

business needs and its impact on the Exchange resources?"⁵³

Under the Commission's Rules of Practice, the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the [SRO] that proposed the rule change."⁵⁴ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,⁵⁵ and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.⁵⁶ Moreover, "unquestioning reliance" on an SRO's representations in a proposed rule change would not be sufficient to justify Commission approval of a proposed rule change.⁵⁷

The Commission believes it is appropriate to institute proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposals are consistent with the Act, any potential comments or supplemental information provided by the Exchange, and any additional independent analysis by the Commission.

V. Request for Written Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Sections 6(b)(4), 6(b)(5), and 6(b)(8), or any other provision of the Act, or the rules and regulations thereunder. The Commission asks that commenters address the sufficiency and merit of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will

consider, pursuant to Rule 19b-4, any request for an opportunity to make an oral presentation.⁵⁸

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by February 23, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by March 9, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File No. SR-EMERALD-2021-42 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-EMERALD-2021-42. 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 changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings also will be available for inspection and copying at the principal office of each 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-EMERALD-2021-42 and should be submitted on or before February 23, 2022. Rebuttal comments should be submitted by March 9, 2022.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,⁵⁹ that File Number SR-EMERALD-2021-42 be, and hereby is, temporarily suspended. In addition, the Commission is instituting proceedings to determine whether the proposed rule change should be approved or disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶⁰

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94075; File No. SR-NYSE-2022-03]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Adopt a Listing Standard for Rights

January 27, 2022.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on January 13, 2022, New York Stock Exchange LLC ("NYSE" or the "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 adopt a listing standard for rights. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and

⁵³ See *id.*

⁵⁴ 17 CFR 201.700(b)(3).

⁵⁵ See *id.*

⁵⁶ See *id.*

⁵⁷ See *Susquehanna Int'l Group, LLP v. Securities and Exchange Commission*, 866 F.3d 442, 446-47 (D.C. Cir. 2017) (rejecting the Commission's reliance on an SRO's own determinations without sufficient evidence of the basis for such determinations).

⁵⁸ 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

⁵⁹ 15 U.S.C. 78s(b)(3)(C).

⁶⁰ 17 CFR 200.30-3(a)(57) and (58).

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

Listed companies sometimes seek to raise capital from their existing shareholders by granting rights to subscribe for additional shares of the issuer's listed securities to all shareholders of record. The issuer may elect to make its rights either transferrable or non-transferrable and may wish to have transferrable rights traded on the Exchange. Historically, the Exchange has traded short-term rights (*i.e.*, rights with a subscription period of less than 90 days) pursuant to Section 703.03 of the NYSE Listed Company Manual ("Manual") on an unlisted basis.⁴

While Section 703.03 provides for the unlisted trading of short-term rights, it does not enable the issuer to list such rights on the Exchange. Nor does the Manual currently provide any mechanism for the trading or listing of rights with a life of 90 days or longer. The Exchange proposes to amend Section 703.12 of the Manual, which currently provides for the listing of warrants, to create a proposed Part (II) of that rule. Part (I) of Section 703.12, as amended, would consist of the current warrant listing provisions, while proposed Part (II) would set forth new listing requirements for rights.⁵

For purposes of proposed Section 703.12(II), the term "rights" refers to the privilege offered to holders of record of

issued equity securities to subscribe (usually on a pro rata basis) for additional securities of the same class.

Under proposed Section 703.12(II), to be listed on the Exchange, rights must be issued to purchase or receive a security that is already listed on the Exchange or that will be listed concurrent with the rights. The rights holders would not be entitled to any privileges of the holders of common stock (*e.g.*, dividends, preemptive rights, or voting rights). If the rights are exercisable into listed common stock, the listing of the rights and the underlying common stock would be subject to the NYSE shareholder approval policy as set forth in Section 312.00 of the Manual.

For initial listing, rights would need to meet the following requirements under proposed Section 703.12(II):

- (1) At least 400,000 issued;
- (2) The underlying security must be listed on the Exchange; and
- (3) At least 100 public holders of round lots.

The proposed rule would state that, for purposes of such rule, "public holders" excludes holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10 percent or more of the company's total outstanding shares.

The Exchange notes that the numerical requirements set forth above are identical to those included in Nasdaq's rule for the listing of rights on Nasdaq Capital Market.⁶ The Exchange also notes that the Nasdaq listing provisions for rights would currently enable an NYSE-listed company to list its rights on Nasdaq, while such a company would not currently be able to list its rights on the NYSE.

Proposed Section 703.12(II) would provide that the continued listing of rights is contingent on the underlying security remaining listed on the Exchange. If the security underlying a listed right ceased to be listed on the Exchange, the Exchange would promptly initiate suspension and delisting procedures with respect to the listed rights.⁷ In such case, the issuer of the listed rights would not be eligible to avail itself of the provisions of Sections 802.02 and 802.03, and any such listed rights would be subject to delisting procedures as set forth in Section 804.00.

The proposed listing standard would note that the general instructions for

preparation and filing of a listing application are described in Section 703.01. The proposed listing standard would also note that the form of listing application and information regarding supporting documents required in connection with the listing of rights are available on the Exchange's website or from the Exchange upon request.

The Exchange notes that its proposed listing standards for rights differ from the those of Nasdaq Capital Market in two respects:

First, Nasdaq Marketplace Rules 5515 and 5560 require, respectively, a listed right to have at least three registered and active market makers at the time of initial listing and a continued listing requirement to have at least two registered and active market makers, one of which may be a market maker entering a stabilizing bid. The Exchange has not included these requirements, as they are not applicable to our market model, in which the rights would be allocated to a Designated Market Maker for trading.

Second, the applicable Nasdaq Capital Market rules provide that a right may be listed if the underlying security is listed on Nasdaq or is a Covered Security and will be subject to delisting if that ceases to be the case. The Exchange's proposal provides that rights may only be listed as an initial matter (and remain listed) if the underlying security is listed on the NYSE and not if it is a Covered Security. The Exchange has taken this approach to be consistent with its existing requirements for the listing of warrants and also because Covered Securities listed on other exchanges are subject to lower initial and continued listing standards than are applicable to NYSE listed securities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act") generally.⁸ Section 6(b)(5)⁹ requires, among other things, that exchange rules are 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 and a national market system, and, in general, to protect the public interest and the interests of investors, promote just and equitable principles of trade and that they are not designed to

⁴ When trading unlisted short-term rights under Section 703.03 of the Manual, the Exchange relies on the exemption from Exchange Act Section 12(a) registration requirements provided under Exchange Act Rule 12a-4.

⁵ The Exchange proposes to change a reference in Part (I) of Section 703.12 from "Para. 312.00" to "Section 312.00" to conform to references elsewhere within the rule.

⁶ See Nasdaq Marketplace Rule 5515.

⁷ Specifically, the Exchange would immediately suspend trading in the rights upon delisting of the underlying security and would not trade the rights pending completion of any appeal by the issuer.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

permit unfair discrimination between issuers, brokers or dealers.

The Exchange believes that the proposal is designed to protect the public interest and the interests of investors, by providing a listed trading market for the shareholders of NYSE listed companies who receive transferable rights from the issuer and who would otherwise not have the ability to list the rights on the same exchange as the underlying securities.

The Exchange notes that the requirements of the proposed rule are identical to those for the listing of rights on Nasdaq Capital Market as set forth in Sections 5515 and 5560 of the Nasdaq Marketplace rules, with the exception of the provisions described above with respect to market makers and the ability to list rights where the underlying security is a Covered Security not listed on the exchange listing the rights. The Exchange believes that these differences are consistent with the protection of investors and the public interest because: (i) The market maker requirement is irrelevant to the NYSE market model, in which the rights will be allocated to a Designated Market Maker for trading; and (ii) as other exchanges have continued listing standards for equity securities that are less stringent than those of the NYSE, the approach of excluding rights with respect to Covered Securities listed on other markets ensures that rights can only be listed with respect to underlying securities that are qualified for listing on the NYSE. Furthermore, the Exchange believes that it is not unfairly discriminatory to limit the listing of rights to those with respect to NYSE listed equities, as the purpose is not to discriminate among issuers, but rather to enhance investor protection by ensuring that rights can only be listed if the underlying security meets the more stringent continued listing standards applied by the NYSE.

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

The Exchange does not believe that the proposal would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. There would be no burden on competition among companies listed on the NYSE, as all NYSE-listed companies would be able to list their rights under the same rule provisions. Similarly, the proposed rule would not impose any burden on intermarket competition, as any rights that could be listed under the proposed rule would also be eligible for listing on Nasdaq. The Exchange believes the proposal enhances competition for

listing by providing issuers with a choice of listing venues between the NYSE and Nasdaq when they list their rights. The Exchange believes that limiting the listing of rights to those with respect to NYSE listed equities does not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act, as the purpose is not to discriminate among issuers, but rather to enhance investor protection by ensuring that rights can only be listed if the underlying security meets the more stringent continued listing standards applied by the NYSE.

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

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed pursuant to Rule 19b-4(f)(6) under the Act¹² normally does not become operative for 30 days after the date of its filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹³ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to allow the Exchange to list rights that would qualify for listing under the proposed rule prior to the expiration of the 30-day operative delay. The Exchange states that such waiver would be consistent with the protection of investors and the public interest because the proposed rule change is

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 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.

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

substantially similar to the rules of another national securities exchange.¹⁴ For this reason, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.¹⁵

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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-NYSE-2022-03 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-NYSE-2022-03. 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 (<https://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

¹⁴ See *supra* note 6, and accompanying text.

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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-NYSE-2022-03, and should be submitted on or before February 23, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁶

J. Matthew DeLesDernier,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-94087; File Nos. SR-MIAX-2021-60, SR-EMERALD-2021-43]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC, MIAX Emerald, LLC; Suspension of and Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Amend Fee Schedules To Adopt Tiered-Pricing Structures for Additional Limited Service MIAX and MIAX Emerald Express Interface Ports

January 27, 2022.

I. Introduction

On December 1, 2021, Miami International Securities Exchange, LLC ("MIAX") and MIAX Emerald, LLC ("MIAX Emerald") (each an "Exchange"; collectively, the "Exchanges") each filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change (File Numbers SR-MIAX-2021-60 and

SR-EMERALD-2021-43) to amend the MIAX Options Fee Schedule and MIAX Emerald Fee Schedule (collectively, the "Fee Schedules") to adopt a tiered-pricing structure for additional limited service express interface ports. Each proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.³ The proposed rule changes were published for comment in the **Federal Register** on December 20, 2021.⁴ Under Section 19(b)(3)(C) of the Act,⁵ the Commission is hereby: (i) Temporarily suspending File Numbers SR-MIAX-2021-60 and SR-EMERALD-2021-43; and (ii) instituting proceedings to determine whether to approve or disapprove File Numbers SR-MIAX-2021-60 and SR-EMERALD-2021-43.

II. Background and Description of the Proposed Rule Changes

Limited Service MIAX Express Interface Ports and Limited Service MIAX Emerald Express Interface Ports (collectively, "Limited Service MEI Ports") provide Market Makers⁶ with the ability to send eQuotes and quote purge messages, and are also capable of receiving administrative information.⁷ Currently, each Exchange allocates two Limited Service MEI Ports, free of charge, per matching engine to which a Market Maker connects. Market Makers may request additional Limited Service MEI Ports for each matching engine to which they connect for an additional monthly fee for each such additional port. Prior to the proposed rule changes, each Exchange charged a flat \$100 monthly fee for each such additional port. Each Exchange has proposed to adopt a tiered-pricing structure.⁸ For

³ 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as "establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization." 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ See Securities Exchange Act Release Nos. 93771 (December 14, 2021), 86 FR 71940 (December 20, 2021) (SR-MIAX-2021-60) ("MIAX Notice"); 93772 (December 14, 2021), 86 FR 71965 (December 20, 2021) (SR-EMERALD-2021-43) ("MIAX Emerald Notice"). For ease of reference, citations to statements generally applicable to both notices are to the MIAX Notice.

⁵ 15 U.S.C. 78s(b)(3)(C).

⁶ Defined at MIAX Rule 100 and MIAX Emerald Rule 100.

⁷ See, e.g., MIAX Notice, *supra* note 4, at 71941 n.15.

⁸ The Exchanges initially filed the proposed fee changes on August 2, 2021. See Securities Exchange Act Release Nos. 92661 (August 13, 2021), 86 FR 46737 (August 19, 2021) (SR-MIAX-2021-37); 92662 (August 13, 2021), 86 FR 46726 (August 19, 2021) (SR-EMERALD-2021-25). These filings were withdrawn by the Exchanges. The Exchanges filed new proposed fee changes with additional

both MIAX and MIAX Emerald, the first and second Limited Service MEI Ports for each matching engine would remain free of charge. For MIAX, the additional Limited Service MEI Port fees for each matching engine would increase from \$100 to: (i) \$150 for the third and fourth Limited Service MEI Ports; (ii) \$200 for the fifth and sixth Limited Service MEI Ports; and (iii) \$250 for the seventh or more Limited Service MEI Ports.⁹ For MIAX Emerald, the additional Limited Service MEI Port fees for each matching engine would increase from \$100 to: (i) \$200 for the third and fourth Limited Service MEI Ports; (ii) \$300 for the fifth and sixth Limited Service MEI Ports; and (iii) \$400 for the seventh to fourteenth Limited Service MEI Ports.¹⁰

III. Suspension of the Proposed Rule Changes

Pursuant to Section 19(b)(3)(C) of the Act,¹¹ at any time within 60 days of the date of filing of an immediately effective proposed rule change pursuant to Section 19(b)(1) of the Act,¹² the Commission summarily may temporarily suspend the change in the rules of a self-regulatory organization ("SRO") 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. As discussed below, the Commission believes a temporary suspension of the proposed rule changes is necessary and appropriate to allow for additional analysis of the proposed rule changes' consistency with the Act and the rules thereunder.

In support of the proposed tiered-pricing structures and associated fee increases, the Exchanges state that such fees (which they refer to as "Proposed Access Fees") are reasonable because

justification (SR-MIAX-2021-43 and SR-EMERALD-2021-31, which were the subject of a Suspension of and Order Instituting Proceedings. See Securities Exchange Act Release No. 93640 (November 22, 2021), 86 FR 67745 (November 29, 2021). The Exchanges subsequently withdrew those filings and replaced them with the instant filings to provide additional information and a revised justification for the proposals, which are discussed herein. See also Securities Exchange Act Release No. 91857 (May 12, 2021), 86 FR 26973 (May 18, 2021) (MIAX-2021-19) (allowing purchase of any number of additional Limited Service MEI Ports and stating that, at a continued monthly fee of \$100 for each additional port, the Exchange anticipates generating an annual loss from the provision).

⁹ See MIAX Notice, *supra* note 4, at 71941.

¹⁰ See MIAX Emerald Notice, *supra* note 4, at 71966-67. The MIAX Emerald Fee Schedule states that Market Makers are limited to twelve additional Limited Service MEI Ports per matching engine, for a total of fourteen per matching engine. See MIAX Emerald Fee Schedule 5.d.ii.

¹¹ 15 U.S.C. 78s(b)(3)(C).

¹² 15 U.S.C. 78s(b)(1).

¹⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.