

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91370; File No. SR-BX-2021-006]

### Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Books and Records Rules and Update Obsolete NASD References in Its Rulebook

March 19, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 8, 2021, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 update the Exchange's books and records provisions; update obsolete references to NASD rules in the Exchange's rulebook ("Rulebook"); and make other related and cleanup changes.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, 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 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

In 2008, the Financial Industry Regulatory Authority (FINRA) began a process to harmonize and streamline its rules by retiring, consolidating, and relocating NASD rules into the FINRA rulebook.<sup>3</sup> Consistent with those changes, the Exchange is proposing to update the Exchange's books and records provisions; replace outdated NASD references in its Rulebook; delete unnecessary or duplicative rule text; and consolidate certain Exchange rules. Additionally, the Exchange proposes to make some necessary cleanup changes to improve the readability of its Rulebook.

Generally, where appropriate, the Exchange will replace the term "Association" and the "NASD" acronym with the acronym "FINRA." Specifically, the Exchange will provide cites to the updated FINRA rules and current internal references as provided in the relocated FINRA rules.

Additionally, the Exchange proposes to delete throughout its Rulebook the paragraphs that refer to the consolidation of NASD rules into the FINRA rulebook, since FINRA has completed the relocation of the NASD rules. Finally, the Exchange proposes to update internal cross-references as necessary.<sup>4</sup>

##### A. Books and Records Rules

The FINRA Books and Records Filing,<sup>5</sup> amended prior NASD Rule 3110 (Books and Records) and adopted the FINRA Rule 4510 Series (Books and Records Requirements). This new Rule 4510 Series included FINRA Rules 4511 (General Requirements), 4512 (Customer Account Information), 4513 (Records of Written Customer Complaints), 4514 (Authorization Records for Negotiable Instruments Drawn From a Customer's Account), and 4515 (Approval and

Documentation of Changes in Account Name or Designation).

##### Nasdaq Books and Records Amendments

In 2012, The Nasdaq Stock Market's ("Nasdaq") filed a proposal to mirror the FINRA Books and Records filing.<sup>6</sup> Nasdaq's filing renumbered its then Rule 3110 as Rule 3110A (which was later relocated under Nasdaq General 9, Section 30<sup>7</sup>) and adopted the Nasdaq Rule 4510A Series to parallel the provisions in the FINRA rulebook, as shown in the chart below:

Nasdaq books and records	FINRA books and records
Rule 4511A (Now Nasdaq Gen. 9, Section 43).	FINRA Rule 4511.
Rule 4512A (Now Nasdaq Gen. 9, Section 45).	FINRA Rule 4512.
Rule 4513A (Now Nasdaq Gen. 9, Section 44).	FINRA Rule 4513.
Rule 4514A (Now Nasdaq Gen. 9, Section 46).	FINRA Rule 4514.
Rule 4515A (Now Nasdaq Gen. 9, Section 47).	FINRA Rule 4515.

##### BX General 9, Section 30

Consistent with the 2012 Nasdaq filing and the Nasdaq rules listed above, the Exchange proposes to amend BX General 9, Section 30 and provide that Exchange members (and their associated persons) shall comply with FINRA Rule 4511 as if such rule were part of the Exchange's rules. Moreover as detailed below, the Exchange proposes to incorporate by reference FINRA Rules 4511 through 4515 under its respective General 9, Sections 43 through 47:

##### (1) General 9, Section 43

The Exchange proposes to incorporate the FINRA rule by reference, indicating that Exchange members and persons associated with a member shall comply with FINRA Rule 4511 as if such Rule were part of the Exchange rules. Additionally, the Exchange proposes that references to FINRA rules shall be construed as references to the rules of the Exchange rules, and that references to FINRA's books and records shall be construed as references to the Exchange's books and records.

##### (2) General 9, Section 44

The Exchange proposes to incorporate FINRA Rule 4513 by reference, indicating that Exchange members and persons associated with a member shall comply with FINRA Rule 4513 as if

<sup>3</sup> See *Information Notice*, March 28, 2008 (Rulebook Consolidation Process) at <https://www.finra.org/sites/default/files/NoticeDocument/p038121.pdf>.

<sup>4</sup> The Exchange will request an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for those FINRA rules that it proposes to incorporate by reference. The proposed rule changes that are the subject of this filing will be operative upon the approval of the Exchange's request for an exemption under Section 36 of the Exchange Act from filing proposed rule changes.

<sup>5</sup> See Securities Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (SR-FINRA-2010-052) ("FINRA Books and Records Filing").

<sup>6</sup> See Securities Exchange Act Release No. 68123 (October 31, 2012), 77 FR 66658 (November 6, 2012) (SR-NASDAQ-2012-123).

<sup>7</sup> See Securities Exchange Act Release No. 87778 (December 17, 2019), 84 FR 70590 (December 23, 2019) (SR-NASDAQ-2019-098).

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

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

such Rule were part of the Exchange rules.

(3) General 9, Section 45

With the elimination of rule text within current General 9, Section 30, the Exchange proposes to adopt a new rule, similar to Nasdaq General 9, Section 45, which provides:

(a) Exchange members and persons associated with a member shall comply with FINRA Rule 4512 as if such Rule were part of the Exchange rules.

(b) For purposes of this Rule:

(1) References to Rule 3260 shall be construed as references to General 9, Section 19;

(2) references to Rules 2070, 2090, and 4512 shall be construed as references to General 9, Sections 29, 10, and this Rule, respectively;

(3) references to “a prior FINRA rule” shall be construed as references to “a FINRA or Exchange rule in effect prior to the effectiveness of FINRA Rule 4512”;

(4) The Exchange and FINRA are parties to the Regulatory Contract pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. Therefore, Exchange members are complying with this Rule by complying with FINRA Rule 4512 as written, including, for example, providing information required by FINRA staff. In addition, functions performed by FINRA, FINRA departments, and FINRA staff under this Rule are being performed by FINRA on behalf of the Exchange.

(4) General 9, Section 46

The Exchange proposes to incorporate FINRA Rule 4514 by reference, indicating that Exchange members and persons associated with a member shall comply with FINRA Rule 4514 as if such Rule were part of the Exchange rules.

(5) General 9, Section 47

The Exchange proposes to incorporate FINRA Rule 4515 by reference, indicating that Exchange members and persons associated with a member shall comply with FINRA Rule 4515 as if such Rule were part of the Exchange rules. Furthermore, the Exchange proposes that references to FINRA Rule 3260 shall be construed as references to Exchange’s General 9, Section 19.

## B. Global Changes

As previously indicated, the Exchange also proposes to replace the terms “Association” and/or “NASD” with the term “FINRA,” without making other accompanying changes to the rules (this will also include a few, necessary grammatical changes, such as removing where appropriate the word “the”). Accordingly, the Exchange will update General 2, Section 5; General 9, Section 1(b); General 9, Section 3; General 9,

Section 10; General 9, Section 21; General 9, Section 33; and Rules 2830; 2843; 2848; 11210; IM–11710; 11860; and 11870. The Exchange notes that it will not update references to NASD notices in its Rulebook. Specifically, the notices referenced in General 9, Section 20(e) (“NASD Notice to Members 97–19”) and Rule 4630(d) (“NASD Notice to Members 91–45”) will remain unchanged.

## C. Specific NASD Rule Changes

The Exchange proposes the following changes to capture the amendments and relocation of rules in the FINRA rulebook. Additionally, the cross-references updates are intended to keep the Exchange’s rules aligned with their corresponding FINRA rules:

### General 2, Section 5. Regulation of the Exchange and Its Members

The Exchange proposes to update General 2, Section 5 (“Regulation of the Exchange and Its Members”) by splitting its subsection (b) into two separate subsections and, thus, follow the same rule structure of equivalent General 2, Section 5 in Nasdaq rulebook.

Additionally, as previously informed, given that FINRA has already completed the consolidation and relocation of the NASD rules, the Exchange proposes to delete current subsection (c).

### General 2, Section 15. Business Continuity Plans

The Exchange proposes to update the NASD Rule 3510 reference in this rule and replace it with a reference to FINRA Rule 4370 (“Business Continuity Plans and Emergency Contact Information”). FINRA Rule 4370 was adopted to include NASD Rules 3510 (“Business Continuity Plans”) and NASD Rule 3520 (“Emergency Contact Information”) without substantive changes to the rule text.<sup>8</sup>

Additionally, the Exchange proposes to include a new paragraph (b) that will indicate that references in FINRA Rule 4370 to Rule 4517 shall be construed as references to Exchange’s General 2, Section 16.

### General 3, Section 1. Membership, Registration and Qualification Requirements

The Exchange proposes to make a cleanup change in General 3, Section 1. Specifically, the Exchange proposes to update the text in the rule’s introductory text by replacing the reference to BX Rule 0120 with a reference to the General 1 and Equity 1

title. This change is made pursuant to the relocation of Exchange Rules 0111, 0112, 0113, 0120, and 0121 to General 1 and Equity 1 in 2019.<sup>9</sup>

Additionally, the Exchange will update the reference to the BX Rule 1200 Series with a reference to General 4 (“Registration Requirements”),<sup>10</sup> which currently incorporates by reference Nasdaq’s registration rules.

### General 9, Section 1. General Standards

The Exchange proposes to update the title of current Section 1(b), “Trading Ahead of Customer Limit Order” with a title consistent with Nasdaq and FINRA rules: “Prohibition Against Trading Ahead of Customer Orders.”

Moreover, the Exchange proposes to update the introductory paragraph in Section 1(b), that currently points to NASD Interpretive Material 2110–2 with a reference to FINRA Rule 5320 (“Prohibition Against Trading Ahead of Customer Orders”). In 2009, FINRA proposed to integrate NASD IM–2110–2 and NASD Rule 2111 into FINRA Rule 5320, to govern members’ treatment of customer orders and apply the new Rule 5320 to all equity securities uniformly, and to extend the application of NASD Rule 2111 to OTC equity securities.<sup>11</sup> In regard to this FINRA rule consolidation, the Exchange proposes to merge the contents of its Sections 1(b) and (h), as some of their contents will be otherwise duplicative.

Therefore, the Exchange proposes to delete Section 1(b)(1), which currently points to the term “NASD Rules” and provides a cross-reference to NASD Interpretive Material 2110–2(a). This is because Section 1(b)’s opening paragraph already requires members to comply with FINRA Rule 5320 as if it was an Exchange rule and FINRA Rule 5320 does not use the term “NASD Rules.”

Similarly, because current FINRA Rule 5320 does not contain references to NASD’s Board of Directors, the Exchange proposes to delete the text under current Section 1(b)(2) and renumber the subsequent subsections.

Moreover, to be consistent with FINRA Rule 5320, the Exchange proposes to remove, update, and insert new cross-references under renumbered Section 1(b)(1). The Exchange will thus delete the cross reference that currently

<sup>9</sup> See Securities Exchange Act Release No. 87468 (November 5, 2019), 84 FR 61091 (November 12, 2019) (SR–BX–2019–039).

<sup>10</sup> See Securities Exchange Act Release No. 85726 (April 26, 2019), 84 FR 18908 (May 2, 2019) (SR–BX–2019–010).

<sup>11</sup> See Securities Exchange Act Release No. 63895 (February 11, 2011), 76 FR 9386 (February 17, 2011) (SR–FINRA–2009–090).

<sup>8</sup> See Securities Exchange Act Release No. 60534 (August 19, 2009), 74 FR 44410 (August 28, 2009) (SR–FINRA–2009–036).

points to NASD Rules 2110 since no equivalent rule is provided under FINRA Rule 5320; relatedly, the Exchange will delete the reference to General 9, Section 1. The Exchange also proposes to replace the references to NASD Rules 2320 and 3110, respectively, with references to FINRA Rules 5310, and 4512 and provide the corresponding references in the Exchange rulebook. The Exchange proposes also to insert a cross-reference to FINRA Rule 7440 and the equivalent Exchange Rule 7440A.

The Exchange proposes to delete the text under renumbered Section 1(b)(3) and insert clarifying text indicating that FINRA Rule 5320.02(b) and the reference to Rule 6420 therein shall be disregarded. This is because the Exchange does not list or trade over the counter securities (“OTC”).

The Exchange proposes to update renumbered Section 1(b)(4) since the exemption referenced in it is now located in FINRA Rule 5320, Supplementary Material .03. Relatedly, the Exchange will insert in renumbered Section 1(b)(4) clarifying text indicating that members will comply with the rule’s reporting requirements.

The Exchange proposes to update Section 1(c) by replacing the reference to NASD Interpretive Material 2110–3 with a reference to FINRA Rule 5270 (“Front Running of Block Transactions”), which FINRA adopted to broaden the scope of the NASD rule and provide further clarity into activity that FINRA believes is inconsistent with just and equitable principles of trade.<sup>12</sup>

The Exchange also proposes to update Section 1(f) by replacing the reference to NASD Interpretive Material 2110–6 with a reference to FINRA Rule 2232 (“Customer Confirmations”). FINRA Rule 2232 was adopted to streamline and consolidate basic customer confirmation requirements in NASD Rule 2230, NASD IM–2110–6, and Incorporated NYSE Rule 409(f).<sup>13</sup>

The Exchange proposes to update Section 1(g) by replacing the reference to NASD Interpretive Material 2110–7 with a reference to FINRA Rule 2140 (“Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes”). FINRA Rule 2140 was adopted without any material changes to the NASD rule text.<sup>14</sup>

<sup>12</sup> See Securities Exchange Act Release No. 67774 (September 4, 2012), 77 FR 55519 (September 10, 2012) (SR–FINRA–2012–025).

<sup>13</sup> See Securities Exchange Act Release No. 63150 (October 21, 2010), 75 FR 66173 (October 27, 2010) (SR–FINRA–2009–058).

<sup>14</sup> See Securities Exchange Act Release No. 59495 (March 3, 2009), 74 FR 10632 (March 11, 2009) (SR–FINRA–2008–052).

Finally, following the deletion of Section 1(h), the Exchange proposes to re-letter current Section 1(i) (“Use of Manipulative, Deceptive or Other Fraudulent Devices”) as Section 1(h).

General 9, Section 3. Communications With the Public and Section 4. Institutional Sales Material and Correspondence

In 2012, FINRA adopted Rule 2210 (“Communications with the Public”) to encompass, among other provisions, NASD Rules 2210 and 2211, and NASD Interpretive Materials 2210–1 and 2210–4.<sup>15</sup> The Exchange proposes to consolidate the text of General 9, Sections 3 and 4 into current Section 3 and reserve current Section 4, as explained below.

Current General 9, Section 3(a) incorporates by reference NASD Rule 2210 (“Communications with the Public”). The Exchange proposes to update this reference with the name “FINRA.”

The Exchange also proposes to delete Section 3(b) which currently incorporates by reference NASD IM–2210–1 which, as explained above, was merged into FINRA Rule 2210. Updating current Section 3(b) to incorporate FINRA Rule 2210 will make Section 3(b) redundant. Therefore, Section 3(b) will be deleted as it is no longer necessary. Following the deletion of Section 3(b), the Exchange will re-letter current Section 3(c) as (b), without any changes to the rule text.

The Exchange proposes to delete General 9, Section 4 and relocate some of its contents under current General 9, Section 3. General 9, Section 4(a) will be deleted because Section 3(a) already incorporates the provisions from NASD Rule 2211 which were merged into current FINRA Rule 2210.

Furthermore, the Exchange believes that the exception in current Section 4(a) concerning NASD Rule 2211(d)(3) does not need to be added to General 9, Section 3(a), because that provision is no longer referenced in FINRA Rule 2210.

The Exchange also proposes to adopt current Section 4(b)(1) as Section 3(c), with a minor change. New Section 3(c) will provide that references to FINRA “membership” will be construed as references to membership with the Exchange.

Finally, the Exchange proposes to adopt part of the text in current Section 4(b)(2) as Section 3(d). New Section 3(d) will omit references to FINRA Rule 2210

<sup>15</sup> See Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (SR–FINRA–2011–035).

(as such incorporation is already provided in Section 3(a)) and will state that references to FINRA Rules 4512<sup>16</sup> and 3110<sup>17</sup> shall be read, respectively, as references to General 9, Section 45 and Section 20.

General 9, Section 9. Fairness Opinions

The Exchange proposes to update the NASD Rule 2290 reference in this rule and replace it with a reference to FINRA Rule 5150 (“Fairness Opinions”). The aforementioned NASD rule was relocated to FINRA Rule 5150 with no changes to the rule text.<sup>18</sup>

General 9, Section 10. Recommendations to Customers (Suitability)

The Exchange proposes to update the NASD Rule 2310 reference in this rule and replace it with a reference to FINRA Rule 2111 (“Suitability”). The FINRA Suitability rule was adopted in 2010 to include NASD Rule 2310 (Recommendations to Customers (Suitability)) and its related Interpretative Materials.<sup>19</sup>

As previously described, the Exchange will delete the paragraphs that refer to FINRA consolidating the NASD rules into a new FINRA rulebook, since such relocation has been completed. Concerning the second paragraph in Section 10(a), the Exchange notes that it will also delete the cross-reference to Rule 3110, since such reference was not relocated when NASD Rule 2310 was merged into FINRA Rule 2111.

The Exchange also proposes to delete Section 10(b) since, as already described, NASD Rule 2310’s interpretive materials were merged into FINRA Rule 2111, which would make Section 10(b) duplicative.

Moreover, the Exchange proposes to assign the letter (b) to the text that begins with “For purposes of . . .” and make the following changes:

The Exchange will insert a new subsection (1) which will provide that any references to Rules 2111 and 4512 in FINRA Rule 2111 shall be construed, respectively, as references to Exchange’s General 9, Section 10 and 45.

The Exchange will also renumber the next paragraph as (2) and replace the references to “Association’s Rules” and “Association Rules” with the term “FINRA rules”.

<sup>16</sup> See *supra* note 5.

<sup>17</sup> See Securities Exchange Act Release No. 71179 (December 23, 2013), 79 FR 79542 (December 30, 2013) (SR–FINRA–2013–025).

<sup>18</sup> See Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (SR–FINRA–2008–028).

<sup>19</sup> See Securities Exchange Act Release No. 63325 (November 17, 2010), 75 FR 71479 (November 23, 2010) (SR–FINRA–2010–039).

The Exchange will next delete the paragraph that refers to NASD's District Business Conduct Committees and Board of Governors, as such references are not provided in the current FINRA Suitability rule. Similarly, the Exchange will delete the paragraph that references the term "Association" since such term is not in the current FINRA rule. Furthermore, the Exchange will also delete the reference to Rule 2840 as such rule is not referenced in FINRA Rule 2111.

The Exchange will insert a new subsection (3) which will clarify that references to Rule 2214 shall be disregarded, and no comparable Exchange Rule shall apply to activities of Exchange Members in connection with investment analysis tools.<sup>20</sup>

Finally, the Exchange proposes to delete the rule text in current Section 10(c) since, as already explained, the Interpretive Materials of NASD Rule 2310 were merged into the FINRA Suitability rule. In its place, the Exchange proposes to adopt the same cross-reference found in Nasdaq's General 9, Section 10(c) to provide that Exchange members will comply with FINRA Rule 2090 ("Know Your Customer") as if such rule was part of the Rules of the Exchange.

#### General 9, Section 12. Customer Account Statements

The Exchange proposes to update the NASD Rule 2340 reference in this rule and replace it with a reference to FINRA Rule 2231 ("Customer Account Statements"). FINRA Rule 2231 was adopted without any substantive changes to the NASD rule text.<sup>21</sup>

Moreover, the Exchange proposes to amend Section 12(b) to provide that references in FINRA Rule 2231 to FINRA Rule 2310 ("Direct Participation Programs") shall be construed as a reference to the corresponding BX Rule 2310A. Additionally, the Exchange proposes to replace the reference to NASD Rule 3110 with FINRA Rule 4512 ("Customer Account Information") and insert its corresponding cross-reference to General 9, Section 45. Finally, the Exchange proposes to delete the word "Equity" (used twice in the subsection) and re-arrange the rules in Section 12(b) to match their corresponding references in the Nasdaq rulebook.

<sup>20</sup> The Exchange notes that a correction shall be made in a future filing to current Nasdaq General 9, Section 10(b)(3), which currently points to NASD IM-2210-6, which has been relocated and should actually refer to FINRA Rule 2214.

<sup>21</sup> See Securities Exchange Act Release No. 85589 (April 10, 2019), 84 FR 15646 (April 16, 2019) (SR-FINRA-2019-009).

#### General 9, Section 13. Margin Disclosure Statement

The Exchange proposes to update the NASD Rule 2341 reference in this rule and replace it with a reference to FINRA Rule 2264 ("Margin Disclosure Statement"). FINRA Rule 2264 was adopted with only minor changes to the text of NASD Rule 2341, and those changes were intended to clarify the submission of disclosure statements.<sup>22</sup>

The Exchange also proposes to amend Section 13(b) by updating the reference to NASD Rule 3110 with FINRA Rule 4512<sup>23</sup> and insert its corresponding cross-reference to General 9, Section 45.

#### General 9, Section 14. Approval Procedures for Day-Trading Accounts

The Exchange proposes to update the second sentence in Section 14(a) that currently refers to NASD Rule 2361 with FINRA Rule 2270. FINRA Rule 2270 was adopted with minor changes to the text of NASD Rule 2361.<sup>24</sup> The Exchange proposes to insert text indicating that a reference to FINRA Rule 2270 shall be construed as a reference to General 9, Section 14.

The Exchange also proposes to amend Section 14(a) by updating the reference to NASD Rule 3110 with FINRA Rules 4511 and 4512<sup>25</sup> and their corresponding references to General 9, Sections 30 and 45 (as indicated in the preceding paragraph, the Exchange is cross-referencing General 9, Section 14 with FINRA Rule 2270, and thus cross-referencing this Section 14 with FINRA's Books and Records rules is unnecessary). Finally, the Exchange will insert text indicating that references to FINRA Rules 4210 shall be construed as references to General 9, Section 38.

Similarly, the Exchange proposes to update the second paragraph in Section 14(b) that currently refers to NASD Rule 2360 with a reference to FINRA Rule 2130. FINRA Rule 2130 was adopted with minor changes to the text of NASD Rule 2360.<sup>26</sup> The Exchange also proposes to amend Section 14(b) by updating the reference to NASD Rule 3110 with FINRA Rule 4512<sup>27</sup> and the corresponding reference to General 9, Section 30 with Section 45, because it corresponds to FINRA Rule 4512.

<sup>22</sup> See Securities Exchange Act Release No. 60697 (September 21, 2009), 74 FR 49051 (September 25, 2009) (SR-FINRA-2009-052).

<sup>23</sup> See *supra* note 5.

<sup>24</sup> See Securities Exchange Act Release No. 61059 (November 24, 2009), 74 FR 62847 (December 1, 2009) (SR-FINRA-2009-059).

<sup>25</sup> See *supra* note 5.

<sup>26</sup> See *supra* note 24.

<sup>27</sup> See *supra* note 5.

#### General 9, Section 16. Charges for Services Performed

The Exchange proposes to update the NASD Rule 2430 reference in this rule and replace it with a reference to FINRA Rule 2122 ("Charges for Services Performed"). FINRA Rule 2122 was adopted without any substantive changes to the NASD rule text.<sup>28</sup>

#### General 9, Section 17. Net Transactions With Customers

The Exchange proposes to update the NASD Rule 2441 reference in this rule and replace it with a reference to FINRA Rule 2124 ("Net Transactions with Customers"). FINRA Rule 2124 was adopted without any substantive changes to the NASD rule text.<sup>29</sup> The Exchange also proposes to update the a cross-reference to NASD Rule 3110 with references to FINRA Rules 4511 and 4512, which have a corresponding Exchange rule under General 9, Sections 30 and 45.

#### General 9, Section 19. Discretionary Accounts

The Exchange proposes to letter the first paragraph as subsection (a) and update the NASD Rule 2510 reference in this rule and replace it with a reference to FINRA Rule 3260 ("Discretionary Accounts"). FINRA Rule 3260 was adopted without any substantive changes to the NASD rule text.<sup>30</sup>

Moreover, the Exchange will letter the last paragraph in Section 19 as subsection (b) and update the cross-references to NASD rules with their respective equivalent FINRA rules. Specifically, the Exchange will replace the NASD Rule 3010 reference with FINRA Rule 3110. Additionally, the Exchange will replace the NASD Rule 3110 reference with FINRA Rule 4512.<sup>31</sup> Finally, the Exchange proposes to replace the reference to General 9, Section 30 with Section 45, because it corresponds to FINRA Rule 4512.

#### General 9, Section 21. Supervisory Control System and Section 22. Annual Certification of Compliance and Supervisory Processes

The Exchange proposes to consolidate Sections 21 and 22 into one rule, Section 21 ("Supervisory Control System, Annual Certification of Compliance and Supervisory Processes"), as explained below. First, the Exchange proposes to update the

<sup>28</sup> See Securities Exchange Act Release No. 73714 (December 2, 2014), 79 FR 72743 (December 8, 2014) (SR-FINRA-2014-049).

<sup>29</sup> See *supra* note 8.

<sup>30</sup> See *supra* note 21.

<sup>31</sup> See *supra* note 5.

NASD Rule 3012 reference in this rule and replace it with a reference to FINRA Rule 3120 (“Supervisory Control System”). FINRA Rule 3120 retained the former NASD rule’s testing and verification requirements for the member’s supervisory procedures and provided requirements for members reporting \$200 million or more in gross revenue.<sup>32</sup>

Second, the Exchange proposes to adopt as new Section 21(c) (“Annual Certification of Compliance and Supervisory Processes”) the text in current Section 22(c). Further, the Exchange will update in the relocated subsection the reference to NASD Rule 3013 and replace it with a reference to FINRA Rule 3130 (“Annual Certification of Compliance and Supervisory Processes”). FINRA Rule 3130 was adopted to streamline and combine the requirements of NASD Rule 3013 and IM-3013.<sup>33</sup>

Third, the Exchange proposes to adopt the text under Section 22(c) that begins with the words: “For purposes of this Rule . . .” and letter them as new Section 21(d). In Section (d)(2), as previously explained, the Exchange will update the reference to NASD Rule 3013 with FINRA Rule 3130, which shall be read as a reference to Exchange’s corresponding rule under General 9, Section 21. Similarly, the Exchange proposes to update the cross-reference to NASD Rule 2110 with FINRA Rule 2010. In 2008, NASD Rule 2110 was renumbered as FINRA Rule 2010 with no changes to the rule text.<sup>34</sup> Additionally, the Exchange will change the General 9, Section 22 reference, which will be reserved, with a reference to Section 21. Moreover, the Exchange proposes to change the reference to General 9, Section 1 with Section 1(a), because it corresponds to FINRA Rule 2010.

Finally, the Exchange will delete and reserve current General 9, Section 22, since its subsections will be duplicative of subsections in Section 21 after the proposed changes.

#### General 9, Section 23. Outside Business Activities of an Associated Person

The Exchange proposes to update the NASD Rule 3030 reference in this rule and replace it with a reference to FINRA Rule 3270 (“Outside Business Activities of Registered Persons”). FINRA Rule 3270 was adopted to harmonize and simplify the events that constitute an

outside business activity, expanding upon the obligations imposed in NASD Rule 3030, by prohibiting any registered person from doing business with another person as a result of any business activity outside the scope of the relationship with his or her member firm, unless prior written notice was provided to the member.<sup>35</sup>

Moreover, the Exchange will update the duplicative cross-reference to NASD Rule 3030 in Section 23(b) (which should have been a reference to NASD Rule 3040) and replace it with a reference to FINRA Rule 3280.<sup>36</sup> The Exchange proposes also to update the reference to General 9, Section 23 with Section 24 (“Private Securities Transactions of an Associated Person”), because it corresponds to FINRA Rule 3280.

#### General 9, Section 24. Private Securities Transactions of an Associated Person

The Exchange proposes to update the NASD Rule 3040 reference in this rule and replace it with a reference to FINRA Rule 3280 (“Private Securities Transactions of an Associated Person”). FINRA Rule 3280 was adopted without any substantive changes to the NASD rule text.<sup>37</sup>

The Exchange will also update the duplicative cross-reference in Section 24(b)(1) to NASD Rule 3040 (which should have been actually a reference to NASD Rule 3050) with a reference to FINRA Rule 3210.<sup>38</sup> The Exchange proposes also to update the reference to General 9, Section 24 with Section 25 (“Transactions for or by Associated Persons”), because it incorporates FINRA Rule 3210.

Furthermore, the Exchange proposes to correct a typo in the quoted text in General 9, Section 24(b)(2). Specifically, the Exchange will substitute the word “immediately” with “immediate.”

The Exchange proposes also to replace a reference to NASD Rule 2790 with FINRA Rule 5130.<sup>39</sup> The definition of “immediate family member,” cross-referenced in General 9, Section

24(b)(2), is currently located under FINRA Rule 5130(i)(5).

#### General 9, Section 25. Transactions for or by Associated Persons

The Exchange proposes to update the NASD Rule 3050 reference in this rule and replace it with a reference to FINRA Rule 3210 (“Accounts At Other Broker-Dealers and Financial Institutions”). FINRA Rule 3210 was adopted to consolidate NASD Rule 3050, Incorporated NYSE Rules 407 and 407A, and Incorporated NYSE Rule Interpretations 407/01 and 407/02. The rule was designed to streamline the provisions of the NASD and incorporated NYSE rules and to help facilitate effective oversight of the specified trading activities of associated persons of member firms.<sup>40</sup>

#### General 9, Section 26. Influencing or Rewarding Employees of Others

The Exchange proposes to update the NASD Rule 3060 reference in this rule and replace it with a reference to FINRA Rule 3220 (“Influencing or Rewarding Employees of Others”). FINRA Rule 3220 was adopted without any material changes to the NASD rule text.<sup>41</sup>

#### General 9, Section 28. Disclosure to Associated Persons When Signing Form U4

The Exchange proposes to update the NASD Rule 3080 reference in this rule and replace it with a reference to FINRA Rule 2263 (“Arbitration Disclosure to Associated Persons Signing or Acknowledging Form U4”). NASD Rule 3080 was transferred into FINRA Rule 2263 which was adopted to improve and clarify the disclosure requirement of Form U4.<sup>42</sup>

#### General 9, Section 31. Use of Information Obtained in Fiduciary Capacity

The Exchange proposes to update the NASD Rule 3120 reference in this rule and replace it with a reference to FINRA Rule 2060 (“Use of Information Obtained in Fiduciary Capacity”). FINRA Rule 2060 was adopted without any changes to the NASD rule text.<sup>43</sup>

<sup>32</sup> See Securities Exchange Act Release No. 62762 (August 23, 2010), 75 FR 53362 (August 31, 2010) (SR-FINRA-2009-042).

<sup>33</sup> See Securities Exchange Act Release No. 75757 (August 25, 2015), 80 FR 52530 (August 31, 2015) (SR-FINRA-2015-030).

<sup>34</sup> *Id.* See also Securities Exchange Act Release No. 80105 (February 24, 2017), 82 FR 12387 (March 2, 2017) (SR-FINRA-2017-004).

<sup>35</sup> See Securities Exchange Act Release No. 77550 (April 7, 2016), 81 FR 21924 (April 13, 2016) (SR-FINRA-2015-029).

<sup>36</sup> See Securities Exchange Act Release No. 58421 (August 25, 2008), 73 FR 51032 (August 29, 2008) (SR-FINRA-2008-025).

<sup>40</sup> See *supra* note 38.

<sup>41</sup> See Securities Exchange Act Release No. 58660 (September 26, 2008), 73 FR 57393 (October 2, 2008) (SR-FINRA-2008-027).

<sup>42</sup> See Securities Exchange Act Release No. 60348 (July 20, 2009), 74 FR 37077 (July 27, 2009) (SR-FINRA-2009-019).

<sup>43</sup> See Securities Exchange Act Release No. 61071 (November 30, 2009), 74 FR 64109 (December 7, 2009) (SR-FINRA-2009-067).

<sup>32</sup> See *supra* note 17.

<sup>33</sup> See Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (SR-FINRA-2008-030).

<sup>34</sup> See *supra* note 18.

#### General 9, Section 33. Reporting Requirements for Clearing Firms

The Exchange proposes to update the NASD Rule 3150 reference in this rule and replace it with a reference to FINRA Rule 4540 (“Reporting Requirements for Clearing Firms”). FINRA Rule 4540 was adopted without any substantive changes to the NASD rule text.<sup>44</sup>

#### General 9, Section 34. Extensions of Time Under Regulation T and SEC Rule 15c3–3

The Exchange proposes to update the NASD Rule 3160 reference in this rule and replace it with a reference to FINRA Rule 4230 (“Required Submissions for Requests for Extensions of Time Under Regulation T and SEA Rule 15c3–3”). FINRA Rule 4230 was adopted largely based on the text of NASD Rule 3160, with a clarification to the original rule text regarding the reporting obligations of clearing members.<sup>45</sup>

#### General 9, Section 38. Margin Requirements

The Exchange proposes to update the NASD Rule 2520 references in this rule and replace it with references to FINRA Rule 4210 (“Margin Requirements”). In 2010, NASD Rules 2520, 2521, 2522, and IM–2522 were combined and consolidated into a single rule intended to improve the organization of margin rules and improve their readability.<sup>46</sup>

#### General 9, Section 49. Payments Involving Publications That Influence the Market Price of a Security

The Exchange proposes to update the NASD Rule 2711 reference in this rule and replace it with a reference to FINRA Rule 2241 (“Research Analysts and Research Reports”). Specifically, the research report’s definition referenced in General 9, Section 49(b)(3) was relocated to current FINRA Rule 2241(a)(11). That definition was amended to exclude communications concerning open-end registered investment companies not listed or traded on an exchange.<sup>47</sup>

#### Exchange Rule 2830. Investment Company Securities

The Exchange proposes to update the NASD Rule 2830 reference in this rule and replace it with a reference to FINRA Rule 2341 (“Investment Company Securities”). FINRA Rule 2341 was

adopted without any substantive changes to the NASD rule text.<sup>48</sup>

Moreover, to be consistent with cross-reference updates in current FINRA Rule 2341, the Exchange will update the cross-reference to NASD Rule 2820 with FINRA Rule 2320. Additionally, the Exchange will update Rule 2830(b)(3) by replacing the NASD Rule 2420 reference with FINRA Rule 2040 and update the rule text to track the text of FINRA Rule 2040(a). Finally, the Exchange will replace the NASD Rule 2230 reference with FINRA Rule 2232.

#### Exchange Rule 2843. Account Approval

The Exchange proposes to update the references to NASD Rules 2860(b)(16) and 2843 in this rule and replace them with references to FINRA Rules 2360(b)(16) (“Opening of Accounts”) and 2352 (“Account Approval”). FINRA Rule 2360(b)(16) was adopted with minor changes to its rule text and FINRA Rule 2352 was adopted without any substantive changes to its rule text.<sup>49</sup>

#### Exchange Rule 2844. Suitability

The Exchange proposes to update the reference to NASD Rules 2860(b)(19) and 2844 in this rule and replace them with references to FINRA Rules 2360(b)(19) (“Suitability”) and 2353 (“Suitability”). FINRA Rules 2360(b)(19) and 2353 were adopted without any substantive changes to their respective rule text.<sup>50</sup>

#### Exchange Rule 2845. Discretionary Accounts

The Exchange proposes to update the reference to NASD Rules 2860(b)(18) and 2845 in this rule and replace them with references to FINRA Rules 2360(b)(18) (“Discretionary Accounts”) and 2354 (“Discretionary Accounts”). FINRA Rules 2360(b)(18) and 2354 were adopted without any substantive changes to their respective rule text.<sup>51</sup>

Moreover, to be consistent with cross-reference updates in current FINRA Rule 2360(b)(18), the Exchange proposes to update the cross-reference to NASD Rules 2510 and 3110(c)(4), respectively, with FINRA Rules 3260 and 4512(c). Relatedly, the Exchange proposes to update the references to Exchange Rules 2510 and 3110(c)(4), respectively, with

a reference to General 9, Sections 19 and 45.<sup>52</sup>

#### Exchange Rule 2846. Supervision of Accounts

The Exchange proposes to update the reference to NASD Rules 2860(b)(20) and 2846 in this rule and replace them with references to FINRA Rules 2360(b)(20) (“Supervision of Accounts”) and 2355 (“Supervision of Accounts”). FINRA Rules 2360(b)(20) and 2355 were adopted without any substantive changes to their respective rule text.<sup>53</sup>

Moreover, to be consistent with cross-reference updates in current FINRA Rule 2360(b)(20), the Exchange proposes to update the cross-reference to NASD Rules 3010, 3012, and 3013, respectively, with FINRA Rules 3110, 3120, and 3130. Relatedly, the Exchange proposes to update the references to Exchange Rules 3010, 3012, and 3013 with respective references to General 9, Sections 20 and 21.<sup>54</sup>

#### Exchange Rule 2847. Customer Complaints

The Exchange proposes to update the reference to NASD Rules 2860(b)(17)(A) and 2847 in this rule and replace them with references to FINRA Rules 2360(b)(17)(A) and 2356. FINRA Rules 2360(b)(17)(A) and 2356 were adopted without any substantive changes to their respective rule text.<sup>55</sup>

Moreover, to be consistent with cross-reference updates in current FINRA Rule 2360(b)(17)(A), the Exchange proposes to update the cross-reference to NASD Rule 3110 with references to FINRA Rules 2268 and the Rule 4510 Series. Relatedly, the Exchange proposes to update the references to Exchange Rule 3110 with a reference to General 9, Section 30.<sup>56</sup> Finally, the Exchange proposes to add text indicating that the reference to Rule 5340 shall be disregarded as such rule does not apply to the Exchange, as the Exchange does not pre-time stamp order tickets in connection with block positioning.

#### Exchange Rule 2848. Communications With the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants

The Exchange proposes to update the reference to NASD Rule 2848 in this rule and replace it with a reference to FINRA Rule 2357 (“Communications with the Public and Customers

<sup>44</sup> See *supra* note 21.

<sup>45</sup> See Securities Exchange Act Release No. 62482 (July 12, 2010), 75 FR 41562 (July 16, 2010) (SR–FINRA–2010–024).

<sup>46</sup> *Id.*

<sup>47</sup> See Securities Exchange Act Release No. 75471 (July 16, 2015), 80 FR 43482 (July 22, 2015) (SR–FINRA–2014–047).

<sup>48</sup> See Securities Exchange Act Release No. 78130 (June 22, 2016), 81 FR 42016 (June 28, 2016) (SR–FINRA–2016–019).

<sup>49</sup> See Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (SR–FINRA–2008–032).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> See *supra* note 9.

<sup>53</sup> See *supra* note 49.

<sup>54</sup> See *supra* note 9.

<sup>55</sup> See *supra* note 49.

<sup>56</sup> See *supra* note 9.

Concerning Index Warrants, Currency Index Warrants and Currency Warrants”). FINRA Rule 2357 was adopted without any substantive changes to the NASD rule text.<sup>57</sup>

#### Exchange Rule 2849. Maintenance of Records

The Exchange proposes to update the reference to NASD Rules 2860(b)(17)(B) and 2849 in this rule and replace them with references to FINRA Rules 2360(b)(17)(B) and 2358. FINRA Rules 2360(b)(17)(B) and 2358 were adopted without any substantive changes to their respective rule text.<sup>58</sup>

#### Exchange Rule 3360. Short-Interest Reporting

In 2008, FINRA Rule 4560 was adopted to include the short interest reporting requirements of the substantially similar NASD Rule 3360 and Incorporated NYSE Rules 421(1) and 421.10 with non-substantive changes to the NASD rule text.<sup>59</sup> In 2010, FINRA made further amendments to the rule that were intended to eliminate the definition of “OTC Equity Security” in FINRA Rule 4560 (Short-Interest Reporting) and to clarify that the rule applied to all equity securities except restricted equity securities.<sup>60</sup>

The Exchange proposes to update Rule 3360(a) by replacing the NASD Rule 3360 reference with FINRA Rule 4560 (“Short-Interest Reporting”). The Exchange will not update Rule 3360 to include the reference to “Restricted Equity Securities” found in FINRA Rule 4560 since such securities are not listed or traded in the Exchange; relatedly, the Exchange will omit the reference to FINRA Rule 6420 since a cross-reference to the definition of Restricted Equity Securities is not required. Further, the Exchange will add the word “all” before the word “securities” but, unlike the FINRA rule, will not insert the word “equities” because the Exchange also lists options securities. Finally, the Exchange will remove a sentence concerning the reporting obligations to reflect changes also made in the FINRA rule.<sup>61</sup>

The Exchange also proposes to amend current Rule 3360(b) and (c) and adopt the text of current FINRA Rule 4560(b) and (c).

#### Exchange Rule 4200. Definitions

The Exchange proposes to update the NASD Rule 2710(b)(11) reference in this rule and replace it with a reference to FINRA Rule 5190 (“Notification Requirements for Offering Participants”). In 2008, NASD Rules 2710(b)(10) and (11) were relocated into FINRA Rule 5190 to consolidate and streamline all Regulation M-related notice requirements.<sup>62</sup>

The Exchange also proposes to replace in Rule 4200(a)(3) and (b) the cross-reference to Exchange Rule 4623 (“Alternative Trading Systems”) with Exchange Rule 4624. Consistent with FINRA Rule 5190(e), an Exchange member’s notification obligation, as described in Rule 4200, is detailed under Exchange Rule 4624 (“Penalty Bids and Syndicate Covering Transactions”).

#### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,<sup>63</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>64</sup> in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by bringing greater transparency to its rules by updating the references to the FINRA rules previously described. The Exchange’s proposal is consistent with the Act and will protect investors and the public interest by harmonizing its rules and clarifying outdated references so that Exchange members and the general public can readily locate FINRA rules that are incorporated by reference into the Rulebook.

The amendment to the books and records rules, reference and cross-reference updates, re-lettering, renumbering, deleting unnecessary or duplicative text, consolidating certain Exchange rules, and other minor technical changes will update the Exchange’s rules and bring greater transparency to the Exchange’s Rulebook. The Exchange believes its proposal will benefit investors and the general public by increasing the transparency of its Rulebook.

#### 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 not necessary or appropriate in furtherance

of the purposes of the Act. The Exchange believes that the proposed amendments do not impose an undue burden on competition because the amendments to update the references and cross-references in its Rulebook are intended to bring greater clarity to the Exchange’s rules. The amendment to the books and records rules, reference and cross-reference updates, re-lettering, renumbering, deleting unnecessary or duplicative text, consolidating certain Exchange rules, and other minor technical changes will update the Exchange’s rules bring greater transparency to the Exchange’s Rulebook.

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

No written comments were either solicited or received.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>65</sup> and Rule 19b-4(f)(6) thereunder.<sup>66</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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.

<sup>57</sup> See *supra* note 49.

<sup>58</sup> See *id.*

<sup>59</sup> See Securities Exchange Act Release No. 58461 (September 4, 2008), 73 FR 52710 (September 10, 2008) (SR-FINRA-2008-033).

<sup>60</sup> See Securities Exchange Act Release No. 61979 (April 23, 2010), 75 FR 23316 (May 3, 2010) (SR-FINRA-2010-003).

<sup>61</sup> See Securities Exchange Act Release No. 66872 (April 27, 2012), 77 FR 26340 (May 3, 2012) (SR-FINRA-2012-001).

<sup>62</sup> See Securities Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008) (SR-FINRA-2008-039).

<sup>63</sup> 15 U.S.C. 78f(b).

<sup>64</sup> 15 U.S.C. 78f(b)(5).

<sup>65</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>66</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

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-BX-2021-006 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-BX-2021-006. 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-BX-2021-006 and should be submitted on or before April 15, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>67</sup>

**Eduardo A. Aleman,**

*Deputy Secretary.*

[FR Doc. 2021-06125 Filed 3-24-21; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-91373; File No. SR-FINRA-2021-004]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Program Related to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities)**

March 19, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 15, 2021, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

FINRA is proposing to extend the current pilot program related to FINRA Rule 11892 (Clearly Erroneous Transactions in Exchange-Listed Securities) ("Clearly Erroneous Transaction Pilot" or "Pilot") until October 20, 2021.

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

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

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B,

and C below, of the most significant aspects of such statements.

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

1. Purpose

FINRA is proposing a rule change to extend the current pilot program related to FINRA Rule 11892 governing clearly erroneous transactions in exchange-listed securities until the close of business on October 20, 2021. Extending the Pilot would provide FINRA and the national securities exchanges additional time to consider a permanent proposal for clearly erroneous transaction reviews.

On September 10, 2010, the Commission approved, on a pilot basis, changes to FINRA Rule 11892 that, among other things: (i) Provided for uniform treatment of clearly erroneous transaction reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of FINRA to deviate from the objective standards set forth in the rule.<sup>4</sup> In 2013, FINRA adopted a provision designed to address the operation of the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS ("Plan").<sup>5</sup> Finally, in 2014, FINRA adopted two additional provisions addressing (i) erroneous transactions that occur over one or more trading days that were based on the same fundamentally incorrect or grossly misinterpreted information resulting in a severe valuation error; and (ii) a disruption or malfunction in the operation of the facilities of a self-regulatory organization or responsible single plan processor in connection with the transmittal or receipt of a trading halt.<sup>6</sup>

On April 9, 2019, FINRA filed a proposed rule change to untie the effectiveness of the Clearly Erroneous Transaction Pilot from the effectiveness of the Plan, and to extend the Pilot's effectiveness to the close of business on October 18, 2019.<sup>7</sup> On October 18, 2019,

<sup>4</sup> See Securities Exchange Act Release No. 62885 (September 10, 2010), 75 FR 56641 (September 16, 2010) (Order Approving File No. SR-FINRA-2010-032).

<sup>5</sup> See Securities Exchange Act Release No. 68808 (February 1, 2013), 78 FR 9083 (February 7, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2013-012).

<sup>6</sup> See Securities Exchange Act Release No. 72434 (June 19, 2014), 79 FR 36110 (June 25, 2014) (Order Approving File No. SR-FINRA-2014-021).

<sup>7</sup> See Securities Exchange Act Release No. 85612 (April 11, 2019), 84 FR 16107 (April 17, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR-FINRA-2019-011).

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

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

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>67</sup> 17 CFR 200.30-3(a)(12).