

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 under Section 19(b)(2)(B) <sup>10</sup> of the Act 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2020-68 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-NYSEAMER-2020-68. 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-NYSEAMER-2020-68 and should be submitted on or before October 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90085; File No. SR-NYSEAMER-2020-69]

#### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Harmonize Rules 9261 and 9830 With Recent Changes by the Financial Industry Regulatory Authority, Inc.

October 2, 2020.

Pursuant to Section 19(b)(1) <sup>1</sup> of the Securities Exchange Act of 1934 (the "Act") <sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on September 23, 2020, NYSE American LLC ("NYSE American" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to harmonize Rules 9261 and 9830 with recent changes by the Financial Industry Regulatory Authority, Inc. ("FINRA") that temporarily grants the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing novel coronavirus ("COVID-19") pandemic. As proposed, these

temporary amendments would be in effect through December 31, 2020. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

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

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

##### 1. Purpose

The Exchange proposes to harmonize Rules 9261 (Evidence and Procedure in Hearing) and 9830 (Hearing) with recent changes by FINRA to its Rules 9261 and 9830 that temporarily grants to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID-19 pandemic. As proposed, these temporary amendments would be in effect through December 31, 2020.<sup>4</sup>

##### Background

In 2016, NYSE American (then known as NYSE MKT LLC) adopted disciplinary rules that are, with certain exceptions, substantially the same as the Rule 8000 Series and Rule 9000 Series of FINRA and its affiliate, the New York Stock Exchange LLC ("NYSE"), and which set forth rules for conducting investigations and enforcement actions.<sup>5</sup>

<sup>4</sup> The Exchange may submit a separate rule filing to extend the expiration date of the proposed temporary amendments if the Exchange requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2020. The amended NYSE American rules will revert back to their current state at the conclusion of the temporary relief period and any extension thereof.

<sup>5</sup> See Securities Exchange Act Release Nos. 77241 (February 26, 2016), 81 FR 11311 (March 3, 2016) (SR-NYSEMKT-2016-30) ("2016 Notice").

<sup>10</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

<sup>25</sup> 15 U.S.C. 78a.

<sup>37</sup> 17 CFR 240.19b-4.

The NYSE MKT disciplinary rules were implemented on April 15, 2016.<sup>6</sup>

In adopting disciplinary rules modeled on FINRA's rules, NYSE American adopted the hearing and evidentiary processes set forth in Rule 9261 and in Rule 9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 9261 and Rule 9830 are substantially the same as the FINRA rules with certain modifications.<sup>7</sup>

In view of the ongoing spread of COVID-19 and its effect on FINRA's adjudicatory functions nationwide, FINRA recently filed a temporary rule change to grant FINRA's Office of Hearing Officers ("OHO") and the National Adjudicatory Council ("NAC") the authority to conduct certain hearings by video conference, if warranted by the current COVID-19-related public health risks posed by in-person hearings. Among the rules FINRA amended were Rules 9261 and 9830.<sup>8</sup>

FINRA represented in its filing that its protocol for conducting hearings by video conference would ensure that such hearings maintain fair process for the parties by, among other things, FINRA's use of a high quality, secure and user-friendly video conferencing service and provide thorough instructions, training and technical support to all hearing participants.<sup>9</sup> According to FINRA, the proposed changes were a reasonable interim solution to allow FINRA's critical adjudicatory processes to continue to function while protecting the health and safety of hearing participants as FINRA works towards resuming in-person

hearings in a manner that is compliant with the current guidance of public health authorities.<sup>10</sup>

Pursuant to a regulatory services agreement ("RSA"), FINRA's OHO will administer all aspects of adjudications, including assigning hearing officers to serve as NYSE American hearing officers. A hearing officer from OHO will, among other things, preside over the disciplinary hearing, select and chair the hearing panel, and prepare and issue written decisions. The Chief or Deputy Hearing Officer for all Exchange disciplinary hearings are currently drawn from OHO and are all FINRA employees. The Exchange believes that OHO will utilize the same video conference protocol and processes for Exchange matters under the RSA as it proposes for FINRA matters.

Given that FINRA and its OHO administers disciplinary hearings on the Exchange's behalf, and given that the public health concerns addressed by FINRA's amendments apply equally to the Exchange's disciplinary hearings, the Exchange proposes to temporarily amend its disciplinary rules to allow FINRA to conduct virtual hearings on its behalf.

#### Proposed Rule Change

Rule 9261(b) states that if a disciplinary hearing is held, a party shall be entitled to be heard in-person, by counsel, or by the party's representative. Absent an agreement by all parties to proceed in another manner, Exchange disciplinary hearings are in-person. As noted, the Chief and Deputy Hearing Officers for all Exchange and cross-market matters are supplied by OHO and are FINRA employees. Accordingly, absent an agreement by all parties to proceed in another manner, under Rule 9261(b) the Chief or Deputy Hearing Officer conducts disciplinary hearings in-person.

Similarly, Rule 9830 outlines the requirements for hearings for temporary and permanent cease and desist orders. Rule 9830(a), however, does not specify that a party shall be entitled to be heard in-person, by counsel, or by the party's representative.

Consistent with FINRA's temporary amendment to FINRA Rules 9261 and 9830, the Exchange proposes to temporarily grant the Chief or Deputy Chief Hearing Officer temporary authority to order, upon consideration of the current COVID-19-related public health risks presented by an in-person hearing, that a hearing under those rules be conducted by video conference. The

proposed rule change will permit OHO to make an assessment, based on critical COVID-19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted, FINRA has adopted a detailed and thorough protocol to ensure that hearings conducted by video conference will maintain fair process for the parties.<sup>11</sup> The Exchange believes that this is a reasonable procedure to follow in hearings under Rules 9261 and 9830 chaired by a FINRA employee.<sup>12</sup>

To effectuate these changes, the Exchange proposes to add the following sentence to Rule 9261(b):

Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

The proposed text is identical to the language adopted by FINRA.<sup>13</sup>

Similarly, the Exchange proposes to add the following text to Rule 9830(a):

Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

Once again, the proposed language is identical to the language adopted by FINRA.<sup>14</sup>

#### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>15</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>16</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market

<sup>6</sup> See NYSE MKT Information Memorandum 16-02 (March 14, 2016).

<sup>7</sup> See 2016 Notice, 81 FR at 11327 & 11332.

<sup>8</sup> See Securities Exchange Act Release Nos. 83289 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR-FINRA-2020-027) ("FINRA Filing"). FINRA also proposed to temporarily amend FINRA Rules 1015 and 9524. FINRA Rule 1015 governs the process by which an applicant for new or continuing membership can appeal a decision rendered by FINRA's Department of Member Supervision under FINRA Rule 1014 or 1017 and request a hearing which would be conducted by a subcommittee of the NAC. See *id.* at 55714. The Exchange has not adopted FINRA Rule 1015. FINRA Rule 9524 governs the process by which a statutorily disqualified member firm or associated person can appeal the Department's recommendation to deny a firm or sponsoring firm's application to the NAC. See *id.* Under the Exchange's version of Rule 9524, if the Exchange's Chief Regulatory Officer rejects the application, the member organization, sponsoring member organization, or applicant may request a review by the Exchange Board of Directors. This differs from FINRA's process, which provides for a hearing before the NAC and further consideration by the FINRA Board of Directors.

<sup>9</sup> See FINRA Filing, 85 FR at 55713.

<sup>10</sup> See *id.*

<sup>11</sup> See FINRA Filing, 85 FR at 55713.

<sup>12</sup> The Exchange notes, as did FINRA, that SEC's Rules of Practice pertaining to temporary cease-and-desist orders provide that parties and witnesses may participate by telephone or, in the Commission's discretion, through the use of alternative technologies that allow remote access, such as a video link. See SEC Rule of Practice 511(d)(3); Comment (d); see FINRA Filing, 85 FR at 55714, n. 21.

<sup>13</sup> See FINRA Filing, 85 FR at 55712.

<sup>14</sup> *Id.*

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

<sup>16</sup> 15 U.S.C. 78f(b)(5).

and a national market system and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.<sup>17</sup>

The Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As previously noted, the text of Rule 9261 and Rule 9830 is substantially the same as FINRA's rule. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed temporary rule change will permit the Exchange to effectively conduct hearings during the COVID-19 pandemic in situations where in-person hearings present likely public health risks. The ability to conduct hearings by video conference will thereby permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to proceed without delay, thereby enabling the Exchange to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

Conducting hearings via video conference will give the parties and adjudicators simultaneous visual and oral communication without the risks inherent in physical proximity during a pandemic. Temporarily permitting hearings for disciplinary matters to proceed by video conference maintains fair process by providing respondents a timely opportunity to address and potentially resolve any allegations of misconduct.

As noted, FINRA will use a high quality, secure video conferencing technology with features that will allow the parties to reasonably approximate those tasks that are typically performed at an in-person hearing, such as sharing documents, marking documents, and

utilizing breakout rooms. FINRA will also provide training for participants on how to use the video conferencing platform and detailed guidance on the procedures that will govern such hearings. Moreover, the Chief or Deputy Chief Hearing Officer may take into consideration, among other things, a hearing participant's access to connectivity and technology in scheduling a video conference hearing and can also, at their discretion, allow a party or witness to participate by telephone, if necessary, to address such access issues.<sup>18</sup>

For the same reasons, the Exchange believes that the proposed rule change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.<sup>19</sup> The Exchange believes that the temporary proposed rule change strikes an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while accounting for the significant health and safety risks of in-person hearings stemming from the outbreak of COVID-19.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to provide temporary relief given the impacts of the COVID-19 pandemic. In its filing, FINRA provides an abbreviated economic impact assessment maintaining that the changes are necessary to temporarily rebalance the attendant benefits and costs of the obligations under FINRA Rules 1015, 9261, 9524 and 9830 in response to the impacts of the COVID-19 pandemic that is equally applicable to the changes the Exchange proposes.<sup>20</sup> The Exchange accordingly incorporates FINRA's abbreviated economic impact assessment by reference.

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

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

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>21</sup> and Rule 19b-4(f)(6) thereunder.<sup>22</sup> Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)<sup>23</sup> of the Act 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](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAMER-2020-69 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-NYSEAMER-2020-69. This file number should be included on the subject line if email is used. To help the Commission process and review your

<sup>17</sup> 15 U.S.C. 78f(b)(7) and 78f(d).

<sup>18</sup> See text accompanying notes 9-10, *supra*.

<sup>19</sup> 15 U.S.C. 78f(b)(7) and 78f(d).

<sup>20</sup> See FINRA Filing, 85 FR at 55716.

<sup>21</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>22</sup> 17 CFR 240.19b-4(f)(6).

<sup>23</sup> 15 U.S.C. 78s(b)(2)(B).

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, on business days between the hours of 10:00 a.m. and 3:00 p.m., located at 100 F Street NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

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-NYSEAMER-2020-69 and should be submitted on or before October 29, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-90071; File No. SR-CTA/CQ-2020-02]

### Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Thirty-Fifth Substantive Amendment to the Second Restatement of the CTA Plan and Twenty-Sixth Substantive Amendment to the Restated CQ Plan

October 1, 2020.

Pursuant to Section 11A of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 608 thereunder,<sup>2</sup> notice is hereby given that on

September 4, 2020,<sup>3</sup> the Participants<sup>4</sup> in the Second Restatement of the Consolidated Tape Association ("CTA") Plan and the Restated Consolidated Quotation ("CQ") Plan ("CTA/CQ Plans" or "Plans") filed with the Securities and Exchange Commission ("Commission") a proposal to amend the Plans. The amendments represent the Thirty-Fifth Substantive Amendment to the CTA Plan and Twenty-Sixth Substantive Amendment to the CQ Plan ("Amendments"). Under the Amendments, the Participants propose to add MIAx PEARL, LLC ("MIAx PEARL") as a Participant to the Plans.

The proposed Amendments have been filed by the Participants pursuant to Rule 608(b)(3)(ii) under Regulation NMS<sup>5</sup> as concerned solely with the administration of the Plans and as "Ministerial Amendments" under both Section IV(b) of the CTA Plan and Section IV(c) of the CQ Plan. As a result, the Amendments become effective upon filing and can be submitted by the Chair of the Plan's Operating Committee. The Commission is publishing this notice to solicit comments on the Amendments from interested persons. Set forth in Sections I and II is the statement of the purpose and summary of the Amendments, along with the information required by Rules 608(a) and 601(a) under the Act, prepared and submitted by the Participants to the Commission.

#### I. Rule 608(a)

##### A. Purpose of the Amendment

The above-captioned Amendments add MIAx PEARL as a Participant to the Plans.

##### B. Governing or Constituent Documents

Not applicable.

##### C. Implementation of Amendment

Because the Amendments constitute "Ministerial Amendments" under both Section IV(b) of the CTA Plan and Section IV(c) of the CQ Plan, the Chairman of the Plan's Operating

<sup>3</sup> See Letter from Robert Books, Chairman, Operating Committee, CTA/CQ Plans, to Vanessa Countryman, Secretary, Commission, dated September 3, 2020.

<sup>4</sup> The Participants are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAx PEARL, LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the "Participants").

<sup>5</sup> 17 CFR 242.608(b)(2).

Committee may submit the Amendments to the Commission on behalf of the Participants in the Plans. Because the Participants designate the Amendments as concerned solely with the administration of the Plans, the Amendments become effective upon filing with the Commission.

##### D. Development and Implementation Phases

Not applicable.

##### E. Analysis of Impact on Competition

The Amendments do not impose any burden on competition because they simply add MIAx PEARL as a Participant to the Plans. MIAx PEARL has completed the required steps to be added to the Plans.

##### F. Written Understanding or Agreement Relating to Interpretation of, or Participation in Plan

Not applicable.

##### G. Approval by Sponsors in Accordance With Plan

See Item I.C. above.

##### H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

##### I. Terms and Conditions of Access

Not applicable.

##### J. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

##### K. Method and Frequency of Processor Evaluation

Not applicable.

##### L. Dispute Resolution

Not applicable.

## II. Regulation NMS Rule 601(a)

##### A. Equity Securities for Which Transaction Reports Shall be Required by the Plan

Not applicable.

##### B. Reporting Requirements

Not applicable.

##### C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

##### D. Manner of Consolidation

Not applicable.

<sup>24</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C 78k-1(a)(3).

<sup>2</sup> 17 CFR 242.608.