

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-CboeEDGX-2020-045, and should be submitted on or before October 20, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>36</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

[FR Doc. 2020-21403 Filed 9-28-20; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89972; File No. 4-566]

### Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amendment to the Plan for the Allocation of Regulatory Responsibilities Among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., NYSE Chicago, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., MEMX LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., Investors' Exchange LLC, and Long-Term Stock Exchange, Inc. Relating to the Surveillance, Investigation, and Enforcement of Insider Trading Rules

September 23, 2020.

Notice is hereby given that the Securities and Exchange Commission ("Commission") has issued an Order,

pursuant to Section 17(d) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> approving and declaring effective an amendment to the plan for allocating regulatory responsibility ("Plan") filed on September 18, 2020, pursuant to Rule 17d-2 of the Act,<sup>2</sup> by Cboe BZX Exchange, Inc. ("BZX"), Cboe BYX Exchange, Inc. ("BYX"), NYSE Chicago, Inc. ("CHX"), Cboe EDGA Exchange, Inc. ("EDGA"), Cboe EDGX Exchange, Inc. ("EDGX"), Financial Industry Regulatory Authority, Inc. ("FINRA"), MEMX LLC ("MEMX"), MIAX PEARL, LLC ("MIAX PEARL"), Nasdaq BX, Inc. ("BX"), Nasdaq PHLX LLC ("PHLX"), The Nasdaq Stock Market LLC ("Nasdaq"), NYSE National, Inc. ("NYSE National"), New York Stock Exchange LLC ("NYSE"), NYSE American LLC ("NYSE American"), NYSE Arca, Inc. ("NYSE Arca"), Investors' Exchange LLC ("IEX") and Long-Term Stock Exchange, Inc. ("LTSE") (collectively, "Participating Organizations" or "Parties").

#### I. Introduction

Section 19(g)(1) of the Act,<sup>3</sup> among other things, requires every self-regulatory organization ("SRO") registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d)<sup>4</sup> or Section 19(g)(2)<sup>5</sup> of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO ("common members"). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act<sup>6</sup> was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.<sup>7</sup> With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce

compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.<sup>8</sup> Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority ("DEA") to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.<sup>9</sup> When an SRO has been named as a common member's DEA, all other SROs to which the common member belongs are relieved of the responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.<sup>10</sup> Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for notice and comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

#### II. The Plan

On September 12, 2008, the Commission declared effective the Participating Organizations' Plan for allocating regulatory responsibilities

<sup>8</sup> 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

<sup>9</sup> See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

<sup>10</sup> See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

<sup>1</sup> 15 U.S.C. 78q(d).

<sup>2</sup> 17 CFR 240.17d-2.

<sup>3</sup> 15 U.S.C. 78s(g)(1).

<sup>4</sup> 15 U.S.C. 78q(d).

<sup>5</sup> 15 U.S.C. 78s(g)(2).

<sup>6</sup> 15 U.S.C. 78q(d)(1).

<sup>7</sup> See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

<sup>36</sup> 17 CFR 200.30-3(a)(12).

pursuant to Rule 17d-2.<sup>11</sup> The Plan is designed to eliminate regulatory duplication by allocating regulatory responsibility over Common FINRA Members<sup>12</sup> (collectively “Common Members”) for the surveillance, investigation, and enforcement of common insider trading rules (“Common Rules”).<sup>13</sup> The Plan assigns regulatory responsibility over Common FINRA Members to FINRA for surveillance, investigation, and enforcement of insider trading by broker-dealers, and their associated persons, with respect to Listed Stocks (as defined in the Plan), irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur.

### III. Proposed Amendment to the Plan

On September 18, 2020, the Parties submitted a proposed amendment to the Plan. The proposed amendment was submitted to add MIAX PEARL as a Participant to the Plan and to add Exchange Act Rules 14e-3 and 15(g) to the list of rules in Exhibit A. The text of the proposed amended 17d-2 plan is as follows (additions are *italicized*; deletions are [bracketed]):

\* \* \* \* \*  
\* \* \* \* \*

#### Agreement for the Allocation of Regulatory Responsibility of Surveillance, Investigation and Enforcement for Insider Trading Pursuant to § 17(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78q(d), and Rule 17d-2 Thereunder

This agreement (the “Agreement”) by and among Cboe BZX Exchange, Inc. (“BZX”), Cboe BYX Exchange, Inc. (“BYX”), NYSE Chicago, Inc. (“CHX”), Cboe EDGA Exchange, Inc. (“EDGA”), Cboe EDGX Exchange, Inc. (“EDGX”), Financial Industry Regulatory Authority, Inc. (“FINRA”), MEMX LLC

<sup>11</sup> See Securities Exchange Act Release No. 58536 (September 12, 2008), 73 FR 54646 (September 22, 2008). See also Securities Exchange Act Release Nos. 58806 (October 17, 2008), 73 FR 63216 (October 23, 2008); 61919 (April 15, 2010), 75 FR 21051 (April 22, 2010); 63103 (October 14, 2010), 75 FR 64755 (October 20, 2010); 63750 (January 21, 2011), 76 FR 4948 (January 27, 2011); 65991 (December 16, 2011), 76 FR 79714 (December 22, 2011); 78473 (August 3, 2016), 81 FR 52722 (August 9, 2016); 84392 (October 10, 2018), 83 FR 52243 (October 16, 2018); 86542 (August 1, 2019), 84 FR 38679 (August 7, 2019); 88948 (May 26, 2020), 85 FR 33239 (June 1, 2020).

<sup>12</sup> Common FINRA Members include members of FINRA and at least one of the Participating Organizations.

<sup>13</sup> Common rules are defined as: (i) Federal securities laws and rules promulgated by the Commission pertaining to insider trading, and (ii) the rules of the Participating Organizations that are related to insider trading. See Exhibit A to the Plan.

(“MEMX”), MIAX PEARL, LLC (“MIAX PEARL”),<sup>1</sup> Nasdaq BX, Inc. (“BX”), Nasdaq PHLX LLC (“PHLX”), The Nasdaq Stock Market LLC (“Nasdaq”), NYSE National, Inc. (“NYSE National”), New York Stock Exchange LLC (“NYSE”), NYSE American LLC (“NYSE American”), NYSE Arca, Inc. (“NYSE Arca”), Investors’ Exchange LLC (“IEX”) and Long-Term Stock Exchange, Inc. (“LTSE”) (each a “Participating Organization” and together, the “Participating Organizations”), is made pursuant to § 17(d) of the Securities Exchange Act of 1934 (the “Act”), 15 U.S.C. 78q(d), and Securities and Exchange Commission (“SEC”) Rule 17d-2, which allow for plans to allocate regulatory responsibility among self-regulatory organizations (“SROs”). Upon approval by the SEC, this

<sup>1</sup> MIAX PEARL’s allocation of certain regulatory responsibilities to FINRA under this Agreement is limited to the activities of MIAX PEARL Equities, a facility of MIAX PEARL.

Agreement shall amend and restate the agreement among the Participating Organizations approved by the SEC on [August 1, 2019] *May 26, 2020*.

*Whereas*, the Participating Organizations desire to: (a) Foster cooperation and coordination among the SROs; (b) remove impediments to, and foster the development of, a national market system; (c) strive to protect the interest of investors; and (d) eliminate duplication in their regulatory surveillance, investigation and enforcement of insider trading;

*Whereas*, the Participating Organizations are interested in allocating to FINRA regulatory responsibility for Common FINRA Members (as defined below) for surveillance, investigation and enforcement of Insider Trading (as defined below) in NMS Stocks (as defined below) irrespective of the marketplace(s) maintained by the Participating Organizations on which the relevant trading may occur in violation of Common Insider Trading Rules (as defined below);

*Whereas*, the Participating Organizations will request regulatory allocation of these regulatory responsibilities by executing and filing with the SEC a plan for the above stated purposes (this Agreement, also known herein as the “Plan”) pursuant to the provisions of § 17(d) of the Act, and SEC Rule 17d-2 thereunder, as described below; and

*Whereas*, the Participating Organizations will also enter into a Regulatory Services Agreement (the “Insider Trading RSA”), of even date

herewith, to provide for the investigation and enforcement of suspected Insider Trading against broker-dealers, and their associated persons, that are not Common FINRA Members in the case of Insider Trading in NMS Stocks..

*Now, therefore*, in consideration of the mutual covenants contained hereafter, and other valuable consideration to be mutually exchanged, the Participating Organizations hereby agree as follows:

1. *Definitions*. Unless otherwise defined in this Agreement, or the context otherwise requires, the terms used in this Agreement will have the same meaning they have under the Act, and the rules and regulations thereunder. As used in this Agreement, the following terms will have the following meanings:

a. “Rule” of an “exchange” or an “association” shall have the meaning defined in Section 3(a)(27) of the Act.

b. “Common FINRA Members” shall mean members of FINRA and at least one of the Participating Organizations.

c. “Common Insider Trading Rules” shall mean (i) the federal securities laws and rules thereunder promulgated by the SEC pertaining to insider trading, and (ii) the rules of the Participating Organizations that are related to insider trading, as provided on Exhibit A to this Agreement.

d. “Effective Date” shall have the meaning set forth in paragraph 27.

e. “Insider Trading” shall mean any conduct or action taken by a natural person or entity related in any way to the trading of securities by an insider or a related party based on or on the basis of material non-public information obtained during the performance of the insider’s duties at the corporation, or otherwise misappropriated, that could be deemed a violation of the Common Insider Trading Rules.

f. “Intellectual Property” will mean any: (1) Processes, methodologies, procedures, or technology, whether or not patentable; (2) trademarks, copyrights, literary works or other works of authorship, service marks and trade secrets; or (3) software, systems, machine-readable texts and files and related documentation.

g. “Plan” shall mean this Agreement, which is submitted as a Plan for the allocation of regulatory responsibilities of surveillance, *investigation and enforcement* for insider trading pursuant to § 17(d) of the Act, 15 U.S.C. 78q(d), and SEC Rule 17d-2.

h. “NMS Stock(s)” shall have the meaning set forth in Rule 600(b)(47) of SEC Regulation NMS.

i. "Listing Market" shall mean an exchange that lists NMS Stocks.

2. *Assumption of Regulatory Responsibilities.* On the Effective Date of the Plan, FINRA will assume regulatory responsibilities for surveillance, investigation and enforcement of Insider Trading by broker-dealers, and their associated persons, for Common FINRA Members with respect to NMS Stocks, irrespective of the marketplace(s) maintained by the Participant Organizations on which the relevant trading may occur in violation of the Common Insider Trading Rules ("Regulatory Responsibilities").

3. *Certification of Insider Trading Rules.*

a. *Initial Certification.* By signing this Agreement, the Participating Organizations, other than FINRA, hereby certify to FINRA that their respective lists of Common Insider Trading Rules contained in Exhibit A hereto are correct, and FINRA hereby confirms that such rules are Common Insider Trading Rules as defined in this Agreement.

b. *Yearly Certification.* Each year following the commencement of operation of this Agreement, or more frequently if required by changes in the rules of the Participating Organizations, each Participating Organization shall submit a certified and updated list of Common Insider Trading Rules to FINRA for review, which shall (i) add Participating Organization rules not included in the then-current list of Common Insider Trading Rules that qualify as Common Insider Trading Rules as defined in this Agreement; (ii) delete Participating Organization rules included in the current list of Common Insider Trading Rules that no longer qualify as Common Insider Trading Rules as defined in this Agreement; and (iii) confirm that the remaining rules on the current list of Common Insider Trading Rules continue to be Participating Organization rules that qualify as Common Insider Trading Rules as defined in this Agreement. FINRA shall review each Participating Organization's annual certification and confirm whether FINRA agrees with the submitted certified and updated list of Common Insider Trading Rules by each of the Participating Organizations.

4. *No Retention of Regulatory Responsibility.* The Participating Organizations do not contemplate the retention of any responsibilities with respect to the regulatory activities being assumed by FINRA under the terms of this Agreement.

5. *Fees.* FINRA shall charge Participating Organizations for performing the Regulatory

Responsibilities, as set forth in the Schedule of Fees, attached as Exhibit B.

6. *Applicability of Certain Laws, Rules, Regulations or Orders.* Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the SEC. To the extent such statute, rule, or order is inconsistent with one or more provisions of this Agreement, the statute, rule, or order shall supersede the provision(s) hereof to the extent necessary to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

7. *Exchange Committee; Reports.*

a. *Exchange Committee.* The Participating Organizations shall form a committee (the "Exchange Committee"), which shall act on behalf of all of Participating Organizations in receiving copies of the reports described below and in reviewing issues that arise under this Agreement. Each Participating Organization shall appoint a representative to the Exchange Committee. The Exchange Committee representatives shall report to their respective executive management bodies regarding status or issues under this Agreement. The Participating Organizations agree that the Exchange Committee will meet regularly up to four (4) times a year, with no more than one meeting per calendar quarter. At these meetings, the Exchange Committee will discuss the conduct of the Regulatory Responsibilities and identify issues or concerns with respect to this Agreement, including matters related to the calculation of the cost formula and accuracy of fees charged and provision of information related to the same. The SEC shall be permitted to attend the meetings as an observer.

b. *Reports.* FINRA shall provide the reports set forth in Exhibit C hereto and any additional reports related to this Agreement reasonably requested by a majority vote of all representatives to the Exchange Committee at each Exchange Committee meeting, or more often as the Participating Organizations deem appropriate, but no more often than once every quarterly billing period.

8. *Customer Complaints.* If a Participating Organization receives a copy of a customer complaint relating to Insider Trading or other activity or conduct that is within FINRA's Regulatory Responsibilities as set forth in this Agreement, the Participating Organization shall promptly forward to FINRA, as applicable, a copy of such customer complaint.

9. *Parties to Make Personnel Available as Witnesses.* Each Participating Organization shall make its personnel available to FINRA to serve as

testimonial or non-testimonial witnesses as necessary to assist FINRA in fulfilling the Regulatory Responsibilities allocated under this Agreement. FINRA shall provide reasonable advance notice when practicable and shall work with a Participating Organization to accommodate reasonable scheduling conflicts within the context and demands as the entity with ultimate regulatory responsibility. The Participating Organization shall pay all reasonable travel and other expenses incurred by its employees to the extent that FINRA requires such employees to serve as witnesses, and provide information or other assistance pursuant to this Agreement.

10. *Market Data; Sharing of Work-Papers, Data and Related Information.*

a. *Market Data.* FINRA shall obtain raw market data necessary to the performance of regulation under this Agreement from (a) the Consolidated Tape Association ("CTA") and (b) the NASDAQ Unlisted Trading Privileges Plan.

b. *Sharing.* A Participating Organization shall make available to FINRA information necessary to assist FINRA in fulfilling the Regulatory Responsibilities assumed under the terms of this Agreement. Such information shall include any information collected by a Participating Organization in the course of performing its regulatory obligations under the Act, including information relating to an on-going disciplinary investigation or action against a member, the amount of a fine imposed on a member, financial information, or information regarding proprietary trading systems gained in the course of examining a member ("Regulatory Information"). This Regulatory Information shall be used by FINRA solely for the purposes of fulfilling its Regulatory Responsibilities.

c. *No Waiver of Privilege.* The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

d. *Intellectual Property.*

(i) *Existing Intellectual Property.* FINRA is and will remain the owner of all right, title and interest in and to the proprietary Intellectual Property it employs in the provision of regulation hereunder (including the SONAR system), and any derivative works thereof. To the extent certain elements of FINRA's systems, or portions thereof, may be licensed or leased from third parties, all such third party elements shall remain the property of such third

parties, as applicable. Likewise, any other Participating Organization is and will remain the owner of all right, title and interest in and to its own existing proprietary Intellectual Property.

(ii) *Enhancements to Existing Intellectual Property or New Developments.* In the event FINRA (a) makes any changes, modifications or enhancements to its Intellectual Property for any reason, or (b) creates any newly developed Intellectual Property for any reason, including as a result of requested enhancements or new development by the Exchange Committee (collectively, the "New IP"), the Participating Organizations acknowledge and agree that FINRA shall be deemed the owner of the New IP created by it (and any derivative works thereof), and shall retain all right, title and interest therein and thereto, and each other Participating Organization hereby irrevocably assigns, transfers and conveys to FINRA without further consideration all of its right, title and interest in or to all such New IP (and any derivative works thereof).

(iii) *Fees for New IP.* FINRA will not charge the Participating Organizations any fees for any New IP created and used by FINRA; provided, however, that FINRA will be permitted to charge fees for software maintenance work performed on systems used in the discharge of its duties hereunder.

11. *Special or Cause Examinations.* Nothing in this Agreement shall restrict or in any way encumber the right of a party to conduct special or cause examinations of Common FINRA Members as any party, in its sole discretion, shall deem appropriate or necessary.

12. *Dispute Resolution Under this Agreement.*

a. *Negotiation.* The parties to this Agreement will attempt to resolve any disputes through good faith negotiation and discussion, escalating such discussion up through the appropriate management levels until reaching the executive management level. In the event a dispute cannot be settled through these means, the parties shall refer the dispute to binding arbitration.

b. *Binding Arbitration.* All claims, disputes, controversies, and other matters in question between the parties to this Agreement arising out of or relating to this Agreement or the breach thereof that cannot be resolved by the parties will be resolved through binding arbitration. Unless otherwise agreed by the parties, a dispute submitted to binding arbitration pursuant to this paragraph shall be resolved using the following procedures:

(i) The arbitration shall be conducted in the city of New York in accordance with the Commercial Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof; and

(ii) There shall be three arbitrators, and the chairperson of the arbitration panel shall be an attorney.

13. *Limitation of Liability.* As between the Participating Organizations, no Participating Organization, including its respective directors, governors, officers, employees and agents, will be liable to any other Participating Organization, or its directors, governors, officers, employees and agents, for any liability, loss or damage resulting from any delays, inaccuracies, errors or omissions with respect to its performing or failing to perform regulatory responsibilities, obligations, or functions, except (a) as otherwise provided for under the Act, (b) in instances of a Participating Organization's gross negligence, willful misconduct or reckless disregard with respect to another Participating Organization, (c) in instances of a breach of confidentiality obligations owed to another Participating Organization, or (d) in the case of any Participating Organization paying fees hereunder, for any payments due. The Participating Organizations understand and agree that the Regulatory Responsibilities are being performed on a good faith and best effort basis and no warranties, express or implied, are made by any Participating Organization to any other Participating Organization with respect to any of the responsibilities to be performed hereunder. This paragraph is not intended to create liability of any Participating Organization to any third party.

14. *SEC Approval.*

a. The parties agree to file promptly this Agreement with the SEC for its review and approval. FINRA shall file this Agreement on behalf, and with the explicit consent, of all Participating Organizations.

b. If approved by the SEC, the Participating Organizations will notify their members of the general terms of this Agreement and of its impact on their members.

15. *Subsequent Parties; Limited Relationship.* This Agreement shall inure to the benefit of and shall be binding upon the Participating Organizations hereto and their respective legal representatives, successors, and assigns. Nothing in this Agreement, expressed or implied, is intended or shall: (a) Confer on any person other than the Participating Organizations hereto, or their respective

legal representatives, successors, and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, (b) constitute the Participating Organizations hereto partners or participants in a joint venture, or (c) appoint one Participating Organization the agent of the other.

16. *Assignment.* No Participating Organization may assign this Agreement without the prior written consent of all the other Participating Organizations, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that any Participating Organization may assign this Agreement to a corporation controlling, controlled by or under common control with the Participating Organization without the prior written consent of any other party.

17. *Severability.* Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

18. *Termination.*

a. Any Participating Organization may cancel its participation in this Agreement at any time, provided that it has given 180 days written notice to the other Participating Organizations (or in the case of a change of control in ownership of a Participating Organization, such other notice time period as that Participating Organization may choose), and provided that such termination has been approved by the SEC. The cancellation of its participation in this Agreement by any Participating Organization shall not terminate this Agreement as to the remaining Participating Organizations.

b. The Regulatory Responsibilities assumed under this Agreement by FINRA may be terminated by FINRA against any Participating Organization as follows. The Participating Organization will have thirty (30) days from receipt to satisfy the invoice. If the Participating Organization fails to satisfy the invoice within thirty (30) days of receipt ("Default"), FINRA will notify the Participating Organization of the Default. The Participating Organization will have thirty (30) days from receipt of the Default notice to satisfy the invoice.

c. FINRA will have the right to terminate the Regulatory Responsibilities assumed under this Agreement if a Participating

Organization has Defaulted in its obligation to pay the invoice on more than three (3) occasions in any rolling twenty-four (24) month period.

19. *Intermarket Surveillance Group ("ISG")*. In order to participate in this Agreement, all Participating Organizations to this Agreement must be members of the ISG.

20. *General*. The Participating Organizations agree to perform all acts and execute all supplementary instruments or documents that may be reasonably necessary or desirable to carry out the provisions of this Agreement.

21. *Liaison and Notices*. All questions regarding the implementation of this Agreement shall be directed to the persons identified below, as applicable. All notices and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon (i) actual receipt by the notified party or (ii) constructive receipt (as of the date marked on the return receipt) if sent by certified or registered mail, return receipt requested, to the following addresses:

For Cboe BZX Exchange, Inc.: Greg Hoogasian, Chief Regulatory Officer, Cboe BZX Exchange, Inc., 400 S. LaSalle Street, Chicago, IL 60605, Telephone: (312) 786-7844, Facsimilie: (312) 786-7982, Email: [ghoogasian@cboe.com](mailto:ghoogasian@cboe.com)

For Cboe BYX Exchange, Inc.: Greg Hoogasian, Chief Regulatory Officer, Cboe B[Z]YX Exchange, Inc., 400 S. LaSalle Street, Chicago, IL 60605, Telephone: (312) 786-7844, Facsimilie: (312) 786-7982, Email: [ghoogasian@cboe.com](mailto:ghoogasian@cboe.com)

For NYSE Chicago, Inc.: Anthony Albanese, Chief Regulatory Officer, NYSE Group, Inc., 11 Wall Street, New York, NY 10005, Telephone: (212) 656-8297, Facsimilie: (212) 656-2027, Email: [Anthony.Albanese@theice.com](mailto:Anthony.Albanese@theice.com)

For Cboe EDGA Exchange, Inc.: Greg Hoogasian, Chief Regulatory Officer, Cboe [BZX]EDGA Exchange, Inc., 400 S. LaSalle Street, Chicago, IL 60605, Telephone: (312) 786-7844, Facsimilie: (312) 786-7982, Email: [ghoogasian@cboe.com](mailto:ghoogasian@cboe.com)

For Cboe EDGX Exchange, Inc.: Greg Hoogasian, Chief Regulatory Officer, Cboe [BZX]EDGX Exchange, Inc., 400 S. LaSalle Street, Chicago, IL 60605, Telephone: (312) 786-7844, Facsimilie: (312) 786-7982, Email: [ghoogasian@cboe.com](mailto:ghoogasian@cboe.com)

For Financial Industry Regulatory Authority, Inc.: Sam Draddy, Senior Vice President, Office of Fraud

Detection and Market Intelligence, FINRA, 1735 K Street NW, Washington, DC 20006, Telephone: (240) 386-5042, Facsimilie: (301) 407-4635, Email: [Sam.Draddy@finra.org](mailto:Sam.Draddy@finra.org)

For MEMX LLC: Scott Palmer, Chief Regulatory Officer, MEMX LLC, 111 Town Square Place, Suite 520, Jersey City, NJ 07310, Telephone: (201) 596-6995, Facsimilie: (201) 331-7904, Email: [spalmer@memx.com](mailto:spalmer@memx.com)

For MIAx PEARL, LLC: Edward Deitzel, Chief Regulatory Officer, Miami International Securities Exchange, LLC, 7 Roszel Road, Suite 1A, Princeton, NJ 08540, Telephone: (609) 897-1466, Facsimilie: (609) 897-1466, Email: [edeitzel@miaoptions.com](mailto:edeitzel@miaoptions.com)

For Nasdaq BX, Inc.: John A. Zecca, Executive Vice President and Chief Legal and Regulatory Officer, The Nasdaq Stock Market LLC, 805 King Farm Boulevard, Rockville, MD 20850, Telephone: (301) 978-8498, Facsimilie: (301) 978-8472, Email: [John.Zecca@nasdaq.com](mailto:John.Zecca@nasdaq.com)

For Nasdaq PHLX LLC: Joseph P. Cusick, Chief Regulatory Officer, Nasdaq PHLX LLC, FMC Tower, Level 8, 2929 Walnut Street, Philadelphia, PA 19104, Telephone: (215) 496-1576, Facsimilie: (215) 496-5104, Email: [joseph.cusick@nasdaq.com](mailto:joseph.cusick@nasdaq.com)

For The Nasdaq Stock Market LLC: John A. Zecca, Executive Vice President and Chief Legal and Regulatory Officer, The Nasdaq Stock Market LLC, 805 King Farm Boulevard, Rockville, MD 20850, Telephone: (301) 978-8498, Facsimilie: (301) 978-8472, Email: [John.Zecca@nasdaq.com](mailto:John.Zecca@nasdaq.com)

For NYSE National, Inc.: Anthony Albanese, Chief Regulatory Officer, NYSE National, Inc., 11 Wall Street, New York, NY 10005, Telephone: (212) 656-8927, Facsimilie: (212) 656-2027, Email: [Anthony.albanese@theice.com](mailto:Anthony.albanese@theice.com)

For New York Stock Exchange LLC: Anthony Albanese, Chief Regulatory Officer, NYSE, 11 Wall Street, New York, NY 10005, Telephone: (212) 656-8927 Facsimilie: (212) 656-2027, Email: [Anthony.albanese@theice.com](mailto:Anthony.albanese@theice.com)

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For Investors' Exchange LLC: Claudia Crowley, Chief Regulatory Officer, IEX, 3 World Trade Center, 175

Greenwich Street 58th Floor, New York, NY 10007, Telephone: (646) 343-2041, Facsimilie: (646) 365-6862, Email: [Claudia.crowley@iextrading.com](mailto:Claudia.crowley@iextrading.com)

For Long-Term Stock Exchange, Inc.: Gary Goldsholle, Chief Regulatory Officer, LTSE, 100 Greenwich St., Suite 11A, New York, NY 10006, Telephone: (202) 580-5752, Email: [Gary@longtermstockexchange.com](mailto:Gary@longtermstockexchange.com)

22. *Confidentiality*. The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations under this Agreement. No party shall assert regulatory or other privileges as against the other with respect to Regulatory Information that is required to be shared pursuant to this Agreement, as defined by paragraph 10, above.

23. *Regulatory Responsibility*. Pursuant to Section 17(d)(1)(A) of the Act, and Rule 17d-2 thereunder, the Participating Organizations jointly and severally request the SEC, upon its approval of this Agreement, to relieve the Participating Organizations, jointly and severally, of any and all responsibilities with respect to the matters allocated to FINRA pursuant to this Agreement for purposes of §§ 17(d) and 19(g) of the Act.

24. *Governing Law*. This Agreement shall be deemed to have been made in the State of New York, and shall be construed and enforced in accordance with the law of the State of New York, without reference to principles of conflicts of laws thereof. Each of the parties hereby consents to submit to the jurisdiction of the courts of the State of New York in connection with any action or proceeding relating to this Agreement.

25. *Survival of Provisions*. Provisions intended by their terms or context to survive and continue notwithstanding delivery of the regulatory services by FINRA, the payment of the Fees by the Participating Organizations, and any expiration of this Agreement shall survive and continue.

#### 26. *Amendment*.

a. This Agreement may be amended to add a new Participating Organization, provided that such Participating Organization does not assume regulatory responsibility, solely by an amendment executed by FINRA and such new Participating Organization. All other Participating Organizations expressly consent to allow FINRA to add new Participating Organizations to this Agreement as provided above. FINRA will promptly notify all Participating Organizations of any such

amendments to add a new Participating Organization.

b. All other amendments must be approved by each Participating Organization. All amendments, including adding a new Participating Organization, must be filed with and approved by the SEC before they become effective.

27. *Effective Date.* The Effective Date of this Agreement will be the date the SEC declares this Agreement to be effective pursuant to authority conferred by § 17(d) of the Act, and SEC Rule 17d-2 thereunder.

28. *Counterparts.* This Agreement may be executed in any number of counterparts, including facsimile, each of which will be deemed an original, but all of which taken together shall constitute one single agreement between the parties.

*In witness whereof,* the parties hereto have each caused this Agreement for the Allocation of Regulatory Responsibility of Surveillance, Investigation and Enforcement for Insider Trading to be signed and delivered by its duly authorized representative.

#### **Exhibit A: Common Insider Trading Rules**

1. Securities Exchange Act of 1934 Section 10(b), and rules and regulations promulgated there under in connection with insider trading, including SEC Rule 10b-5 (as it pertains to insider trading), which states that:

Rule 10b-5—Employment of Manipulative and Deceptive Devices It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

a. To employ any device, scheme, or artifice to defraud,

b. To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

c. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

2. Securities Exchange Act of 1934 Section 17(a), and rules and regulations promulgated there under in connection with insider trading, including SEC Rule 17a-3 (as it pertains to insider trading).

3. *Securities Exchange Act of 1934 Rule 14e-3—Transactions in securities on the basis of material, nonpublic*

*information in the context of tender offers.*

4. *Securities Exchange Act of 1934 Section 15(g) in connection with insider trading and protection of material, nonpublic information.*

5. The following SRO Rules as they pertain to violations of insider trading:

FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade)

FINRA Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices)

FINRA Rule 3110 (Supervision)

FINRA Rule 4511 (General Requirements)

FINRA Rule 4512 (Customer Account Information)

MEMX Rule 3.1 (Business Conduct of Members)

MEMX Rule 3.2 (Violations Prohibited)

MEMX Rule 3.3 (Use of Fraudulent Devices)

MEMX Rule 4.1 (Requirements)

MEMX Rule 5.1 (Written Procedures)

MEMX Rule 5.3 (Records)

MEMX Rule 5.5 (Prevention of Misuse of Material, Nonpublic Information)

MEMX Rule 12.4 (Manipulative Transactions)

*MIAX PEARL Equities Rule 2100 (Business Conduct of Members)*

*MIAX PEARL Equities Rule 2101 (Violations Prohibited)*

*MIAX PEARL Equities Rule 2102 (Use of Fraudulent Devices)*

*MIAX PEARL Equities Rule 2200 (General Requirements)*

*MIAX PEARL Equities Rule 2201 (Customer Account Information)*

*MIAX PEARL Equities Rule 2300 (Supervision)*

*MIAX PEARL Equities Rule 2303 (Prevention of Misuse of Material, Non-Public Information)*

*MIAX PEARL Equities Rule 2703 (Manipulative Transactions)*

NYSE Rule 440 (Books and Records)

NYSE Rule 476(a) (Disciplinary Proceedings Involving Charges Against Members, Member Organizations, Principal Executives, Approved Persons, Employees, or Others)

NYSE Rule 2010 (Standards of Commercial Honor and Principles of Trade)

NYSE Rule 2020 (Use of Manipulative, Deceptive or Other Fraudulent Devices)

NYSE Rule 3110 (Supervision)

NYSE American General and Floor Rule 3(j) (General Prohibitions and Duty to Report)

NYSE American Rule 2.24-E (ETP Books and Records)

NYSE American Rule 476(a) (Disciplinary Proceedings Involving

Charges Against Members, Member Organizations, Principal Executives, Approved Persons, Employees, or Others)

NYSE American Rule 2010 (Equities. Standards of Commercial Honor and Principles of Trade)

NYSE American Rule 2020 (Equities. Use of Manipulative, Deceptive or Other Fraudulent Devices)

NYSE American Rule 3110 (Equities. Supervision)

Nasdaq Rule General 9, Section 1(a) (Standards of Commercial Honor and Principles of Trade)

Nasdaq Rule General 9, Section 1(g) (Use of Manipulative, Deceptive or Other Fraudulent Devices)

Nasdaq Rule General 9, Section 20 (Supervision)

Nasdaq Rule General 9, Section 43 (General Requirements)

Nasdaq Rule General 9, Section 45 (Customer Account Information)

CHX Article 8, Rule 3 (Fraudulent Acts)

CHX Article 9, Rule 2 (Just & Equitable Trade Principles)

CHX Article 11, Rule 2 (Maintenance of Books and Records)

CHX Article 6, Rule 5 (Supervision of [Registered Persons] *Representatives* and Branch and Resident Offices)

[PHLX Rule Options 9, Section 1 (Conduct Inconsistent with Just and Equitable Principles of Trade)] *PSX Rule 3503(a) Conduct Inconsistent with Just and Equitable Principles of Trade*

PHLX Rule General 9, Section 20 (Supervision)

[PHLX Rule Options 6E, Section 1 (Maintenance, Retention and Furnishing of Books, Records and Other Information)]

PHLX Rule General 9, Section 21 (Supervisory Procedures Relating to ITSFEA and to Prevention of Misuse or Material Nonpublic Information)

PHLX Rule General 9, Section 1(b) (Manipulative Operations)

NYSE Arca Rule 2.28 (Books and Records)

NYSE Arca Rule 5.1-E(a)(2)(v)(D) (General Provisions and Unlisted Trading Privileges)

NYSE Arca Rule 11.1 (Adherence to Law and Good Business Practice)

NYSE Arca Rule 11.2(b) (Prohibited Acts (J&E))

NYSE Arca Rule 11.3 (Prevention of the Misuse of Material, Nonpublic Information)

NYSE Arca Rule 11.18 (Supervision)

NYSE Arca Rule 9.1-E(c) (Office Supervision)

NYSE Arca Rule 9.2-E(b) (Account Supervision)

NYSE Arca Rule 9.2-E(c) (Customer Records)

NYSE Arca Rule 9.2010–E (Standards of Commercial Honor and Principles of Trade)  
 NYSE Arca Rule 9.2020–E (Use of Manipulative, Deceptive or Other Fraudulent Devices)  
 NYSE National Rule 5.1(a)(2)(D)(iv) (Unlisted Trading Privileges)  
 NYSE National Rule 11.3.1 (Business Conduct of ETP Holders)  
 NYSE National Rule 11.3.2 (Violations Prohibited)  
 NYSE National Rule 11.3.3 (Use of Fraudulent Devices)  
 NYSE National Rule 11.4.1 (Requirements)  
 NYSE National Rule 11.5.1 (Written Procedures)  
 NYSE National Rule 11.5.3 (Records)  
 NYSE National Rule 11.5.5 (Prevention of the Misuse of Material, Nonpublic Information)  
 NYSE National Rule 11.12.4 (Manipulative Transactions)  
 BX Rule General 9, Section 1(a) (Standards of Commercial Honor and Principles of Trade)  
 BX Rule General 9, Section 1(i) (Use of Manipulative, Deceptive or Other Fraudulent Devices)  
 BX Rule General 9, Section 20 (Supervision)  
 BX Rule General 9, Section 30(a) and (b) (Books and Records; Financial Condition)  
 BZX Rule 3.1 (Business Conduct of Members)  
 BZX Rule 3.2 (Violations Prohibited)  
 BZX Rule 3.3 (Use of Fraudulent Devices)  
 BZX Rule 4.1 (Requirements)  
 BZX Rule 5.1 (Written Procedures)  
 BZX Rule 5.3 (Records)  
 BZX Rule 5.5 (Prevention of the Misuse of Material, Non-Public Information)  
 BZX Rule 12.4 (Manipulative Transactions)  
 BYX Rule 3.1 (Business Conduct of ETP Holders)  
 BYX Rule 3.2 (Violations Prohibited)  
 BYX Rule 3.3 (Use of Fraudulent Devices)  
 BYX Rule 4.1 (Requirements)  
 BYX Rule 5.1 (Written Procedures)  
 BYX Rule 5.3 (Records)  
 BYX Rule 5.5 (Prevention of the Misuse of Material, Non-Public Information)  
 BYX Rule 12.4 (Manipulative Transactions)  
 EDGA Rule 3.1 (Business Conduct of Members)  
 EDGA Rule 3.2 (Violations Prohibited)  
 EDGA Rule 3.3 (Use of Fraudulent Devices)  
 EDGA Rule 4.1 (Requirements)  
 EDGA Rule 5.1 (Written Procedures)  
 EDGA Rule 5.3 (Records)  
 EDGA Rule 5.5 (Prevention of *the* Misuse of Material, Nonpublic Information)

EDGX Rule 12.4 (Manipulative Transactions)  
 IEX Rule 3.110 (Business Conduct of Members)  
 IEX Rule 3.120 (Violations Prohibited)  
 IEX Rule 3.130 (Use of Fraudulent Devices)  
 IEX Rule 4.511 (General Requirements)  
 IEX Rule 4.512 (Customer Account Information)  
 IEX Rule 5.110 (Supervision)  
 IEX Rule 5.150 (Prevention of *the* Misuse of Material, Non-Public Information)  
 IEX Rule 10.140 (Manipulative Transactions)  
 LTSE Rule 3.110 (Business Conduct of Members)  
 LTSE Rule 3.120 (Violations Prohibited)  
 LTSE Rule 3.130 (Use of Fraudulent Devices)  
 LTSE Rule 4.511 (General Requirements)  
 LTSE Rule 4.512 (Customer Account Information)  
 LTSE Rule 5.110 (Supervision)  
 LTSE Rule 5.150 (Prevention of *the* Misuse of Material, Non-Public Information)  
 LTSE Rule 10.140 (Manipulative Transactions)

#### Exhibit B: Fee Schedule

1. *Fees.* FINRA shall charge each Participating Organization a Quarterly Fee in arrears for the performance of FINRA's Regulatory Responsibilities under the Plan (each, a "Quarterly Fee," and together, the "Fees").

##### a. *Quarterly Fees.*

(1) Quarterly Fees for each Participating Organization will be charged by FINRA according to the Participating Organization's "Percentage of Publicly Reported Trades" occurring over three-month billing periods. The "Percentage of Publicly Reported Trades" shall equal a Participating Organization's total number of reported NMS Stock trades during the relevant period as specified in paragraph 1b. (the "Numerator"), divided by the total number of all NMS Stock trades for the same period as specified in paragraph 1b. (the "Denominator"). For purposes of clarification, ADF and Trade Reporting Facility ("TRF") activity will be included in the Denominator. Additionally, with regard to TRFs, TRF trade volume will be charged to FINRA. Consequently, for purposes of calculating the Quarterly Fees, the volume for each Participant Organization's TRF will be calculated separately (that is, TRF volume will be broken out from the Participating Organization's overall Percentage of Publicly Reported Trades) and the fees for such will be billed to FINRA in

accordance with paragraph 1a.(2), rather than to the applicable Participating Organization.

(2) The Quarterly Fees shall be determined by FINRA in the following manner for each Participating Organization:

(a) Less than 1.0%: If the Participating Organization's Percentage of Publicly Reported Trades for the relevant three-month billing period is less than 1.0%, the Quarterly Fee shall be \$6,250, per quarter ("Static Fee");

(b) Less than 2.0% but No Less than 1.0%: If the Participating Organization's Percentage of Publicly Reported Trades for the relevant three-month billing period is less than 2.0% but no less than 1.0%, the Quarterly Fee shall be \$18,750, per quarter ("Static Fee");

(c) 2.0% or Greater: If the Participating Organization's Percentage of Publicly Reported Trades for the relevant three-month billing period is 2.0% or greater, the Quarterly Fee shall be the amount equal to the Participating Organization's Percentage of Publicly Reported Trades multiplied by FINRA's total charge ("Total Charge") for its performance of Regulatory Responsibilities for the relevant three-month billing period.

(3) Increases in Static Fees. FINRA will re-evaluate the Quarterly Fees on an annual basis during the annual budget process outlined in paragraph 1.c. below. During each annual re-evaluation, FINRA will have the discretion to increase the Static Fees by a percentage no greater than the percentage increase in the Final Budget over the preceding year's Final Budget. Any changes to the Static Fees shall not require an amendment to this Agreement, but rather shall be memorialized through the budget process.

(4) Increases in Total Charges. Any change in the Total Charges (whether a Final Budget increase or any mid year change) shall not require an amendment to this Agreement, but rather shall be memorialized through the budget process.

b. *Source of Data.* For purposes of calculation of the Percentage of Publicly Reported Trades for each Participating Organization, FINRA will use trades reported to the two SIPs (a) the Consolidated Tape Association ("CTA"), and (b) the Unlisted Trading Privileges Plan. In each case, FINRA will use the total trades as may be adjusted by the Participating Organization. Adjustments will include any separation or breakup of the number of trades as a result of reporting of bunched or bundled trades by a Participating Organization but will not

include any adjustments resulting from single-priced opening, reopening or closing auction trades. Each Participating Organization that reports bunched or bundled trades will report to FINRA any adjustments to its total number of NMS Stock trades on the 15th of the month following the end of the quarter.

c. *Annual Budget Forecast.* FINRA will notify the Participating Organizations of the forecasted costs of its insider trading program for the following calendar year by close of business on October 15 of the then-current year (the "Forecasted Budget"). FINRA shall use best efforts to provide as accurate a forecast as possible. FINRA shall then provide a final submission of the costs following approval of such costs by its Board of Governors (the "Final Budget"). Subject to paragraph 1d. below, in the event of a difference between the Forecasted Budget and the Final Budget, the Final Budget will govern.

d. *Increases in Fees over Five Percent.*

(1) In the event that any proposed increase to Fees by FINRA for a given calendar year (which increase may arise either during the annual budgetary forecasting process or through any mid-year increase) will result in a cumulative increase in such calendar year's Fees of more than five percent (5%) above the preceding calendar year's Final Budget (a "Major Increase"), then senior management of any Participating Organization (a) that is a Listing Market or (b) for which the Percentage of Publicly Reported Trades is then currently twenty percent (20%) or greater, shall have the right to call a meeting with the senior management of FINRA in order to discuss any disagreement over such proposed Major Increase. By way of example, if FINRA provides a Final Budget for 2011 that represents an 4% increase above the Final Budget for 2010, the terms of this paragraph 1.d.(1) shall not apply; if, however, in April of 2011, FINRA notifies the Exchange Committee of an increase in Fees that represents an additional 3% increase above the Final Budget for 2010, then the increase shall be deemed a Major Increase, and the terms of this paragraph 1.d.(1) shall become applicable (*i.e.*, 4% and 3% represents a cumulative increase of 7% above the 2010 Final Budget).

(2) In the event that senior management members of the involved parties are unable to reach an agreement regarding the proposed Major Increase, then the matter shall be referred back to the Exchange Committee for final resolution. Prior to the matter being referred back to the Exchange

Committee, nothing shall prohibit the parties from conferring with the SEC. Resolution shall be reached through a vote of no fewer than all Participating Organizations seated on the Exchange Committee, and a simple majority shall be required in order to reject the proposed Major Increase.

e. *Time Tracking.* FINRA shall track the time spent by staff on insider trading responsibilities under this Agreement; however, time tracking will not be used to allocate costs.

2. *Invoicing and Payment.* FINRA shall invoice each Participating Organization for the Quarterly Fee associated with the regulatory activities performed pursuant to this Agreement during the previous three-month billing period within forty five (45) days of the end of such previous 3-month billing period. A Participating Organization shall have thirty (30) days from date of invoice to make payment to FINRA on such invoice. The invoice will reflect the Participating Organization's Percentage of Publicly Reported Trades for that billing period.

3. *Disputed Invoices; Interest.* In the event that a Participating Organization disputes an invoice or a portion of an invoice, the Participating Organization shall notify FINRA in writing of the disputed item(s) within fifteen (15) days of receipt of the invoice. In its notification to FINRA of the disputed invoice, the Participating Organization shall identify the disputed item(s) and provide a brief explanation of why the Participating Organization disputes the charges. FINRA may charge a Participating Organization interest on any undisputed invoice or the undisputed portions of a disputed invoice that a Participating Organization fails to pay within thirty (30) days of its receipt of such invoice. Such interest shall be assessed monthly. Interest will mean one and one half percent per month, or the maximum allowable under applicable law, whichever is less.

4. *Taxes.* In the event any governmental authority deems the regulatory activities allocated to FINRA to be taxable activities similar to the provision of services in a commercial context, the other Participating Organizations agree that they shall bear full responsibility, on a joint and several basis, for the payment of any such taxes levied on FINRA, or, if such taxes are paid by FINRA directly to the governmental authority, the other Participating Organizations agree that they shall reimburse FINRA for the amount of any such taxes paid.

5. *Audit Right; Record Keeping.*

a. *Audit Right.*

(i) Once every rolling twelve (12) month period, FINRA shall permit no more than one audit (to be performed by one or more Participating Organizations) of the Fees charged by FINRA to the Participating Organizations hereunder and a detailed cost analysis supporting such Fees (the "Audit"). The Participating Organization or Organizations that conduct this Audit will select a nationally-recognized independent auditing firm (or may use its regular independent auditor, providing it is a nationally-recognized auditing firm) ("Auditing Firm") to act on its, or their behalf, and will provide reasonable notice to other Participating Organizations of the Audit. FINRA will permit the Auditing Firm reasonable access during FINRA's normal business hours, with reasonable advance notice, to such financial records and supporting documentation as are necessary to permit review of the accuracy of the calculation of the Fees charged to the Participating Organizations. The Participating Organization, or Organizations, as applicable, other than FINRA, shall be responsible for the costs of performing any such audit.

(ii) If, through an Audit, the Exchange Committee determines that FINRA has inaccurately calculated the Fees for any Participating Organization, the Exchange Committee will promptly notify FINRA in writing of the amount of such difference in the Fees, and, if applicable, FINRA shall issue a reimbursement of the overage amount to the relevant Participating Organization(s), less any amount owed by the Participating Organization under any outstanding, undisputed invoice(s). If such an Audit reveals that any Participating Organization paid less than what was required pursuant to the Agreement, then that Participating Organization shall promptly pay FINRA the difference between what the Participating Organization owed pursuant to the Agreement and what that Participating Organization originally paid FINRA. If FINRA disputes the results of an Audit regarding the accuracy of the Fees, it will submit the dispute for resolution pursuant to the dispute resolution procedures in paragraph 12 of the Agreement.

(iii) In the event that through the review of any supporting documentation provided during the Audit, any one or more Participating Organizations desire to discuss with FINRA the supporting documentation and any questions arising therefrom with regard to the manner in which regulation was conducted, the Participating Organization(s) shall call a



meeting with FINRA. FINRA shall in turn notify the Exchange Committee of this meeting in advance, and all Participating Organizations shall be welcome to attend (the “Fee Analysis Meeting”). The parties to this Agreement acknowledge and agree that while FINRA commits to discuss the supporting documentation at the Fee Analysis Meeting, FINRA shall not be subject, by virtue of the above Audit rights or any discussions during the Fee Analysis Meeting or otherwise, to any limitation whatsoever, other than the Increase in Fee provisions set forth in paragraph 1.d. of this Exhibit, on its discretion as to the manner and means by which it conducts its regulatory efforts in its role as the SRO primarily liable for regulatory decisions under this Agreement. To that end, no disagreement among the Participating Organizations as to the manner or means by which FINRA conducts its regulatory efforts hereunder shall be subject to the dispute resolution procedures hereunder, and no Participating Organization shall have the right to compel FINRA to alter the manner or means by which it conducts its regulatory efforts. Further, a Participating Organization shall not have the right to compel a rebate or reassessment of fees for services rendered, on the basis that the Participating Organization would have conducted regulatory efforts in a different manner than FINRA in its professional judgment chose to conduct its regulatory efforts.

b. *Record Keeping.* In anticipation of any audit that may be performed by the Exchange Committee under paragraph 5.a. above, FINRA shall keep accurate financial records and documentation relating to the Fees charged by it under this Agreement.

**Exhibit C: Reports**

FINRA shall provide the following information in reports to the Exchange Committee, which information covers activity occurring under this Agreement:

1. *Alert Summary Statistics:* Total number of surveillance system alerts generated by quarter along with associated number of reviews and investigations. In addition, this paragraph shall also reflect the number of reviews and investigations originated from a source other than an alert. A separate table would be presented for the trading activity of the NMS Stocks listed on each Participating Organization’s exchange.

2008	Surveillance alerts	Investigations
1st Quarter		
2nd Quarter		
3rd Quarter		
4th Quarter		
2008 Total		

2. *Aging of Open Matters:* Would reflect the aging for all currently open matters for the quarterly period being reported. A separate table would be presented for the trading activity of the NMS Stocks listed on each Participating Organization’s exchange.

*Example:*

	Surveillance alerts	Investigations
0–6 months		
6–9 months		
9–12 months		
12+ months		
Total		

3. *Timeliness of Completed Matters:* Would reflect the total age of those matters that were completed or closed during the quarterly period being reported. FINRA will provide total referrals to the SEC.

	Surveillance alerts	Investigations
0–6 months		
6–9 months		
9–12 months		
12+ months		
Total		

4. *Disposition of Closed Matters:* Would reflect the disposition of those matters that were completed or closed during the quarterly period being reported. A separate table would be presented for the trading activity of the NMS Stocks listed on each Participating Organization’s exchange.

*Example:*

	Surveillance YTD	Investigations YTD
No Further Review		
Letter of Caution/Admonition Fine		
Referred to Legal/Enforcement		
Referred to SEC/SRO		
Merged		

	Surveillance YTD	Investigations YTD
Other		
Total		

5. *Pending Reviews.* In addition to the above reports, the Chief Regulatory Officer (CRO) (or his or her designee) of any Participating Organization that is also a Listing Market may inquire about pending reviews involving stocks listed on that Participating Organization’s market. FINRA will respond to such inquiries from a CRO; provided, however, that (a) the CRO must hold any information provided by FINRA in confidence and (b) FINRA will not be compelled to provide information in contradiction of any mandate, directive or order from the SEC, US Attorney’s Office, the Office of any State Attorney General or court of competent jurisdiction.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 4–566 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 4–566. 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 plan that are filed with the Commission, and all written communications relating to the proposed plan 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 plan also will be available for inspection and copying at the principal offices of the Participating Organizations. 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 4-566 and should be submitted on or before October 20, 2020.

## V. Discussion

The Commission finds that the Plan, as proposed to be amended, is consistent with the factors set forth in Section 17(d) of the Act<sup>14</sup> and Rule 17d-2 thereunder<sup>15</sup> in that it is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. The Commission continues to believe that the Plan, as amended, should reduce unnecessary regulatory duplication by allocating regulatory responsibility for the surveillance, investigation, and enforcement of Common Rules to FINRA. Accordingly, the proposed amendment to the Plan promotes efficiency by consolidating these regulatory functions in a single SRO.

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The amendment adds MIAX PEARL as a Participant to the Plan, and adds Exchange Act Rules 14e-3 and 15(g) to the list of rules in Exhibit A.<sup>16</sup> The Commission believes that the current amendment to the Plan does not raise any new regulatory issues that the Commission has not previously considered, and therefore believes that the amended Plan should become effective without any undue delay.

<sup>14</sup> 15 U.S.C. 78q(d).

<sup>15</sup> 17 CFR 240.17d-2.

<sup>16</sup> The Commission notes that the most recent prior amendment to the Plan, which, among other things, added MEMX as a Party to the Plan, was published for comment and the Commission did not receive any comments thereon. See *supra* note 11.

## VI. Conclusion

This order gives effect to the amended Plan submitted to the Commission that is contained in File No. 4-566.

*It is therefore ordered*, pursuant to Section 17(d) of the Act,<sup>17</sup> that the Plan, as amended, filed with the Commission pursuant to Rule 17d-2 on September 18, 2020, is hereby approved and declared effective.

*It is further ordered* that the Participating Organizations are relieved of those regulatory responsibilities allocated to FINRA under the amended Plan to the extent of such allocation.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>18</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2020-21408 Filed 9-28-20; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-89974; File No. SR-CboeBZX-2020-071]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule

September 23, 2020.

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 September 11, 2020, Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the fee schedule. 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/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), 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 amend its fee schedule applicable to its equities trading platform (“BZX Equities”) to: (1) Amend certain standard rates; (2) update the Add Volume Tiers; (3) update the Supplemental Incentive Program Tiers; (4) include a Remove Volume Tier; and (5) include additional Lead Market Maker (“LMM”) Add Volume Tiers.<sup>3</sup>

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 13 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,<sup>4</sup> no single registered equities exchange has more than 18% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a

<sup>3</sup> The Exchange initially filed the proposed fee changes on September 1, 2020 (SR-CboeBZX-2020-069). On September 11, 2020, the Exchange withdrew that filing and submitted this filing.

<sup>4</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (August 24, 2020), available at [https://markets.cboe.com/us/equities/market\\_statistics/](https://markets.cboe.com/us/equities/market_statistics/).

<sup>17</sup> 15 U.S.C. 78q(d).

<sup>18</sup> 17 CFR 200.30-3(a)(34).

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

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