipate that paying honoraria to Panelists serving on non-

²⁹ In 2017, there were 25 hearings, 14 of which were Extended Hearings; in 2018, of 21 hearings, 10 were Extended Hearings; and in 2019, of 13 hearings, six were Extended Hearings.

³⁰ Figures based on a three-year period from January 2017 to December 2019.

Extended Hearing Panels will adversely impact the hearing process.

Alternatives Considered

FINRA considered allowing the Chief Hearing Officer to use his or her discretion in determining whether to compensate Hearing Panelists. A primary objective of the amendment is to increase eligible Hearing Panelists' incentive to serve. Therefore, requiring compensation in the form of an honorarium at the rate set for arbitrators to all Hearing Panelists—rather than at the discretion of the Chief Hearing Officer—should only increase the likelihood that the amendment will yield the desired outcome.

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

Written comments were neither solicited nor 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) of the Act³¹ and Rule 19b-4(f)(6) thereunder.³²

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

³¹ 15 U.S.C. 78s(b)(3)(A).

³² 17 CFR 240.19b-4(f)(6).

²⁸ 15 U.S.C. 78o-3(b)(6).

- Send an email to rule-comments@sec.gov. Please include File Number SR-FINRA-2020-014 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-FINRA-2020-014. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2020-014 and should be submitted on or before June 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-88845; File No. SR-CboeBYX-2020-014]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Adopting Rule 14.12 Governing the Trading, Pursuant to Unlisted Trading Privileges, of Exchange-Traded Fund Shares

May 8, 2020.

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 May 7, 2020, Cboe BYX Exchange, Inc. (“Exchange” or “BYX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder.⁴ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to adopt Rule 14.12 to permit the trading, pursuant to unlisted trading privileges, of Exchange-Traded Fund Shares. Additionally, the Exchange proposes to make corresponding changes to Rule 14.1(a). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (http://markets.cboe.com/us/equities/regulation/rule_filings/byx/), at the Exchange's Office of the Secretary, 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 proposes to adopt Rule 14.12 to permit the trading, pursuant to unlisted trading privileges (“UTP”), of Exchange-Traded Fund (also referred to as “ETF”) Shares,⁵ which substantially conforms to Cboe BZX Exchange, Inc. (“BZX”) Rule 14.11(l).⁶ Additionally, the Exchange proposes to make corresponding changes to Rule 14.1(a) to reference Exchange-Traded Fund Shares and proposed Rule 14.12, where applicable.

The Exchange does not currently list any securities as a primary listing market. Consistent with this fact, Exchange Rule 14.1(a) currently states that all securities traded on the Exchange are traded pursuant to UTP and that the Exchange will not list any securities before first filing and obtaining Commission approval of rules that incorporate qualitative listing criteria and comply with Rules 10A-3⁷ (“Rule 10A-3”) and 10C-1⁸ (“Rule 10C-1”) under the Act. Therefore, the provisions of existing Rules 14.2 through 14.9, 14.11, and proposed Rule 14.12 that permit the listing of certain Equity Securities⁹ will not be effective

⁵ ETF Shares means shares of stock issued by an Exchange-Traded Fund. See proposed Rule 14.12(c)(1).

⁶ See Securities and Exchange Act Release No. 88566 (April 6, 2020) 85 FR 20312 (April 10, 2020) (SR-CboeBZX-2019-097) (the “BZX Approval Order”).

⁷ Rule 10A-3 obligates the Exchange to prohibit the initial or continued listing of any security of an issuer that is not in compliance with certain required standards. See 17 CFR 240.10A-3.

⁸ Rule 10C-1 obligates the Exchange to establish listing standards that require each member of a listed issuer's compensation committee to be a member of the issuer's board and to be independent, as well as establish certain factors that an issuer must consider when evaluating the independence of a director. See 17 CFR 240.10C-1.

⁹ As provided in Rule 14.1(a), the term “Equity Security” means, but is not limited to, common stock, secondary classes of common stock, preferred stock and similar issues, shares or certificates of beneficial interest of trusts, notes, limited partnership interests, warrants, certificates of deposit for common stock, convertible debt securities, ADRs, CVRs, Investment Company Units, Trust Issued Receipts (including those based on Investment Shares), Commodity-Based Trust

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

³³ 17 CFR 200.30-3(a)(12).