Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2018–057 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–NASDAQ–2018–057. 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–NASDAQ–2018–057, and should be submitted on or before August 21, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–16270 Filed 7–30–18; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83703; File No. SR–ISE–2018–59]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Align Existing Investigatory and Disciplinary Processes and Related Rules With the Investigatory and Disciplinary Processes and Associated Rules of Nasdaq BX, Inc.

July 25, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2018, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by 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 align its existing investigatory and disciplinary processes and related rules with the investigatory and disciplinary processes and associated rules of Nasdaq BX, Inc. (''BX'').

The text of the proposed rule change is available on the Exchange's website at *http://ise.cchwallstreet.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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to eliminate its existing processes for: (1) Summarily suspending and limiting or prohibiting access to Exchange services by Exchange members (''Members''), persons associated with such Members (''Associated Persons''), (2) investigating and disciplining Exchange Members and Associated Persons, and (3) adjudicating actions brought by persons economically aggrieved by certain Exchange actions. The Exchange also seeks to eliminate Chapters 15, 16, and 17[3] of the Exchange's Rules (with certain exceptions, discussed below), which set forth and govern such processes, respectively, and it proposes to eliminate the Exchange's Business Conduct Committee (''BCC''), which is a body that exists to help to enforce the Exchange's Rules. The Exchange further proposes to adopt, in place of the aforementioned Rules, the investigatory, disciplinary, and adjudicatory processes of the Exchange's sister exchange, BX. It also proposes to replace the BCC with an Exchange Review Council that is similar to one that BX has in place. Specifically, the Exchange proposes to establish new Chapters 80 and 90 of its Rules[4] and incorporate by reference into those Chapters (again with certain exceptions, described below) the BX

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As discussed below, the Exchange proposes to replace Chapter 17, which sets forth processes for persons aggrieved by Exchange actions, including adverse membership or association determinations, by adding to Exchange Rules 302 and 307 provisions adapted from BX Rules 1015 and 1016, which provide for similar adjudicative processes. Portions of proposed Chapter 90 also replace portions of Chapter 17, *e.g.,* statutory disqualification in the 9520 Series.

[4] The Exchange proposes to add Chapters 23–79 and Chapters 81–89 to its Rules, but reserve such Chapters for future use.

Rule 8000 and 9000 Series,[5] which set forth and govern the BX investigatory, disciplinary, and adjudicative processes.[6] The proposed changes, when coupled with certain changes to the Exchange's other Rules, including Rules that govern appeals of the Exchange's membership and other decisions, will render the Exchange's investigative, disciplinary, and adjudicatory processes substantially the same as those, not only of BX, but also of other Nasdaq, Inc. family of [sic] exchanges (the ''Nasdaq, Inc. Exchanges'').[7] The proposal [sic] change will also further harmonize the work that the Financial Industry Regulatory Authority (''FINRA'') conducts for all these exchanges.

Overview of the Exchange's Existing Investigatory, Disciplinary, and Adjudicatory Processes and Rules

The existing processes for investigating and disciplining Exchange Members[8] and Associated Persons,[9] for taking summary action against them, and for adjudicating Exchange actions that aggrieve them, are set forth in Existing Chapters 15–17 of the Exchange's Rulebook.

With respect to investigations, Existing Rule 1602 authorizes the Exchange's regulatory staff (hereinafter described in this filing, for consistency with the BX rules, as ''Regulation Department'' or ''Exchange Regulation Department'')[10] to investigate Members and Associated Persons based on information it receives from a variety of sources, such as surveillance reviews, examinations, industry notifications, third party complaints, and referrals.[11] Alternatively, the Rule provides that the Exchange may, and it typically does, refer such investigatory matters to FINRA.

FINRA performs, among other things, investigatory and prosecutorial work for the Exchange pursuant to a Regulatory Services Agreement between the two parties (the ''RSA'').[12] Under the RSA, FINRA is responsible[13] for the investigation of potential violations of the Exchange Rules and the Act, and for the prosecution of any such violations thereof, by Exchange Members and Associated Persons.[14] Upon completion of an investigation, FINRA analyzes the evidence and applicable law, and makes preliminary determinations, known as ''Sufficiency of Evidence'' reviews, as to whether or not violations have occurred.[15] The Sufficiency of Evidence review determines the nature of FINRA's recommendation to the Exchange's Chief Regulatory Officer (''CRO'') as to whether and how to proceed further with matters. If probable cause exists that a Member or Associated Person has violated the Exchange Rules or the Act, then the Regulation Department may file charges against the Member or Associated Person for adjudication before a Current Hearing Panel.[16] A Current Hearing Panel consists of a professional hearing officer and two members of the Exchange's BCC.

Currently, the BCC is charged with enforcing the Rules of the Exchange with respect to Members and Associated Persons. The BCC is a committee, established by the Board,[17] whose enforcement jurisdiction includes the following: (1) Ordering investigations of possible Rule violations; (2) considering letters of consent in expedited disciplinary actions; (3) making its members available to serve on Current Hearing Panels that adjudicate formal disciplinary proceedings; (4) imposing sanctions on Members or Associated Persons in disciplinary proceedings (''Respondents''); (5) reviewing Exchange actions involving minor rule violations; (6) appointing panels to conduct hearings and reviews of Exchange actions that deny membership or Member association privileges; and (7) generally overseeing all matters relating to the conduct of disciplinary hearings and hearings for review of Exchange decisions, and providing the Exchange with advice for improving disciplinary procedures.[18]

The Existing Rules provide several means by which the Exchange may pursue disciplinary actions.

First, Existing Rule 1603 permits informal disposition of disciplinary matters through ''letters of consent.'' The Existing Rule states that disciplinary matters are disposable in this manner if: (1) The Parties agree to the terms of such a letter, including any sanctions imposed therein; (2) the CRO approves of the draft letter; and (3) the BCC subsequently approves of the draft letter. If the Parties to the letter cannot reach agreement to [sic] its terms, or if the CRO or BCC reject [sic] it, then the disciplinary matter proceeds through formal channels.

Second, Existing Rules 1604–1613 provide for formal adjudication of disciplinary matters. These Existing Rules state that, whenever probable cause exists for finding that a Member or Associated Person has committed a violation within the disciplinary jurisdiction of the Exchange, regulatory staff may prepare a ''statement of charges,'' subject to the approval of the CRO. The Existing Rules further provide for Current Hearing Panels to adjudicate disciplinary matters. Current Hearing Panels are composed of a professional hearing officer, who serves as the Current Hearing Panel Chair, and two members of the BCC. The Existing Rules provide for the Parties to a disciplinary proceeding to receive at least 28 calendar days' notice prior to the occurrence of a hearing. They also provide for a pre-hearing conference to

[5] Citation herein to rules of the proposed Chapters 80 and 90 will be preceded by the term ''BX Rule'' to reflect incorporation of the BX Rule 8000 and 9000 Series. References to current rules will be preceded by the term ''Existing Rule.''

[6] The Exchange proposes to separately request an exemption from the rule filing requirements of Section 19(b) of the Act for changes to Chapters 80 and 90 to the extent such rules are effected solely by virtue of a change to the BX Rule 8000 and 9000 Series.

[7] The Exchange notes that the BX Rule 8000 and 9000 Series are substantially similar to corresponding rules of The Nasdaq Stock Market, LLC (''Nasdaq'') and Nasdaq PHLX, LLC (''Phlx''). Moreover, the Exchange notes that Nasdaq MRX, LLC and Nasdaq GEMX, LLC will propose similar changes to their respective investigatory and disciplinary processes and associated rules that will render them substantially similar to those of BX.

[8] As defined in Existing Rule 100(a)(30).

[9] As defined in Existing Rule 100(a)(4).

[10] The Exchange notes that the scope of its Regulation Department is the same as that of the BX Regulation Department.

[11] Existing Rule 1601 obligates each Member and Associated person to comply with investigatory requests by the Exchange (or FINRA, acting on its behalf) for testimony, or for written information or documentary materials.

[12] *See* RSA, dated June 10, 2013, as amended. The Exchange retains ultimate legal responsibility for the regulation of its Members, persons associated with its Members, and its market. *See* Existing Rule 1615 and its Supplementary Material.

[13] Although Existing Rule 1615 and its Supplementary Material authorizes the Exchange to contract with FINRA or another self-regulatory organization (''SRO'') to perform its disciplinary functions, the Existing Rule states that the Exchange retains ultimately legal responsibility for and control over such functions.

[14] Under the RSA, ISE's Regulation Department may elect to exercise jurisdiction over a matter involving an ISE Member or an Associated Person, performing the investigation and any resulting prosecutorial work without FINRA's involvement.

[15] *See* FINRA Regulatory Notice 09–17 (March 2009) (available at *http://www.finra.org/sites/default/files/NoticeDocument/p118171.pdf*).

[16] Both the Existing Rules and the BX Rules refer to their respective disciplinary adjudication panels as ''Hearing Panels.'' In the discussion that follows, the Exchange distinguishes between these two types of panels, which differ from one another substantively, by referring to the type of panel that exists under the Existing Rules as a ''Current Hearing Panel'' and the panel that the Exchange proposes to establish under the BX Rules as a ''New Hearing Panel.'' For purposes of the following discussion, the term New Hearing Panel shall also refer to an ''Extended Hearing Panel,'' as that term is defined in BX Rule 9120(l).

[17] *See* Resolution of the Board of Directors of the International Securities Exchange LLC Delegating Authority, dated May 11, 2000.

[18] *See* ISE Business Conduct Committee Charter, as amended, May 1, 2003.

expedite disciplinary proceedings by, among other things, seeking the Parties' agreement regarding undisputed facts. They permit non-Parties to proceedings to intervene, under certain circumstances, and they grant the Current Hearing Panel Chair broad discretion to determine the course of the proceedings, including with respect to timing, filing deadlines, if not specified in the Rules, and evidentiary matters. They generally prohibit interlocutory review of Current Hearing Panel decisions as well as *ex parte* communications among Members and Associated Persons and Panelists, the BCC, or the Board concerning the merits of a disciplinary matter. They require Current Hearing Panels to issue their decisions by majority vote and in writing.

Existing Rule 1608 permits Current Hearing Panels to engage in summary disciplinary proceedings, meaning that they may reach decisions and impose penalties without holding hearings as to violations that Respondents admit, do not dispute, or fail to answer. The Rule provides, in such instances, that Respondents have 10 calendar days following service of such summary decisions to request hearings as to matters not previously admitted or to contest the penalties imposed.

Existing Rule 1609 sets forth procedures for settlements of disciplinary matters. The Rule generally provides that a Party may submit up to two written ''offers of settlement'' at any time period prior to 120 calendar days following service of the statement of charges. Settlements must be approved by the Current Hearing Panel (or the CRO if a Current Hearing Panel has yet to be appointed).

Pursuant to Existing Rule 1610, Respondents may appeal Current Hearing Panel decisions to the Board. The Rule also permits the Board to review Current Hearing Panel decisions upon its own initiative within 30 calendar days after service of such decisions. The Rule permits the Board to delegate responsibility for its review to a committee composed of at least three of its Directors whose decision must be ratified by the Board. The Board may affirm, reverse, or modify decisions of Current Hearing Panels, and such Board decisions are final.

Third, Existing Rule 1614 provides for the disposition of certain minor disciplinary violations through the summary assessment of fines.[19] This Rule comprises violations of the Rules listed in Rule 1614(d) and that are set forth in the Exchange's Minor Rule Violation Plan (''MRVP'') approved by the Commission pursuant to SEC Rule 19d–1 (''MRVP violations'') as well as violations that are not included in the Exchange's MRVP but may be considered ''minor'' in nature (''minor rule violations'') and thus possibly resolved outside of the formal disciplinary process.[20] Existing Rule 1614(a) sets forth the Exchange's general authority to assess such fines in amounts no greater than $5,000 (up to $2,500 for MRVP violations, and up to $5,000 for minor rule violations). Existing Rule 1614(b) sets forth the notice requirements for service upon the Member or person against which the fine is to be levied (a ''Subject''). The Existing Rule requires the Exchange to serve notice upon the Subject, along with a written statement that describes the nature of the alleged violation and the basis for finding that the Subject committed the violation, the amount of the fine to be imposed for each violation, and a date, not less than 30 calendar days after service of the notice, by which such determination becomes final and such fine must be paid or contested.

Under Existing Rule 1614(c), a Subject may contest the fine by filing an answer to this written determination prior to the date when the fine is payable. Additionally, the Subject may request a hearing as part of the answer.[21] The Rule charges the BCC, or a subcommittee thereof, with adjudicating contested fines. The BCC may decide to overturn, affirm, or modify fines levied by the Exchange.[22] A Subject or the Exchange staff may appeal such determinations to the Board, and the Board may also call the matter for review on its own initiative.[23]

Existing Rule 1614(d) sets forth the list of violations and a corresponding schedule of fines that the Exchange may impose and disciplinary actions it may pursue for MRVP violations and minor rule violations.[24] They include the following:

- Violations of Rule 412 pertaining to position limits (with fines ranging from $500 for the first offense within any 24 month rolling period to $5,000 for the fourth and subsequent offenses within the same period);
- Violation of Rule 1403 for failing to file focus reports (with sanctions ranging from a $200 fine for delinquencies of up to 30 calendar days and formal disciplinary action for delinquencies of 90 or more calendar days);
- Failing to make timely responses to requests for trade data in violation of Rule 1404 (with sanctions for the first offense ranging from a $200 fine for delinquencies of up to 9 business days to formal disciplinary action for delinquencies of 30 or more business days, and sanctions for subsequent offenses ranging from a $500 fine for the second offense to formal disciplinary action beginning with the fifth offense);
- Violating Rule 717(d) and (e) regarding limits on orders entered by Electronic Access Members (with a letter of caution for the first five offenses within one calendar year, fines escalating from $500 to $2,000 for the sixth through the twentieth offenses within the same period, and formal disciplinary action thereafter);
- Violations of Rule 803 and 805(b)(1)(i) regarding pre- and post-opening quote spread parameters for market maker quotations (with a letter of caution for the first offense within any 24 month rolling period, fines escalating from $1,000 to $5,000 for the second through the fourth offenses within the same period, and formal disciplinary action thereafter);
- Violations of Rule 805, which requires market makers to execute in appointed options classes a minimum percentage of the total number of contracts executed during a quarter (with a letter of caution for the first offense within any 12 month rolling period, fines escalating from $500 to $2,500 for the second through the fourth offenses within the same period, and formal disciplinary action thereafter);
- Failure to conduct mandatory systems testing in violation of Rule 419 (with fines escalating from $250 to $2,000 for the first through the fourth offenses within one calendar year, and formal disciplinary action thereafter);
- Failure to timely submit information or instructions regarding the exercise or non-exercise of noncash-settled equity options in violation of Rule 1100 (with fines for member

[19] Generally, notice to the SEC of final disciplinary action by an SRO is required pursuant to Rule 19d–1 of the Act; however, uncontested fines of $2,500 or less assessed for violations of MRVP rules are subject to abbreviated periodic SEC reporting. None of the fines assessed in lieu of formal disciplinary action exceed $5,000.

[20] Determinations to issue a fine under Rule 1614 are made on a case-by-case basis, whereby the Exchange considers the individual facts and circumstances to determine whether a fine of more or less than the recommended amount is appropriate for the violation, or whether the violation requires formal disciplinary action.

[21] Existing Rule 1614(c).

[22] *See id.*

[23] *See id.*

[24] *See* n.20, *infra.*

organizations[25] escalating from $1,000 for the first offense within any 24 month rolling period to $5,000 for the third and subsequent offenses within the same period, and for individuals, from $500 for the first offense within any 24 month rolling period to $2,500 for the third and subsequent offenses within the same period);

- Failure to accurately report positions and account information in violation of Rule 415 (with fines escalating from $500 for the first offense within any 24 month rolling period to $5,000 for the fourth and subsequent offenses within the same period); and
- Failure of a market maker to enter continuous quotations for the option classes to which it is appointed in violation of Rule 804(e) (with fines ranging from a letter of caution for the first offense within any 24 month rolling period, to fines ranging from $1,000 to $5,000 for the second through fourth offenses within the same period, and formal disciplinary actions beginning with the fifth offense).[26]

As explained below, the Exchange proposes to retain but renumber Existing Rule 1614(d) insofar as the Exchange's MRVP and schedule of minor violations are unique to it. The Exchange cannot and does not seek to simply incorporate by reference the BX MRVP.

Existing Rule 1615 and its Supplementary Material authorizes the Exchange to contract with FINRA or another SRO to perform its disciplinary functions, but the Existing Rule states that the Exchange retains ultimately [sic] legal responsibility for and control over such functions.

Existing Rule 1616 authorizes and prescribes the process for adjudicating expedited client suspensions that may be imposed upon Members or Associated Persons that violate the prohibition in Existing Rule 403 on disruptive quoting and trading activity. Existing Rule 1616 states that the initiation of expedited suspension proceedings requires the prior written authorization of the CRO or his designees. It requires the Exchange to provide prior notice to the Respondent as well as to convene a Current Hearing Panel to adjudicate the matter. The Existing Rule provides that such hearings are to be administered generally in accordance with Existing Rule 1606. If a Respondent fails to appear at a hearing for which it receives proper notice, the Existing Rule states that the Current Hearing Panel may issue a suspension order without further proceedings, while the failure of the Exchange to appear may result in the dismissal of the suspension proceeding. Existing Rule 1616(d) requires a Current Hearing Panel to issue a written decision as to whether to order [sic] suspension not later than 10 days after receiving the hearing transcript. It further provides that a Panel may issue an order imposing suspension only if it finds, by a preponderance of the evidence, that the alleged violation specified in the notice occurred. At any time after a Respondent is served with a suspension order, a Party may apply to the Current Hearing Panel to modify, set aside, limit, or revoke the order, and the Current Hearing Panel must respond to the request within 10 days after receipt thereof, unless extended. Finally, Existing Rule 1616(f) provides for the right of a Respondent to seek Commission review of a suspension order.

Chapter 15 of the Existing Rules states that the Board, a committee thereof, or an Exchange Official designated by the Board may summarily suspend a Member or an Associated Person that has been expelled or suspended from any other SRO or has been barred or suspended from being associated with a member of another SRO, if the Board, a committee thereof, or a designated Exchange Official determines that their ongoing transaction of business on the Exchange would compromise the safety of investors, creditors, other Members of the Exchange, or the Exchange itself.[27] On the same grounds, the Board, a committee thereof, or a designated Exchange Official may summarily suspend a Member if it is experiencing operational or financial difficulties and cannot continue doing business as a member with safety to investors, creditors, other Members, or the Exchange.[28] Furthermore, the Board, committee, or Exchange Official may limit or prohibit any person's access to services offered by the Exchange for these same reasons or, as to a Member, they [sic] may take such actions if they [sic] determine that such Member does not meet the qualification requirements or other prerequisites for access with safety to investors, creditors, Members, or the Exchange.[29] Chapter 15 provides for the Exchange to notify the SEC upon imposing a summary suspension or when summarily limiting or prohibiting access to Exchange services.[30]

Chapter 15 provides that, following the imposition of a suspension or a limitation on or prohibition against accessing Exchange services, the Exchange will conduct an investigation of the affairs of the affected Member, Associated Person, or person.[31] A suspended, limited, or prohibited Member, Associated Person, or person must file with the Exchange a written statement covering all information that the Exchange may request in this regard, including a complete list of creditors and amounts owed to each as well as a complete list of positions in Exchange options contracts they [sic] maintain on their [sic] own behalf and that of their [sic] customers.[32]

Those subject to summary suspension or that are limited or prohibited with respect to access to Exchange services may petition for reinstatement within six months of their suspension, limitation, or prohibition, if they are suspended, limited, or prohibited due to operating difficulty, or within 30 days of suspension, limitation, or prohibition, if they are suspended, limited, or prohibited for reason of financial difficulty.[33] An applicant for reinstatement is afforded an opportunity for a hearing, in certain circumstances.[34] The Exchange may approve an application for reinstatement if it finds that the applicant is operationally and financially able to conduct their [sic] business with safety to investors, creditors, Members, and the Exchange.[35]

[25] The Exchange notes that it proposes to amend the term ''Member Organization'' so that it merely reads ''Member.'' These terms are synonymous.

[26] As explained below, the Exchange also proposes to retain Existing Rule 1600, which sets forth the general jurisdiction of the Exchange with respect to disciplinary matters. Existing Rule 1600 states that a Member or Associated Person who is alleged to have violated or aided and abetted a violation of the Act, the rules and regulations promulgated thereunder, and the By-Laws or Rules of the Exchange, or any interpretation thereof are subject to the disciplinary jurisdiction of the Exchange and may be, after notice and opportunity for a hearing, appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a Member, or any other fitting sanction in accordance with the provisions of the disciplinary rules. It also permits the Exchange to charge a supervisor with a violation of a rule within the disciplinary jurisdiction of the Exchange committed by an employee under his supervision or by the Member as though such violations were his own. Finally, it extends the disciplinary jurisdiction of the Exchange to continue after deregistration of the Member from the Exchange or a person's termination of association with a Member as to matters that occurred prior to such termination or deregistration. The Exchange must serve written notice to the former Member within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters.

[27] *See* Existing Rule 1500.

[28] *See id.*

[29] *See id.*

[30] *See id.*

[31] *See* Existing Rule 1501.

[32] *See id.*

[33] *See* Existing Rule 1502.

[34] *See id.*

[35] *See id.*

The failure of a suspended, limited, or prohibited Member to obtain reinstatement will result in disposition of membership, unless the Member sells or leases their [sic] membership.[36] Finally, Existing Rule 1504 provides that a Member suspended under Chapter 15 shall be deprived for [sic] all of the rights and privileges of being a Member of the Exchange during the period of suspension.

Lastly, Chapter 17 of the Existing Rules sets forth a procedure by which persons who are economically aggrieved by Exchange actions, including but not limited to those organizations whose applications for membership are denied, persons who are prohibited from becoming associated with a Member, and organizations and persons that are prohibited or limited with respect to the use of Exchange services or the services of Members, may seek review of such actions.[37]

Existing Rule 1701 provides that aggrieved persons must file written applications for hearing and review within 30 days of the occurrence of relevant Exchange actions, unless the Chair of the BCC grants, in writing, an extension of time to file an appeal.

Existing Rule 1702 provides for the BCC, or a panel comprised of at least three members thereof, to review applications. The BCC, or the panel, must set a hearing date and receive materials relevant to the proceeding at least 72 hours in advance of the hearing.

Existing Rule 1703 provides for intervention in a hearing by a third party under certain circumstances. Current Rule 1703 also authorizes the panel to determine all questions concerning the admissibility of evidence and to otherwise regulate the conduct of hearings. Finally, Existing Rule 1703 directs panels to render their decisions in writing and to include in such decisions the Panel's reasons for their [sic] conclusions.

Existing Rule 1704 states that panel decisions are subject to review by the Board (or a committee composed of at least three Directors thereof), either upon the Board's own motion (within 30 days of issuance of the decision), upon written request of the President of the Exchange (within 15 days after issuance of the decision), or upon written request by the applicant. The Board has discretion to grant requests for written or oral arguments before it. The Board may affirm, reverse, or modify the decision of the panel. A decision of the Board is a final Exchange Action [sic].

Existing Rule 1705 governs the service of process for notices or other documents served pursuant to the proceedings set forth in Chapter 17 and the extension of time limits for the submission of answers, petitions, or other materials.

Existing Rule 1706 states that the Exchange may contract with another SRO to perform some or all of the functions specified in Chapter 17, provided that the Exchange shall retain ultimate legal responsibility for and control of such functions.

Overview of the Exchange Review Council and the BX Rule 8000 and 9000 Series

The Exchange proposes to amend its By-Laws to replace the BCC with a new ''Exchange Review Council.'' The Exchange also proposes, with limited exceptions described below, to delete in their entirety Chapters 15–17 of the Existing Rules, establish new Chapters 80 and 90 of the Exchange's Rulebook, and then incorporate by reference into Chapters 80 and 90 the BX Rule 8000 and 9000 Series, respectively. The principal purpose of these proposals is to harmonize the Exchange's disciplinary processes and Rules consistent with those of its sister exchanges, including not only BX, but also Nasdaq and Phlx.

Broadly speaking, the BX Rules and processes will be similar to the existing ones. Both provide processes for informal resolution and formal adjudication of disciplinary matters. Both set forth procedures that are designed to provide due process to Members and Associated Persons, including fair notice of allegations and proceedings, opportunities to be heard and to present and rebut arguments and evidence before hearing panels, and opportunities to appeal adverse determinations made by such panels.

However, in a number of respects, the new Rules and processes will differ from the existing ones. One key difference concerns the role that FINRA will play in the new regime. Not only will FINRA continue to assist the Exchange in investigating matters under the BX Rules, through FINRA's Department of Enforcement and Department of Market Regulation (collectively, the ''Departments'') [38] but it will also assist in the adjudication of matters. Specifically, the adjudicatory functions of the BCC and Current Hearing Panels will be administered by FINRA's Office of Disciplinary Affairs (''ODA'') and Office of Hearing Officers (''OHO''), respectively.[39] The ODA and OHO are offices within FINRA that are independent of the FINRA enforcement function and not involved in investigating or litigating cases. The ODA will review each proposed complaint to determine the legal and evidentiary sufficiency of proposed charges as well as proposed settlements, in certain instances.[40] A recommendation proposed by the Departments or the Exchange's Regulation Department in a matter involving formal disciplinary action will require approval by the ODA. Going forward, the ODA will authorize (pursuant to a request by the Exchange's Regulation Department or the Departments) the issuance of a complaint.[41] The OHO, in turn, will be responsible for convening and administering New Hearing Panels in lieu of the Exchange's Current Hearing Panels.

Another key difference involves the replacement of the BCC with the Exchange Review Council. The Exchange Review Council, as the successor to the BCC, will play a more limited role in disciplinary matters than does the BCC presently. As to disciplinary matters, the Exchange Review Council will not be responsible for approving the issuance of complaints (formerly, statements of charges) or routinely approving [42] letters of acceptance, waiver, and consent or offers of settlement. Instead, the

[36] *See* Existing Rule 1503.

[37] *See* Existing Rule 1700.

[38] The Departments are authorized to act on behalf of BX in investigating and administering disciplinary matters pursuant to the RSA, and will do the same for the Exchange upon adoption of the new process.

[39] *See* FINRA Rule 9211(a); *see also* BX Rule 9211(a). The Exchange notes, however, that the Board may direct the ODA to authorize a complaint when, on the basis of information and belief, it is of the opinion that a Member or Associated Person has committed a violation which the Exchange has jurisdiction to enforce. *See* BX Rule 9211(a)(2).

[40] Pursuant to BX Rule 9270, proposed settlements must be submitted to and accepted by the Exchange Review Council, except that proposed settlements involving an affiliate of the Exchange must be reviewed by the ODA. BX Rule 9216(a) provides that proposed letters of acceptance, waiver, and consent must be submitted to and accepted by either the ODA, the Review Subcommittee, or the Exchange Review Council.

[41] BX Rule 9211(a) also provides that the Board has authority to direct the issuance of a complaint.

[42] Under BX Rule 9216(a), the ODA or a Review Subcommittee of the Exchange Review Council may accept or refer letters of acceptance, waiver, and consent to the Exchange Review Council for approval or rejection. The Review Subcommittee can also reject such letters. Similarly, under BX Rule 9270, a Review Subcommittee of the Exchange Review Council may accept, reject, or refer offers of settlement to the Exchange Review Council for approval or rejection (except where the offer of settlement involves an affiliate of the Exchange, in which case the ODA must decide whether to accept or reject the offer). As a practical matter and based upon the experiences of Nasdaq and BX, the Exchange expects such referrals to the Exchange Review Council to occur infrequently.

Exchange Review Council will function principally as an intermediate appellate body for decisions rendered by the New Hearing Panels. As to non-disciplinary matters, the Exchange Review Council will assume regulatory responsibilities that currently rest with various panels, including reviews of staff determinations made as to obvious errors.

Other noteworthy differences between the Existing Rules and the BX Rules and processes include the following:

• The BX Rules generally include more comprehensive rights and detailed procedures for, among other things, discovery and service of process than do the Existing Rules.

• As to the assessment of fines for violations of the Exchange's MRVP or other minor rule violations, the BX Rules do not authorize the issuance of minor rule violation letters or the imposition of fines of more than $2,500.[43] Should a Respondent fail to consent to the imposition of a fine or if the Review Subcommittee or the Exchange Review Council reject [sic] the terms of an MRVP or minor rule violation letter, then the matter will proceed through formal disciplinary channels. The BX Rules do not allow for a fine to be reversed, modified or affirmed, prior to formal disciplinary proceedings.

The following is a more detailed overview of each of the Exchange's proposals.

Overview of the Exchange Review Council

The Exchange proposes to retire the BCC[44] and to amend its By-Laws to establish in its place an Exchange Review Council. The amended By-Laws that the Exchange proposes to adopt in this regard are substantially the same as those that BX adopted to establish the BX Exchange Review Council.[45] Thus, the By-Laws provide for the Exchange Review Council to have the same general structure and powers as does the BX Exchange Review Council.[46] The proposed By-Laws will authorize the Exchange Review Council to adjudicate disciplinary actions and approve settlements thereof as well as make recommendations to the Board on certain policy matters and rule changes. Such policy functions of the Exchange Review Council render its jurisdiction broader than that of the BCC.

Specifically, proposed Article VI, Section 1 of the proposed By-Laws provides that the Exchange Review Council may be authorized to act for the Board with respect to: an appeal or review of a disciplinary proceeding, a statutory disqualification proceeding, or a membership proceeding; a review of an offer of settlement, a letter of acceptance, waiver, and consent, and a minor rule violation plan letter; the exercise of exemptive authority; and such other proceedings or actions as may be authorized by the Exchange rules. The Exchange Review Council also may consider and make recommendations to the Board on policy and rule changes relating to business and sales practices of Exchange Members and Associated Persons and enforcement policies, including policies with respect to fines and other sanctions. It may advise the Board on regulatory proposals and industry initiatives relating to quotations, execution, trade reporting, and trading practices and it may advise the Board in its administration of programs and systems for the surveillance and enforcement of rules governing Exchange Members' conduct and trading activities in the Exchange.

Proposed Article VI, Section 2 states that the Exchange Review Council would consist of no fewer than eight and no more than 12 members. The Exchange Review Council must include a number of Member Representative members[47] that is equal to at least 20% of the total number of members of the Exchange Review Council. The number of Non-Industry members,[48] including at least three Public members,[49] shall equal or exceed the sum of the number of Industry members[50] and Member Representative members. As soon as practicable, following the appointment of members, the Exchange Review Council shall elect a Chair from among its members. The Chair shall have such powers and duties as may be determined from time to time by the Exchange Review Council. The Board, by resolution adopted by a majority of Directors then in office, may remove the Chair from such position at any time for refusal, failure, neglect, or inability to discharge the duties of Chair. No more than 50% of the members of the Exchange Review Council shall be engaged in market making activity or employed by an Exchange Member firm whose revenues from market making activity exceed 10 percent of its total revenues.

Proposed Article VI, Section 3 requires the Exchange's Secretary to collect from each nominee for the office of member of the Exchange Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry, Member Representative, Non-Industry, or Public member. The Secretary must also certify to the Nominating Committee or the Member Nominating Committee[51] (as applicable) each nominee's qualifications and classification. After appointment to the Exchange Review Council, each member must update such information at least annually and upon request of the Exchange's Secretary, and must report immediately to the Secretary any change in such information.

Proposed Article VI, Section 4 provides that Exchange Review Council members shall serve three-year terms, or until a successor is duly appointed and qualified, except in the event of earlier

[43] As the Exchange discusses below, the Exchange proposes to retain certain of its Existing Rules to preserve its existing authorities with respect to minor rule violations, the issuance of minor rule violation letters, and the imposition of fines for such minor rule violations of up to $5,000.

[44] In a May 11, 2000 resolution, the Exchange Board delegated its authority to the President of the Exchange to establish a BCC to, among other things, conduct disciplinary hearings under Chapter 16 of the Existing Rules and conduct other hearings and reviews as set forth in Chapter 17 of the Existing Rules. On February 1, 2017, the Board passed a resolution that both revoked the President's authority to establish a BCC and authorized the establishment of an Exchange Review Council, effective upon the date when this rule filing becomes operative.

[45] The BX by-laws differ from the proposed Exchange By-Laws because the BX by-laws have a different numbering convention from the Exchange's By-Laws and, in various places, the BX by-laws refer to a Listing and Hearing Review Council, which has no analogue with respect to the Exchange.

[46] The BX by-laws do not describe in detail the process of the proceedings over which the BX Exchange Review Council presides. However, Section 7.9 of the BX by-laws state that a quorum of three BX Exchange Review Council members is necessary to adjudicate appeals of determinations made under BX Rules 4612 (appeal of denial of registration as an Equities Market Maker), 4619 (review of denial of an excused withdrawal of Equities Market Maker quotation), 4620 (appeal of denial of reinstatement of Equities Market Maker that accidentally withdraws), 11890 (appeal of clearly erroneous transaction determination), and BX Options Chapter V, Section 6 (appeal of obvious error determination). *See* BX by-laws, Article VII, Section 9. The Exchange's Rules do not have analogues to BX Rules 4612, 4620, and 11890 and, as such, the corresponding provision of the Exchange's proposed By-Laws (Article VII, Section 9) provides only that a quorum of three Exchange Review Council members is necessary for it to adjudicate appeals involving determinations made under Rules 720 (appeal of obvious error determination), 720A (appeal of determinations of erroneous trades due to system malfunctions and disruptions), and 804 (review of denial of an excused withdrawal of market maker quotation).

[47] *See* n.52, *infra*.

[48] *See id*.

[49] *See id*.

[50] *See id*.

[51] The terms ''Nominating Committee'' and ''Member Nominating Committee'' are defined in Exchange By-Laws, Article I.

termination from office by reason by death, resignation, removal, disqualification, or other reason. Members are term limited out after two consecutive terms. Proposed Article VI, Section 5 sets forth the procedures for resigning as a member of the Exchange Review Council and provides that an Exchange Review Council member may resign at any time upon written notice to the Board. Under proposed Article VI, Section 6, any member of the Exchange Review Council may be removed from office at any time for refusal, failure, neglect, or inability to discharge the duties of such office by majority vote of the Board.

Under proposed Article VI, Section 7, an Exchange Review Council member would be disqualified and removed immediately upon a determination by the Board, by a majority vote, that: (a) The member no longer satisfies the classification (Industry, Member Representative, Non-Industry, or Public) for which the member was elected; and (b) the member's continued service as such would violate the compositional requirements of the Exchange Review Council set forth in Article VI, Section 2. If the term of office of an Exchange Review Council member terminates under this Section, and the remaining term of office of such member at the time of termination is not more than six months, during the period of vacancy the Exchange Review Council shall not be deemed to be in violation of Article VI, Section 2 by virtue of such vacancy. Proposed Article VI, Section 8 contains provisions for the filling of vacancies on the Exchange Review Council and states that if a position on the Exchange Review Council becomes vacant, the Nominating Committee or the Member Nominating Committee (as applicable) shall nominate, and the Board shall appoint a person satisfying the qualifications for the position as provided in Article VI, Section 2 to fill such vacancy, except that if the remaining term of office for the vacant position is not more than six months, no replacement shall be required.

Proposed Article VI, Section 9 provides that a quorum of the Exchange Review Council will consist of a majority of its members, including not less than 50% of its Non-Industry members and one Member Representative member. Proposed Article VI, Section 10 contains provisions related to the meetings of the Exchange Review Council.

Under proposed Article VI, Section 11, the Exchange Review Council is required to establish a Review Subcommittee to determine whether disciplinary and membership proceedings decisions should be called for review by the Exchange Review Council under the disciplinary and membership rules to be proposed for the Exchange. The Review Subcommittee shall be composed of no fewer than two and no more than four members of the Exchange Review Council. The number of Non-Industry members of the Review Subcommittee shall equal or exceed the sum of the number of Industry members and Member Representative members of the Review Subcommittee, and the subcommittee must include at least one Member Representative member. At all meetings of the Review Subcommittee, a quorum for the transaction of business shall consist of not less than 50 percent of the members of the Review Subcommittee, including not less than 50 percent of the Non-Industry members of the Review Subcommittee and one Member Representative member of the Review Subcommittee.[52]

The BX Rules implement the foregoing responsibilities of the Exchange Review Council by establishing various procedures, described below, to govern its reviews. As the Exchange also describes in further detail below, the Exchange proposes to transfer to the Exchange Review Council (or panels thereof) certain responsibilities currently vested in other Exchange committees or the Board. For example, pursuant to Existing Rule 720, an Obvious Error Panel (''OEP'') is presently responsible for reviewing determinations regarding obvious and catastrophic errors. Pursuant to Existing Rule 720A, a ''Review Panel'' is responsible for reviewing determinations to nullify or adjust transactions that arise from system disruptions and malfunctions. The Exchange is proposing to eliminate the OEP and the Review Panel and to transfer their responsibilities to a panel of the new Exchange Review Council, which corresponds to the practice of BX. Subject to Chapter 90, the Exchange also proposes to transfer responsibility to the Exchange Review Council to review denials or conditions imposed upon those that seek to become or remain a Member of the Exchange or become or remain associated with a Member of the Exchange, as set forth in Existing Rule 302. Similarly, the Exchange proposes to transfer responsibility to the Exchange Review Council to review denials or conditions imposed upon Members that seek to transfer or sell market maker rights, as set forth in the Supplementary Material to Existing Rule 307.[53] In addition, the Exchange proposes to amend Existing Rule 804 to provide for the Exchange Review Council to review determinations regarding temporary withdrawals of quotations, which are not reviewable under the Existing Rules. The Exchange notes that BX vests in its Exchange Review Council responsibility for reviewing similar types of matters.[54]

The BX Rule 8000 Series

The Exchange proposes to incorporate by reference into a new Chapter 80 of its Rulebook the BX Rule 8000 Series. The BX Rule 8000 Series is entitled ''Investigation and Sanctions,'' and it governs the investigative process, including FINRA's authority under the RSA to conduct investigations of Members and Associated Persons on behalf of the Exchange.

BX Rule 8001 states that the Exchange and FINRA are parties to the RSA, pursuant to which FINRA has agreed to perform certain functions on behalf of the Exchange. It also specifies, however, that the Exchange retains ultimate legal responsibility for, and control over the functions that FINRA performs on its behalf.[55]

BX Rule 8110 requires Members to keep and maintain copies of the NASD (now known as FINRA) and Exchange Manuals in readily accessible places and make them available for examination by customers upon request.

BX Rule 8120 sets forth definitions for the BX Rule 8000 Series.

[52] In addition to adding Article VI to the By-Laws, the Exchange proposes to make changes to other articles of the By-Laws to accommodate the existence of the Exchange Review Council. For example, the Exchange proposes to amend Article I, which defines the terms that the Exchange uses in the By-Laws, to provide that the terms ''Industry member,'' ''Member representative member,'' ''Non-industry member,'' and ''Public member'' mean, in part, members of the Exchange Review Council. The Exchange also proposes to amend Article III, Section 6, to add a new subsection (a) that directs the Board to appoint an Exchange Review Council, as provided in Article VI. It also proposes to amend Article III, Section 6(b) to state that the Nominating Committee and the Member Nominating Committee of the Board shall have responsibility for nominating members of the Exchange Review Council. Finally, the Exchange proposes to amend Sections 7 and 8 of Article III, which deal with Director conflicts-of-interest/self-interested transactions and Director compensation, respectively, to ensure that the restrictions and benefits that these provisions provide apply to Exchange Review Council members.

[53] The Exchange notes that it proposes to establish procedures in Existing Rule 302 and Rule 307 to govern the review by the Exchange Review Council of adverse membership, association, or market maker sale or transfer determinations. The Exchange proposes to base these procedures upon those set forth BX Rules 1015 and 1016.

[54] *See* Securities Exchange Act Release No. 72149 (May 12, 2014), 79 FR 28564 (May 16, 2014) (SR–BX–2014–024).

[55] BX Rule 9001 also states that the Exchange has contracted with FINRA to perform some or all of the Exchange's disciplinary functions, while noting that the Exchange retains ultimate legal responsibility for and control of such functions.

BX Rule 8210 generally authorizes the Exchange's Regulation Department and FINRA, acting on the Exchange's behalf to require a Member, an Associated Person, or another person subject to the Exchange's jurisdiction to provide information orally, in writing or electronically, to provide testimony under oath, or to allow for the inspection of their [sic] books, records, and accounts, with respect to any matter associated with an investigation, complaint, examination, or proceeding of the Exchange or of other Self-Regulatory Organizations or regulators.

BX Rule 8211 requires a Member to submit certain specified trade data in an automated form, as the Regulation Department or FINRA may require or request.

BX Rule 8310 sets forth the Exchange's authority to sanction a Member or an Associated Person for violations of the federal securities laws, rules, or regulations thereunder, or the Exchange's Rules, as well as for neglect or refusal to comply with an order, direction, or decision issued under the Exchange Rules.[56] BX Rule 8310(a) provides for sanction [sic] that include censure, fine, suspension of membership or registration of a person associated with a Member, expulsion or cancellation of membership or association, suspension or bar from association with all Members, temporary or permanent cease and desist order, or any other fitting sanction. BX IM–8310–1 precludes Members from allowing Associated Persons from remaining associated with them, even in a clerical or ministerial capacity, upon issuance of orders suspending, revoking, or cancelling the registration of such Associated Persons and it prohibits payment of any salary, commission, profit, or other remuneration such Associated Persons might have earned during their periods of suspension. BX IM–8310–3 states, in part, that the Exchange's Regulation Department shall release certain information to the public regarding disciplinary complaints and decisions and release, upon request, a copy of any complaint or disciplinary decision issued by the Exchange or any committee thereof.

BX Rule 8320 states that fines and other monetary sanctions shall be paid to the Treasurer of the Exchange. It authorizes the Exchange, after seven days written notice, to in part summarily suspend or expel Members if they are delinquent in paying sanctions or fines.

BX Rule 8330 states that a Member or an Associated Person disciplined pursuant to Rule 8310 shall bear the costs of disciplinary proceedings as the New Hearing Panels or the Board deem appropriate under the circumstances.

The BX Rule 9000 Series

The Exchange proposes to incorporate by reference into a new Chapter 90 of its Rulebook the BX Rule 9000 Series. The BX Rule 9000 Series is entitled ''Code of Procedure,'' and it governs proceedings for disciplining Members and Associated Persons, proceedings for regulating Members experiencing financial or operational difficulties, proceedings for summary or non-summary suspensions, cancellations, bars, prohibitions, or limitations, and proceedings for obtaining relief from the eligibility requirements of the Exchange By-Laws and the Exchange Rules.

BX Rule 9100 Series

The BX Rule 9100 Series describes the application and purpose of the BX Rule 9000 Series, including the types of proceedings covered by the BX Rules,[57] the rights, duties, and obligations of Members and Associated Persons,[58] defined terms,[59] and rules concerning the filing and service of papers.[60] The BX Rule 9100 Series also provides rules concerning proceedings, including appearance and practice,[61] withdrawal by attorney or representative,[62] *ex parte* communications,[63] separation of functions among adjudicators and interested staff,[64] rules of evidence and official notice,[65] motions,[66] rulings on procedural matters,[67] and interlocutory review.[68]

Specifically, BX Rule 9110 sets forth the general rights, duties, and obligations of Members and Associated Persons under the Code of Procedure, including the rights, in any disciplinary matter thereunder, to be presented with specific charges, to have a hearing, to have due notice thereof, to present a defense and relevant supporting material, to be represented by counsel, to have a record kept of proceedings, and to receive a written determination that sets forth the basis therefor.

BX Rule 9120 sets forth definitions of various terms used throughout the Rule 9000 Series.

The BX Rule 9130 Series governs the requirements for service of complaints and other written documents in connection with disciplinary proceedings. The BX Rule 9130 Series prescribes the timing and form of required service based on the type of the notice. BX Rule 9134 concerns the permissible methods of service and the procedures for service. BX Rule 9134 permits personal service, service by U.S. Postal Service, or service by courier. BX Rules 9135 through 9138 set forth the form, format, and procedures for filing papers with adjudicators as well as the effect for [sic] a Party or its counsel or representative for affixing or failing to affix their [sic] signatures to such papers. Other BX Rules govern service of notices and other documents in particular situations.[69]

BX Rule 9141 concerns appearances before adjudications in proceedings, both by Parties and by their attorneys and representatives. BX Rule 9141 permits a person to represent themselves [sic] in any proceeding as

[56] The Exchange proposes to retain Existing Rule 1600, which provides a more general statement of the Exchange's disciplinary authority than that which exists in BX Rule 8310. Existing Rule 1600 states that a Member or Associated Person who is alleged to have violated or aided and abetted a violation of the Act, the rules and regulations promulgated thereunder, and the By-Laws or Rules of the Exchange, or any interpretation thereof are subject to the disciplinary jurisdiction of the Exchange and may be, after notice and opportunity for a hearing, appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a Member, or any other fitting sanction in accordance with the provisions of the disciplinary rules. It also permits the Exchange to charge a supervisor with a violation of a rule within the disciplinary jurisdiction of the Exchange committed by an employee under his supervision or by the Member as though such violations were his own. Finally, it extends the disciplinary jurisdiction of the Exchange to continue after termination of the Member from the Exchange or a person's termination of association with a Member as to matters that occurred prior to such termination. Staff must serve written notice to the former Member or Associated Persons within one year of receipt by the Exchange of notice of such termination that the Exchange is making inquiry into a matter or matters.

[57] *See* BX Rule 9110.

[58] *Id.*

[59] *See* BX Rule 9120.

[60] *See* BX Rules 9131–9138.

[61] *See* BX Rule 9141.

[62] *See* BX Rule 9142.

[63] *See* BX Rule 9143.

[64] *See* BX Rule 9144.

[65] *See* BX Rule 9145.

[66] *See* BX Rule 9146.

[67] *See* BX Rule 9147.

[68] *See* BX Rule 9148.

[69] *See, e.g.* BX Rule 9360 (effective dates of bars, expulsions, and permanent cease and desist orders); BX Rule 9400 (various service requirements pertaining to expedited client suspension proceedings); BX Rule 9550 Series (various service requirements pertaining to: (1) Suspensions for failures to provide information or keep information current; (2) suspensions and cancellations for failures to pay Exchange dues, fees, or other charges; (3) suspensions or cancellations for failures to comply with arbitration awards, settlements, or restitution orders or settlements; (4) suspensions, cancellations, or bars from membership or suspensions or bars from association with Members, or limitations or prohibitions of access to Exchange services; (5) suspensions, cancellations, and bars for failure to comply with cease and desist orders; (6) restrictions on Members' activities due to financial or operational difficulties; and (7) suspensions for actions authorized by Section 6(d)(3) of the Act).

well as to be represented by others (pursuant to a notice of appearance), including a licensed attorney,[70] a member of a partnership (to represent a partnership), and a bona fide officer of a corporation, trust or association (to represent a corporation, trust or association).

BX Rule 9143(a) prohibits Parties, their representatives, or Interested Staff[71] from having *ex parte* communications with adjudicators or with Exchange staff who are participating in or advising on a proceeding about the merits of the proceeding.[72] BX Rule 9143(b) also requires adjudicators participating in a proceeding to disclose and place in the record any written *ex parte* communications (or memoranda summarizing any oral *ex parte* communications) concerning the merits of the proceeding. BX Rule 9143(c) furthermore permits the Exchange Regulation Department or an adjudicator (consistent with the interests of justice, the policies, [sic] underlying the Act, and the Rules of the Exchange) to order any Party that violates the *ex parte* prohibition to show cause why the Party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by reason of such [sic] *ex parte* communication. BX Rule 9143(d) generally specifies that the *ex parte* prohibition applies beginning with the authorization of a complaint. Finally, BX Rule 9143(e) specifies circumstances in which a Party's claim as to a violation of the *ex parte* rules are [sic] waived, including when a Respondent submits an offer of settlement, an executed letter of acceptance, waiver, and consent, or an MRVP letter.[73]

BX Rule 9145 states that formal rules of evidence do not apply to proceedings brought under the BX Rule 9000 Series. It also permits adjudicators, after providing notice and an opportunity for a Party to comment or oppose, to take official notice of matters that may be judicially noticed by courts or of other matters within the specialized knowledge of the Exchange.

BX Rules 9146 through 9148 govern motion practice before adjudicators. BX Rule 9146 provides that the filing of a motion does not stay a proceeding, unless an adjudicator orders otherwise. It also provides that, unless otherwise ordered by an adjudicator, a Party may file an opposition or response to a written motion within 14 days after service of the motion and that, if the Party fails to do so, it shall be deemed to have waived its objection to the motion. However, BX Rule 9146 states that a moving Party is not entitled to file a reply to such an opposition or response, except at the discretion of the adjudicator. BX Rule 9146 also authorizes an adjudicator to permit oral arguments on motions and to summarily deny frivolous motions. It specifically provides for motions for protective orders. Finally, along with BX Rule 9147, BX Rule 9146 designates adjudicators for procedural and summary disposition motions at both the Hearing Panel and appellate levels. BX Rule 9148 specifies that there are no interlocutory reviews of rulings on motions or orders.

BX Rule 9150 authorizes an adjudicator to exclude from disciplinary proceedings an attorney for a Party or any other person authorized to represent a Party to the extent that the adjudicator deems said attorney or persons to be engaging in contemptuous conduct, under BX Rule 9280, or unethical or improper professional conduct. The BX Rule authorizes an attorney or person so excluded to seek review of their [sic] exclusion from the Exchange Review Council. Moreover, BX Rule 9150(b) states that even if it prohibits an attorney or other person authorized to represent others from practicing or appearing in an Exchange proceeding, such action by the Exchange shall not preclude it from initiating other proceedings against such person.

BX Rule 9160 sets forth conditions for the recusal or disqualification of an adjudicator. Such conditions include a conflict of interest, bias, or other circumstances in which the adjudicator's fairness might reasonably be questioned. The Rule also designates those who are authorized to order the disqualification of Board Directors, members of the Exchange Review Council or committees thereof, or New Hearing Panels.

The BX Rule 9200 Series

The BX Rule 9200 Series sets forth the disciplinary process, providing rules concerning the issuance of a complaint, the briefing and hearings process, issuance of a decision and the settlement process. The BX Rule 9200 Series also governs permanent cease and desist orders.

BX Rule 9211(a)(1) states that if the Departments believe that a Member or an Associated Person has violated any law, rule, or regulation over which the Exchange has jurisdiction, then the Regulation Department or the Departments may request authorization from the ODA to issue a complaint. Likewise, BX Rule 9211(a)(2) states that the Board may direct the ODA to authorize and the Departments to issue a complaint when the Board is of the opinion that any Member or Associated Person has violated any law, rule, or regulation within the Exchange's jurisdiction. Unlike the Existing Rule, the BX Rules do not specify that ''probable cause'' or any other legal standard must be satisfied for the ODA to authorize issuance of a complaint.

BX Rule 9212 sets forth the requirements for the issuance of complaints. It states that if a complaint is authorized, the Departments shall issue it.[74] It furthermore states that complaints must be in writing and specify, in reasonable detail, the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision allegedly violated by such conduct.[75] The BX Rule provides that complaints must be signed by the Department of Enforcement or of Market Regulation and served by the Departments on the Parties in accordance with the Rules.[76] The BX Rules permit amendments to and withdrawals of complaints. As to amendments, BX Rule 9212(b) provides that the Departments may amend a complaint once, as a matter of course, at any time before the Respondent answers the complaint, and otherwise, upon a motion to the Hearing Officer, a showing of good cause, and a determination that the Respondent will suffer no unfair prejudice as a result of the amendment. As to withdrawals, BX Rule 9212(c) states that the Departments may withdraw a complaint with prior leave of the Hearing Officer. BX Rule

[70] Pursuant to BX Rule 9142, an attorney or representative may withdraw from a proceeding for good cause, pursuant to written notice and at least 30 days prior notice.

[71] BX Rule 9120(t) defines ''Interested Staff'' to include certain enumerated Exchange or FINRA employees. The applicable employees who constitute ''Interested Staff'' under this BX Rule vary depending upon the type of disciplinary proceeding at issue.

[72] BX Rule 9144(a) generally prohibits Interested Staff from advising adjudicators, and adjudicators from advising Interested Staff, with respect decisions of the other, including as to whether to file complaints, appeals or cross appeals. BX Rule 9144(b) also prohibits Hearing Officers and Panelists, absent waivers in certain circumstances, from participating in decisions as to whether to issue complaints, appeal or cross-appeal disciplinary proceedings to the Exchange Review Council, or call decisions for review.

[73] In the proposed introduction to Chapter 90, the Exchange states that the Exchange's procedure for handling MRVP letters, including as set forth in BX Rule 9143(e)(3), shall also apply to minor rule violation letters.

[74] *See* BX Rule 9212(a)(1).

[75] *See id.*

[76] *See id.*

9212(d) provides for the docketing of complaints.

BX Rule 9214 governs the consolidation and severance of disciplinary proceedings. Unlike Existing Rule 1606(d), BX Rule 9214 does not permit a non-Party to intervene in disciplinary proceedings, but it does permit the consolidation of proceedings. Under the BX Rule, either the Hearing Officer may order or a Party may request consolidation of two or more disciplinary proceedings if such consolidation would further the efficiency of the disciplinary process, or if the subject complaints involve common questions of law or fact or one or more of the same Respondents. When determining whether to order the consolidation of such disciplinary proceedings, BX Rule 9214(a) requires the Chief Hearing Officer to consider whether the same or similar evidence reasonably would be expected to be offered at each of the hearings, whether the proposed consolidation would conserve the time and resources of the Parties, and whether any unfair prejudice would be suffered by one or more Parties as a result of the consolidation. If consolidation is ordered, BX Rule 9214(c) provides that the Chief Hearing Officer shall issue an order specifying which New Hearing Panel will preside over the consolidated proceedings or the Chief Hearing Panel shall appoint another New Hearing Panel to do so.

BX Rule 9215 requires a Respondent to file an answer to a complaint with the OHO within 25 days after service of the complaint (unless the Hearing Officer extends that deadline for good cause) and to state in such answer whether they [sic] admit, deny, or lack sufficient information to admit or deny each allegation made in the complaint. However, the BX Rule differs in certain respects from Existing Rule 1605, which governs answers to statements of charges. For example, it specifically authorizes a Respondent to file a motion for a more definite statement of the allegations set forth in the complaint as well as to amend the answer.[77] Although the BX Rule, similar to Existing Rule 1605, permits extensions of time to respond to an amended complaint, the BX Rule provides for the greater of the original remaining answer period or 14 days to do so, rather than 25 days.[78] Finally, instead of simply providing that a failure to file an answer shall be deemed to be an admission of the matters alleged, BX Rule 9215(f) requires the Departments to send a second notice to Respondents before they may impose sanctions, which may include, not only the admission of unanswered allegations, but also the issuance of default decisions pursuant to BX Rule 9269.

BX Rule 9216 sets forth procedures to informally dispose of matters, where appropriate. Specifically, BX Rule 9216 provides that the Departments may prepare and request that a Member or Associated Person execute a letter of acceptance, waiver, and consent (''AWC'') accepting a finding of a violation and consenting to the imposition of sanctions. Unlike Existing Rule 1603, which governs analogous ''letters of consent,'' the BX Rule provides that in executing an AWS [sic] letter, a Member or Associated Person is deemed to waive their [sic] rights to a hearing, to appeal, to otherwise challenge the terms of a letter, to claim bias or prejudgment, or to claim violation of the *ex parte* prohibitions of BX Rule 9143. The BX Rule states that executed AWC letters are subject to approval by the ODA, the Exchange Review Council, or the Review Subcommittee and, if rejected, they may not be introduced into evidence in connection with any subsequent disciplinary hearing that occurs.

BX Rule 9216(b) concerns the process for assessing fines for MRVP violations.[79] Under BX Rule 9216(b), if the Departments have reason to believe that a Member or an Associated Person has violated certain specified Rules, then they may prepare an MRVP letter (for fines of up to $2,500 for violations subject to the Exchange's MRVP plan) and request that the Member or Associated Person accept [sic] the letter and the fine set forth in it.[80] BX Rule 9216(b) provides that executed MRVP letters are to be submitted for approval to the Exchange Review Council. The Review Subcommittee or the ODA may accept such letters or refer them to the Exchange Review Council for acceptance or rejection. The Review Subcommittee may also reject such letters or refer them to the Exchange Review Council. If the letter is accepted, then it is deemed to be a final decision of the Exchange. If a Member or an Associated Person chooses not to consent to the issuance of an MRVP letter, or the Review Subcommittee or the Exchange Review Council rejects the letter, then the matter becomes subject to formal disciplinary adjudication.[81]

BX Rule 9216(b) will replace Existing Rule 1614, with three exceptions. First, the Exchange proposes to retain Existing Rule 1614(a), which sets forth its authority to impose fines of up to $2,500 for MRVP violations and up to $5,000 for minor rule violations (other than those subject to an MRVP), because BX Rule 9216(b) does not authorize the imposition of fines of up to $5,000 for minor rule violations. Existing Rule 1614(a) also includes a sentence (that the BX Rules lack) clarifying that the Exchange has discretion to decide, on a case-by-case basis, whether to impose a fine for an MRVP violation or a minor rule violation or whether instead to proceed with a formal disciplinary action under proposed Chapter 90. Second and relatedly, the Exchange proposes to include in its introduction to Chapter 90 a statement that the procedures set forth in BX Rule 9216(b) for handling MRVP violations and MRVP violation letters also apply to the handling of minor rule violations and minor rule violation letters, except that the Exchange will promptly report to the Commission any final Exchange action, in accordance with SEC Rule 19d–1(c)(1). Third, the Exchange proposes to retain Existing Rule 1614(d) (renumbered as Rule 1614(b)), which presently sets forth the Exchange's schedule of MRVP violations and minor rule violations and their associated fines. This schedule is particular to the Exchange and cannot be replaced summarily with the corresponding BX schedule, which is set forth in BX IM–9216. The Exchange will not incorporate by reference BX IM–9216.

The BX Rule 9200 Series sets forth the procedures of the Exchange for holding disciplinary hearings. Although the BX hearing rules are broadly similar to the Existing Rules, the BX Rules are more comprehensive and robust. One noteworthy difference between them is that under the Existing Rule 1606, a Respondent is entitled to a hearing as a matter of course, whereas under BX Rule 9221, a Respondent must affirmatively request a hearing in their [sic] answer or else, in absence of good

[77] *See* BX Rule 9215(c) and (d).

[78] If the Respondent files an answer before the complaint is amended, the Respondent receives 14 days to respond to the amended complaint. *See* BX Rule 9215(e).

[79] As discussed previously, the Exchange proposes to retain its existing MRVP fine schedule.

[80] Pursuant to BX Rule 9216(b), if a Member or Associated Person agrees to execute an MRVP or a violation letter, they [sic] also agree [sic] to waive certain of their [sic] rights with respect to the alleged violations, including their [sic] rights to dispute the allegations or the validity of the letter, as well as to make claims of bias or prejudgment, and to raise violations of the *ex parte* and separation of functions rules.

[81] Because the minor rule violation process proceeds only to the extent that a Member or Associated Person assents to the letter and its terms, there is no provision under the BX Rules, as there is under the Existing Rules, for a Member or Associated Person to contest a minor rule violation fine.

cause shown, they are [sic] deemed to waive their [sic] right to one.[82] A Hearing Officer or the Hearing Panel may also call a hearing on their [sic] own initiative or the Hearing Panel may issue its decision on the record.[83] BX Rule 9221(d) provides for notice of a hearing to be given to the Parties at least 28 days beforehand, but the BX Rule provides an exception if the Hearing Officer determines that extraordinary circumstances require a shorter notice period or the Parties waive the notice period.

BX Rule 9231(a) states that the Chief Hearing Officer of the OHO shall appoint a New Hearing Panel or an Extended New Hearing Panel [84] to conduct formal disciplinary procedures. BX Rule 9231(b) specifies that a New Hearing Panel, in most instances, is to be composed of a Hearing Officer and two Panelists,[85] that the Hearing Officer shall preside over the hearings, and that the Chief Hearing Officer is responsible for selecting the Panelists, who must be associated with a Members or retired therefrom.[86] BX Rule 9231(e) states that the Chief Hearing Officer may appoint a replacement Hearing Officer if the Hearing Officer withdraws, is incapacitated, or otherwise is unable to continue service after being appointed.[87] Meanwhile, BX Rule 9234 authorizes the Chief Hearing Officer to appoint new Hearing Panelists under similar circumstances. Like Existing Rule 1606(a)(3), BX Rules 9233 and 9234 provide for the recusal or withdrawal of Hearing Officers and Panelists with conflicts of interest or biases and their replacement by the Chief Hearing Officer. Unlike the Existing Rule, however, BX Rules 9233 and 9234 authorize a Party to file a request that Hearing Officers or Panelists be disqualified for such reasons.[88]

BX Rule 9241 governs pre-hearing conferences. BX Rule 9241(a) states that such conferences may be held to expedite proceedings, establish efficient procedures to manage proceedings, or to improve the quality of hearings through preparation. BX Rule 9241(b) states that pre-hearing conferences may be held upon the motion of the Hearing Officer or at the request of a Party. BX Rule 9241(c) provides that subjects for discussion at pre-hearing conferences may include, not only the simplification of issues for adjudication and the expedition of proceedings, but also the exchange of witness and exhibit lists and exhibits, the stipulation of the authenticity and admissibility of evidence, taking official notice of facts, the scheduling of pre-hearing motions or briefs, the method of service, the scheduling of hearing dates, any amendments to the complaint or answers, and the production of documents. Generally, under BX Rule 9241(d), initial pre-hearing conferences, unless determined by a Hearing Officer to be unnecessary or premature, shall be held within 21 days after the filing of an answer. BX Rule 9241(e) provides for agreements and procedural determination [sic] made during pre-hearing conferences to be recorded in orders issued by the Hearing Officer. Under BX Rule 9241(f), a Hearing Officer may issue a default decision against a Party that fails to appear at a pre-hearing conference, if the Party was provided due notice.

Additionally, prior to a hearing, BX Rule 9242 authorizes a Hearing Officer to order a Party to furnish information to all other Parties and to the New Hearing Panel that may include an outline or narrative summary of the Party's case or defense, the legal theories upon which a Party will rely, a list and copies of documents that the Party intends to introduce at the hearing, a list of witnesses that the Party intends to call to testify on their [sic] behalf and a summary of the expected testimony, and if a witness is to be called as an expert witness, a statement of the witness' expertise.

The BX Rule 9250 Series governs discovery during disciplinary proceedings. The BX Rule 9250 Series provides for more extensive discovery than that which exists under the Existing Rules. BX Rule 9251(a) generally provides that the Departments must make available to Respondents information and documents obtained in connection with the investigations that led to the institution of disciplinary proceedings, such as requests for information and documents, responses thereto, and all transcripts and exhibits. BX Rule 9251(b) permits the Departments to withhold certain documents from Respondents under certain circumstances, including to the extent that they are privileged, contain attorney work product, constitute internal memoranda or examination reports, reveal examination or investigatory methods, the identities of confidential sources, or the existence of other prospective investigations or enforcement actions, or if the Hearing Officer grants leave to withhold a document.[89] The BX Rule does not permit the Departments to withhold from Respondents exculpatory evidence. The Hearing Officer may require the Departments to submit a list of withheld documents.[90] However, the Rule states that unless the Hearing Officer orders otherwise, the Departments generally must make documents available to a Respondent not later than 21 days after service of the Respondent's answer.[91] If the Departments fail to make documents or witness statements available to Respondents as required under BX Rule

[82] BX Rule 9221(a) provides that any request by a Respondent for a hearing shall be granted.

[83] *See* BX Rule 9221(b)-(c).

[84] Like Extended New Hearing Panels, Extended Proceeding Committees are established for proceedings that involve unusually complex issues or will require an extended period of time to hear. Pursuant to BX Rule 9331(a)(2), members of Extended Proceeding Committees may be entitled to compensation at the rates then in effect for arbitrators appointed under the FINRA Rule 10000 Series.

[85] BX Rule 9120(z) defines the term ''Panelist'' as used in the Rule 9200 Series, the Rule 9550 Series, and the Rule 9800 Series, to mean a ''member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer.'' As used in the Rule 9300 Series, the term means a ''current or former member of the Exchange Review Council or a former Director who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.'' The Exchange will select Panelists in accordance the requirements set forth in BX Rules 9120(z) and 9231.

[86] BX Rule 9232 sets forth other criteria for the Chief Hearing Officer to use when selecting New Hearing Panels, including their level of expertise, the absence of any conflicts of interest or bias and any appearance thereof, their availability for service, and the frequency of their prior service on New Hearing Panels (with a preference towards providing opportunities for new or infrequently-serving individuals).

[87] BX Rule 9235(b) also authorizes the Chief Hearing Officer or his or her Deputy to exercise the authority of a Hearing Officer in his or her temporary absence.

[88] BX Rule 9233(b) permits a Party to move for the disqualification of a Hearing Officer not later than 15 days after the later of: (1) When the Party learned of the facts believed to constitute the disqualification; or (2) when the Party was notified of the assignment of the Hearing Officer. Similarly, BX Rule 9234(b) permits a Party to move for the disqualification of a Hearing Panelist within 15 days after the later of: (1) When the Party learned of the facts believed to constitute the disqualification; or (2) when the Party was notified of the assignment of the Hearing Panelist. BX Rule 9233(c) provides that the Chief Hearing Officer shall promptly investigate whether disqualification is required and issue a written ruling on the motion. BX Rule 9234 provides for a similar process for motions and decisions on motions to disqualify Hearing Panelists.

[89] BX Rule 9253 provides in part that, notwithstanding BX Rule 9251(b), a Respondent may file a motion requesting that the Departments produce witness statements or witness deposition transcripts. It provides that the failure to produce such materials shall not result in rehearing or an amended decision unless the Respondent establishes that the failure was not harmless error. The Hearing Officer, or upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the Exchange Review Council, shall determine whether the failure to provide any statement was not harmless error.

[90] *See* BX Rule 9251(c).

[91] *See* BX Rule 9251(d).

9251, no rehearing or amended decision may be in order, unless the Hearing Officer determines that the failure was not harmless error.[92]

BX Rule 9252 provides for a process by which a Respondent may request that the Exchange invoke BX Rule 8210 to compel the production of documents or testimony at the hearing. Pursuant to BX Rule 9252(a), such a request must be submitted to the Hearing Officer no later than 21 days before the hearing date. The request may be granted upon a showing that the information sought is relevant, material, and non-cumulative, that the requesting Party has been unsuccessful in obtaining the requested documents or testimony despite good faith attempts to do so, and that each of the persons for whom the documents and testimony are sought is subject to the Exchange's jurisdiction.[93] The Hearing Officer shall also consider whether the request is unreasonable, oppressive, excessive, [sic] in scope, or unduly burdensome, or whether it should be denied, limited, or modified.[94] If the Hearing Officer determines that a request is unreasonable, excessive, or unduly burdensome, he or she may deny the request or grant it only upon such conditions as fairness requires.[95] If the Hearing Officer grants the request, the Hearing Officer shall order that requested documents be produced to all Parties not less than ten days before the hearing, and order that witnesses whose testimony was requested appear and testify at the hearing. If the Hearing Officer grants the request ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, the documents or testimony shall be produced immediately to all Parties.[96]

Several BX Rules govern the hearing process. Broadly speaking, these Rules are similar to, albeit more comprehensive than, the hearings process that exists under Existing Rule 1606(e). BX Rule 9261(a) requires a Party to submit to all other Parties and to the Hearing Officer, no later than 10 days before a hearing, or at such earlier date as may be specified by the Hearing Officer, copies of documentary evidence and the names of the witnesses that it intends to present at the hearing. BX Rule 9261(b) states that a Party is entitled to appear at a hearing in person, by counsel, or by their [sic] representative. BX Rule 9262 requires sworn testimony at hearings. BX Rule 9263(a) grants the Hearing Officer authority to receive relevant evidence and to exclude all evidence that is irrelevant, immaterial, unduly repetitious, or unduly prejudicial. BX Rule 9145(a) provides that the formal rules of evidence shall not apply in a proceeding brought under the Rule 9000 Series. BX Rule 9265 requires hearings and (unless otherwise ordered by a Hearing Officer) pre-hearing conferences to be recorded by a court reporter and for transcripts to be available for correction and purchase. BX Rule 9266 states that the Hearing Officer may require the Parties to file proposed findings of fact and conclusions of law, or post-hearing briefs, and it prescribes a procedure for doing so. BX Rule 9267 lists the contents of the evidentiary record.

BX Rule 9268 governs New Hearing Panel decisions. Similar to Existing Rule 1607, BX Rule 9268(a) requires a New Hearing Panel to make a determination in a matter based on a majority vote, which is reflected in a written decision drafted by the Hearing Officer. Also similar to the Existing Rule, BX Rule 9268(b) requires that each decision include a statement of the specific violations alleged, findings of underlying facts, and conclusions of law. Unlike the Existing Rule, however, BX Rule 9268(c) permits the Hearing Officer or a Hearing Panelist to prepare a written dissenting opinion. BX Rule 9268(a) also specifically requires that the decision be issued within 60 days of the final date allowed for filing proposed findings of fact, conclusions of law, and post hearing briefs, or by a date established by the Chief Hearing Officer. Last, under subparagraph (d) of the BX Rule, the OHO must serve the decision and any dissenting opinion on the Parties, publish notice of the decision and any dissenting opinion in the Central Registration Depository (''CRD'') and provide a copy of the decision and any dissent thereto to the each Member of the Exchange with which the Respondent is associated.

BX Rules 9264 and 9269 concern the disposition of a disciplinary matter through a summary proceeding. BX Rule 9264 states that a motion for summary disposition must be initiated by a Party. Under BX Rule 9264(a), the Respondent and/or staff may, prior to the hearing but after the Respondent has filed an answer and had opportunity to inspect documents in the record, make a motion for summary disposition of any or all the causes of action in the complaint with respect to that Respondent, as well as any defense raised in a Respondent's answer. If a hearing on the merits has begun, then BX Rule 9264(b) states that Parties may submit a motion for summary disposition only with leave of the Hearing Officer. BX Rule 9264(c) provides the process for proceeding when a summary motion does not dispose of the matter entirely. BX Rule 9264(d) requires motions for summary disposition to be supported by a statement of undisputed facts, a supporting memorandum of points and authorities, and affidavits or declarations that set forth such facts. BX Rule 9264(e) concerns rulings on motions for summary disposition. This provision of the BX Rule provides that a Hearing Officer may deny or defer a decision on any motion for summary disposition, yet only a New Hearing Panel may grant such a motion (except the Hearing Officer may grant motions for summary disposition with respect to questions of jurisdiction). BX Rule 9264(e) also provides that a motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the Party that files the motion is entitled to summary disposition as a matter of law.

Meanwhile, BX Rule 9269 governs the issuance of default decisions by the Hearing Officer against Respondents that fail to provide timely answers to complaints or any Party that fails to appear at any hearing for which they have [sic] due notice. Where the defaulting Party is the Respondent, the BX Rule specifies that the Hearing Officer may issue a default decision that deems the allegations against the Respondent to be admitted. Where the defaulting Party is the Departments, the Hearing Officer may issue a default decision that dismisses the complaint with prejudice. The Hearing Officer also may order a Party who fails to attend a pre-hearing conference or a hearing to pay the costs of attendance for the other Party. Like Existing Rule 1608, the BX Rule provides for default decisions to be set aside, but unlike the Existing Rule, BX Rule 9269 provides for the Hearing Officer to set them aside only upon a motion and a showing of good cause. The BX Rule provides, however, that default decisions may be appealed to or called for review by the Board within 25 days after service.[97]

[92] *See* BX Rule 9251(g). The Hearing Officer, or, upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the Exchange Review Council, shall determine whether the failure to make the document available was not harmless error. *See id.*

[93] *See* BX Rule 9252(b).

[94] *See id.*

[95] *See* BX Rule 9252(c).

[96] *See id.*

[97] In addition to the above, BX Rule 9280 authorizes a New Hearing Panel to exclude or impose sanctions upon a Party, an attorney for a Party, or another authorized representative of a Party that violates an order or otherwise engages in contemptuous conduct during a proceeding.

Continued

BX Rule 9270 governs settlements. It permits a Party to propose in writing an offer of settlement at any time and to do so without limit to the number of offers it proposes. Under BX Rule 9270(e), if an offer of settlement is uncontested, then the Departments must, if a hearing has not yet commenced, transmit the offer and a proposed order of acceptance to the Exchange Review Council (or the ODA, if the Respondent is an affiliate of the Exchange) for approval or rejection. If a hearing has already commenced when the offer is made, then the Departments must send the offer and proposed order to the New Hearing Panel for preliminary approval and then to the Exchange Review Council (or, if a Respondent is an affiliate of the Exchange, to the ODA) for ultimate approval or rejection. Under BX Rule 9270(f), if an offer of settlement is made and it is contested, then the Departments must provide a written opposition to the New Hearing Panel, which may issue an order approving the offer, or it may order the Parties to attend a settlement conference. If a New Hearing Panel approves a contested offer of settlement, then the Hearing Officer shall send the order of acceptance of the offer of settlement to the Exchange Review Council (or, if a Respondent is an affiliate of the Exchange, to the ODA) for ultimate acceptance or rejection. Pursuant to BX Rule 9270(h), if an offer of settlement is rejected, then the Respondent shall be notified in writing, the offer shall be withdrawn, and the rejected order shall not constitute part of the record in any subsequent proceeding against the Respondent. BX Rule 9270(j) further clarifies that a Respondent shall not be prejudiced by a rejected order of settlement.[98]

BX Rule 9280 authorizes the issuance of sanctions for Parties, their attorneys, and their representatives, for contemptuous conduct. As set forth in BX Rule 9280(a)(2), such sanctions may include exclusion of an attorney or representative from proceedings. They may also include, in part, orders that establish disputed facts in favor of the non-sanctioned Party, preclude the disobedient Party from supporting or opposing claims or defenses, or strike pleadings or portions thereof.[99] The exclusion of an attorney or representative is subject to review by the Exchange Review Council.[100]

BX Rule 9290 states that hearings shall be held and orders shall be issued as to temporary cease and desist proceedings on an expedited basis. BX Rule 9291 governs the form and delivery of permanent cease and desist orders.

The BX Rule 9300 Series

The BX Rule 9300 Series sets forth the process for review of disciplinary proceedings by the Exchange Review Council and the Board.

BX Rule 9311 sets forth the process for appellate reviews of New Hearing Panel decisions. Under BX Rule 9311, a Party may appeal a New Hearing Panel decision to the Exchange Review Council within 25 days after service of a decision.[101] Additionally, on their [sic] own motion, any member of the Exchange Review Council, a Review Subcommittee thereof, or the CRO (as to default decisions) may issue a call to review a New Hearing Panel decision within 45 days after the date of service of the decision (or within 25 days after the date of service, as to calls for review that the CRO initiates). BX Rule 9311(c) and (d) require [sic] that Parties file written notices of appeal (and cross-appeal) with the OHO and it prescribes requirements for such notices. BX Rule 9311(e) states that the Exchange Review Council, in its discretion, may waive any issues not raised in appeal or cross-appeal notices, but it provides a process by which the Parties may petition for consideration of such issues.

Meanwhile, BX Rule 9312 governs the process by which the Exchange Review Council, the Review Subcommittee, or the CRO may call a matter for review. It provides that a decision of a New Hearing Panel issued pursuant to BX Rule 9268 may be called for review by any member of the Exchange Review Council or any member of a Review Subcommittee within 45 days after service of the decision. It also provides that a default decision against a Respondent, pursuant to BX Rule 9269, may be called for review by the CRO, on his or her own motion, within 25 days after service of the decision. Additionally, it provides that a decision with respect to a Member that is an affiliate of the Exchange may not be called for review by the Exchange Review Council. BX Rule 9312(b) states that a decision to call a matter for review by the Exchange Review Council, the Review Subcommittee, or the CRO operates as a stay of a final decision until such time as the Council or Board issues its decision, except with respect to permanent cease and desist orders.

BX Rule 9321 provides for the transmission of the record of a disciplinary proceeding to the Exchange Review Council within 21 days after the filing of a notice of appeal or notice of review, or at such a later time as the Council may designate. BX Rule 9322 grants discretion, with good cause shown, to the Exchange Review Council, the Review Subcommittee, a Subcommittee, an Extended Proceeding Committee, and Counsel to the Exchange Review Council (defined below) to modify filing deadlines, adjourn appeal proceedings, and change hearing locations in certain instances and subject to certain limitations.

BX Rule 9331 states that, following the filing of a notice of appeal or a call for review, the Exchange Review Council or the Review Subcommittee shall appoint a Subcommittee or an Extended Proceeding Committee, composed of two or more persons who are or were members of the Exchange Review Council or former Directors, for the purpose of making recommendations to the full Council as to how to dispose of matters before it.[102]

Authorized sanctions include, but are not limited to, imposing orders that establish facts in favor of the opposing Party, precluding a Party from making claims or defenses, striking portions of pleadings, or staying procedures until compliance occurs. No similar provisions exist in the Existing Rules. Meanwhile, BX Rule 9150(a) authorizes an adjudicator to exclude from disciplinary proceedings an attorney for a Party or any other person authorized to represent a Party to the extent that the adjudicator deems said attorney or persons to be engaging in contemptuous conduct, under BX Rule 9280, or unethical or unprofessional conduct. The BX Rule authorizes an attorney or person so excluded to seek review of their exclusion from the Exchange Review Council.

[98] Finally, BX Rule 9270(i) states that, when a disciplinary proceeding names multiple respondents, settlement offers may be accepted or rejected as to any one or all of the Respondents submitting offers.

[99] *See* BX Rule 9280(b).

[100] *See* BX Rule 9280(c).

[101] However, the Exchange notes that a decision involving a Respondent who is an affiliate of the Exchange may not be appealed to the Exchange Review Council.

[102] Under the BX Rules, the Exchange Review Council is assigned its own counsel in appellate matters. BX Rule 9120(e) defines the term ''Counsel to the Exchange Review Committee'' as an attorney that reports to the CRO of the Exchange who is responsible for advising the Exchange Review Council, the Review Subcommittee, a Subcommittee, or an Extended Proceeding Committee regarding a disciplinary proceeding on appeal or review before the Exchange Review Council. Counsel also may decide a motion on a procedural matter in the BX Rule 9300 Series. *See* BX Rule 9146(j)(2). BX Rule 9313 describes the authority of the Counsel and the process for seeking the review of a Counsel decision. Under BX Rule 9313(a), Counsel has authority to take ministerial and administrative actions to further the efficient administration of a proceeding. A Party may seek review of a Counsel decision on motion to the Exchange Review Council, the Review Subcommittee, a Subcommittee or, if applicable, an Extended Proceeding Committee. *See* BX Rule 9313(b). Counsel is subject to the same conflict of interest prohibitions as the Exchange Review Council, *see* BX Rule 9332, which requires Counsel to withdraw from a matter any time that the Counsel has a conflict of interest or bias or circumstances otherwise exists where the fairness of the Counsel might reasonably be questioned.

Under BX Rule 9332, Exchange Review Council members, including members of the Review Subcommittee, panelists of a Subcommittee or an Extended Proceeding Committee, or Counsel to the Exchange Review Council, are subject to the same disqualification and recusal standards as the Hearing Panelists and Hearing Officers.

The BX Rule 9340 Series governs the proceedings of the Exchange Review Council, Extended Proceeding Committee, and Subcommittees. BX Rule 9341 provides for oral arguments before a Subcommittee and the Extended Proceeding Committee, upon written request of a Party or otherwise at the discretion of Subcommittee or Committee.[103] BX Rule 9343 provides that, if no oral argument is held, a matter shall be decided on the record, supplemented by any written materials submitted to or issued by the Exchange Review Council, a Subcommittee, or the Extended Proceeding Committee. BX Rule 9344 grants discretion to the Council or the Review Subcommittee to proceed with or dismiss the appeal and remand appeals of Parties that failed to participate in initial disciplinary hearings and show good cause for their failure to participate. It also prescribes circumstances under which an appeal or cross-appeal will be deemed abandoned. BX Rule 9345 states that a Subcommittee or the Extended Proceeding Committee shall present a recommended decision to the Exchange Review Council. Pursuant to BX Rule 9346, the Exchange Review Council is charged with issuing a decision based on the record, supplemented by briefs and other papers submitted to the Subcommittee, Extended Proceedings Committee, or the Exchange Review Council, any oral arguments that occur, and upon a showing of good cause and with the leave of the Council, Extended Proceeding Committee, or Subcommittee, additional evidence that is introduced on appeal.[104] It also provides that the formal rules of evidence shall not apply during the appeals process.[105] BX Rule 9347 sets forth the form, format, and filing procedures and deadlines for papers filed in Exchange Review Council proceedings. BX Rule 9348 states the powers of the Exchange Review Council to affirm, dismiss, modify, or reverse New Hearing Panel decisions with respect to each finding, or to remand the proceeding with instructions. It also provides that the Exchange Review Council may affirm, modify, reverse, increase, or reduce any sanction, or impose any other fitting sanction. The Exchange Review Council must issue a decision consistent with BX Rule 9349(b), which provides elements required to be included in an Exchange Review Council decision.

BX Rule 9351 governs discretionary review by the Board. Pursuant to BX Rule 9351(a), a Director may call for review a decision of the Exchange Review Council (other than a decision with respect to a Member that is an affiliate of the Exchange) not later than the next meeting of the Board that is at least 15 days after the date on which the Board receives the Exchange Review Council decision. As set forth in BX Rule 9351(d), the Board may affirm, modify, or reverse the proposed written decision of the Exchange Review Council and it may affirm, modify, reverse, increase, or reduce any sanction (including the terms of any permanent cease and desist order) or impose any other fitting sanction. The Board also may remand the proceeding with instructions. The Board is required to issue its decision in writing pursuant to BX Rule 9351(e).[106]

Unlike the Existing Rules, BX Rule 9370 expressly provides for a Respondent aggrieved by a final disciplinary action to apply for review by the Commission pursuant to Section 19(d)(2) of the Act.

The BX Rule 9400 and 9500 Series

The BX Rule 9400 Series provides the process for expedited client suspension proceedings involving alleged violations of Rule 403 (Disruptive Quoting and Trading Activity Prohibited). The BX Rule 9500 Series provides the process for proceedings other than formal disciplinary proceedings. The Exchange proposes that these BX Rules will replace Chapter 15 of the Existing Rules, which also provide for the Exchange to impose summary suspensions in various circumstance [sic].

BX Rule 9400 authorizes and prescribes the process for adjudicating expedited client suspensions that may be imposed upon Members or Associated Persons that violate the prohibition on disruptive quoting and trading activity.[107] BX Rule 9400 states that the Regulation Department, with the prior authorization of the CRO, may issue a notice initiating a suspension proceeding of a Member or an Associated Person for engaging in disruptive quoting and trading activity, which shall trigger the appointment of a New Hearing Panel and the occurrence of a hearing not later than 15 days after service of the notice, unless extended for good cause shown. The New Hearing Panel may issue a written decision imposing a suspension (within 10 days of receipt of the hearing transcript, unless otherwise extended) only if the New Hearing Panel finds by a preponderance of the evidence that the violation occurred and that it is likely to result in significant market disruption or harm to investors. BX Rule 9400(e) also permits a Respondent to apply to the New Hearing Panel to modify, set aside, limit, or revoke a suspension order and it requires the New Hearing Panel to respond to such a request in writing within 10 days after receiving it, unless such time period is extended with the consent of the Parties for good cause shown. Finally, BX Rule 9400(f) states that suspensions imposed by New Hearing Panels may be appealed to the Commission as set forth in Section 19 of the Act.

The BX Rule 9500 Series permits the Exchange to impose sanctions, such as suspensions, cancellations of membership, bars of association with Members, and prohibitions or restrictions on access to Exchange services, as well as the adjudication of such sanction orders, for actions or circumstances that include the following: (1) Failures to provide information, reports, data, or testimony requested or required by the Exchange or failures to keep membership applications or supporting documentation current (BX Rule 9552); (2) failures to pay Exchange dues, fees and other charges or to submit a required report or information related to such payment (BX Rule 9553); (3) failures to comply with arbitration awards or settlements or orders of restitution (BX Rule 9554); (4) failures to meet the eligibility or qualification standards or prerequisites for access to

Moreover, the Counsel may be removed on motion based upon a good faith belief that the Counsel has a conflict of interest or bias or circumstances otherwise exists where the fairness of the Counsel might reasonably be questioned.

[103] BX Rule 9342 states that if a Party requests, but fails to appear at an oral argument, then the Committee or Subcommittee may proceed with oral arguments without that Party or consider the matter on the basis of the record, without oral argument, as to that Party.

[104] BX Rule 9346(f) also permits the Council, Extended Proceeding Committee, or Subcommittee to order, on its own motion, that the record be supplemented with such additional evidence as they deem relevant.

[105] *See* BX Rule 9346(g).

[106] BX Rules 9360 and 9370 states [sic] when sanctions become effective, including when a Respondent appeals a decision to the Commission.

[107] Although BX Rule 9400 references the BX Rule that prohibits disruptive quoting and trading, the Exchange proposes to substitute reference to its own analogous provision, Rule 403.

services (BX Rule 9555); (5) failures to comply with temporary and permanent cease and desist orders (BX Rule 9556); (6) financial or operational difficulties that require limiting or ceasing certain business activities (BX Rule 9557); and (7) actions authorized by Section 6(d)(3) of the Act, including in part summary suspensions of or limitations or prohibitions with respect to services offered by the Exchange on Members, Associated Persons, or other persons subject to the Exchange's jurisdiction, including those who have been suspended or expelled from another SRO, barred or suspended from being associated with a member of another SRO, or are experiencing severe financial or operation [sic] difficulties threaten [sic] investors, creditors, other Members, or the Exchange (BX Rule 9558). The BX Rule 9520 Series also provides for adjudication of statutory disqualifications or determinations of ineligibility to become or remain a Member or associated with a Member. Generally, each of these provisions of the BX Rules require [sic] the Exchange to serve written notice to the Member or Associated Person, offer them an opportunity to request a hearing in writing, and permit them to request termination of sanctions upon achieving compliance.[108] Meanwhile, BX Rule 9559 sets forth extensive procedures governing hearings and it provides for appellate reviews by the Exchange Review Council, upon its call for review, and by the Commission, pursuant to Section 19 of the Act.

The BX Rule 9600 Series

The BX Rule 9600 Series provides procedures to be followed when a Member seeks exemptive relief pursuant to any Rule that references the BX Rule 9600 Series. As discussed below, the Exchange proposes to amend the Supplementary Material to Existing Rule 303 to provide for the BX Rule 9600 Series to govern requests to waive applicable qualification examination requirements for applicants that apply to become associated with Members of the Exchange.

The BX Rule 9800 Series[109]

The BX Rule 9800 Series provides the process followed by the Exchange in administering temporary cease and desist orders, including the initiation of proceeding to issue such an order,[110] service thereof,[111] subsequent review of the order by the Hearing Panel,[112] the consequences of non-compliance,[113] and the process for seeking Commission review of the order.[114]

The BX Rule 9800 Series provides for temporary cease and desist orders and a process for adjudicating them. BX Rule 9810 states that with the prior written authorization of the CRO and FINRA's Chief Executive Officer (or such other senior officers as he or she designates), the Departments may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Act and SEC Rule 10b-5, SEC Rules 15g-1 through 15g-9, and BX Rules 2110, 2120, or 2150 (references to these BX Rules will be replaced with references to Exchange Rules 400, 405, and Chapter 6, respectively). The Departments must serve written notice upon Respondents of a proposed temporary cease and desist order and file a copy of such notice with the OHO. Additionally, if a complaint has not already been issued against the Respondents, then the Departments must file and serve a complaint together with the notice of the temporary cease and desist order. BX Rule 9820 provides for the Chief Hearing Officer of the OHO to assign a New Hearing Panel to adjudicate the proposed cease and desist order. BX Rule 9830 provides for a hearing to be held, generally speaking, not later than 15 days after service of the notice. BX Rule 9840 states that the New Hearing Panel shall issue a written decision as to whether to impose a temporary cease and desist order within 10 days after receipt of the hearing transcript, unless such deadline is extended for good cause. It states that the New Hearing Panel should impose such an order if it finds that the Departments have demonstrated a likelihood of success on the merits and that the alleged misconduct or continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors prior to the completion of disciplinary proceedings. BX Rule 9850 permits a Party to apply to the New Hearing Panel to modify, set aside, limit, or suspend a temporary cease and desist order. BX Rule 9860 states that a Respondent that violates a temporary cease and desist order may have its association or membership suspended or cancelled or be subject to any fitting sanction, pursuant to BX Rule 9556. Finally, BX Rule 9870 states that a Respondent may apply to the Commission to review the issuance of a temporary cease and desist order, as set forth in Section 19 of the Act.

Additional Conforming Rule Changes

As discussed above, the Exchange is amending its By-Laws to conform to the BX by-laws, largely deleting the Existing Rule 1500, 1600, and 1700 Series,[115] and adopting in their place the BX Rule 8000 and 9000 Series. As a consequence of these changes, the Exchange proposes to amend or delete certain other Existing Rules, which are either not needed, duplicated elsewhere, or reference the deleted Existing Rules. Below is a description of the specific changes the Exchange proposes to make to its Existing Rules.

Existing Rule 100 provides definitions for purposes of the Existing Rules. The Exchange is proposing to amend this Existing Rule to include definitions for several new terms. For example, the proposed Rules will define the new term ''Code of Procedure'' as the procedural rules contained in Chapter 90. The Exchange also defines the new term ''Exchange Review Council,'' which is largely copied from BX Rule 0120(m). The Exchange notes that item (6) of the new definition differs from the BX item (6) in that it cites the analogous rules of the Exchange, which have different rule numbers. Finally, the Exchange proposes to amend the

[108] The BX Rule 9520 Series provides for a somewhat different process from the BX Rule 9550 Series. BX Rule 9522 requires Members and Associated Persons to file applications for relief from statutory disqualifications or determinations of ineligibility. BX Rule 9522(e) authorizes the Department of Member Regulation, to the extent it deems consistent with the public interest and the protection of investors, to approve a written request for relief from the eligibility requirements by a disqualified Member with or without the filing of an application by such disqualified Member, under certain specified conditions. Pursuant to BX Rule 9523, the Department of Member Regulation also may recommend membership or association or continued membership or association pursuant to a supervisory plan that is subject to approval by the Chair of the Statutory Disqualification Committee (a Subcommittee of the Exchange Review Council, as defined in BX Rule 9120(cc)) or the Exchange Review Council. Pursuant to BX Rule 9523(a), the Member or Associated Person may request a hearing before a New Hearing Panel to seek relief from disqualification or conditions imposed upon continued membership or association. In such instances, the Hearing Panel shall issue a recommended decision to the Statutory Disqualification Committee, which in turn shall issue a recommended decision to the Exchange Review Council for ultimate determination. The decision of the Exchange Review Council is subject to discretionary review by the Board. *See id.* The BX Rule also provides for the Exchange Review Council to conduct an expedited review of a recommended decision of the Statutory Disqualification Committee. *See id.* Finally, it provides for review by the Commission of any action taken pursuant to the BX Rule 9520 Series. *See id.*

[109] The BX Rule 9700 Series is reserved.

[110] BX Rule 9810.

[111] *Id.*

[112] BX Rule 9850.

[113] BX Rule 9860.

[114] BX Rule 9870.

[115] As noted elsewhere, the Exchange proposes to retain Existing Rules 1600 and 1614(a) and (d) in their current form (and to renumber Rule 1614(d) as 1614(b)).

definition of ''SEC'' so that it also includes the word ''Commission.''

Existing Rule 210 concerns the consequences of a Member's or an Associated Person's failure to pay dues, fees and other charges. The Exchange proposes to delete this Existing Rule in favor of BX Rule 9553, which is more comprehensive than the Existing Rule and differs from it in several respects. Existing Rule 210 provides that instances of nonpayment shall be reported to the Exchange President when they are 30 days past due, and that the President thereafter shall provide reasonable notice to the delinquent Member that continued non-payment will result in suspension of trading privileges. An Associated Person that fails to pay may be suspended from association with a Member. Moreover, although Existing Rule 210(a) does not specify a time period for a reasonable notice that precedes suspension, it nevertheless provides that the Exchange shall dispose of the memberships of Members who are more than six months delinquent. By contrast, BX Rule 9553 states that the Regulation Department, within an unspecified period of time period [sic] after the onset of a delinquency, may issue a written notice to the delinquent Member or Associated Person that failure to comply within 21 days of service of the notice will result in suspension or cancellation of membership or suspension or bar of association with a Member, as applicable. BX Rule 9553 also provides for detailed provisions for serving such notice, a provision for requesting a hearing with respect to such a notice, a provision declaring the effectiveness of such notices (21 days after service) when no hearing is requested, and a means to request termination of a suspension, which may be granted for good cause shown.

Existing Rule 302 sets forth circumstances in which the Exchange may deny or condition approval of membership applications or applications to associate with Members. Existing Rule 302(c) also sets forth circumstances in which the Exchange may determine not to permit a Member or Associated Person from continuing their [sic] membership or association with a Member, including because they become [sic] subject to [sic] statutory disqualification under the Act. Existing Rule 302(f) furthermore permits a Member or Associated Person that becomes subject to [sic] statutory disqualification under the Act to apply to the Exchange to continue as a Member or as an Associated Person, within 30 days of becoming subject to the statutory disqualification. Existing Rule 302(g) states that, subject to the summary suspension rules in Chapter 15, any applicant for membership or association with a Member whose application is denied or conditioned or who is not permitted to continue as a Member or Associated Person may appeal such determinations under Chapter 17 of the Existing Rules.

The Exchange proposes to modify Existing Rule 302(f) so that it refers to new and more robust procedures, set forth in the BX Rule 9520 series, by which a Member or an Associated Person may obtain relief from disqualification or ineligibility determinations (BX Rule 9522).

The Exchange also proposes to amend Existing Rule 302(g), which states that subject to Chapter 15, the BCC may review in part Exchange determinations to deny membership or association with a Member pursuant to Chapter 17 of the Existing Rules. The Exchange proposes to re-assign responsibility for these reviews from the BCC to the Exchange Review Council and replace the review process presently set forth in Chapter 17 of the Existing Rules with processes that are substantially the same as those set forth in BX Rules 1015 and 1016. Specifically, the proposed amendments to Exchange Rule 302(g) state that, subject to Chapter 90, the Exchange Review Council will have jurisdiction to review these decisions. Proposed Rule 302(g) states that anyone whose application for membership on the Exchange, association with an Exchange Member, or whose continuing membership or association is denied or conditioned by the Exchange's Membership Department, may file a written request for review by the Exchange Review Council within 25 days after service of the Exchange's decision.[116] The request must state specifically why the applicant believes that the Membership Department's decision is inconsistent with the permissible bases for denial set forth in Rule 302, or otherwise should be set aside and state whether a hearing is requested.[117] The request will be heard by a Subcommittee appointed by the Exchange Review Council or the Review Subcommittee composed of two or more persons who are either current or past members of the Council or former Directors of the Exchange.[118] If a hearing is requested or directed, it must be held within 45 days after the request for review is filed with the Exchange or service of the notice by the Subcommittee.[119] Applicants and the Membership Department may be represented by counsel at the hearing and formal rules of evidence will not apply during the hearing.[120] The Subcommittee must present a recommended decision in writing to the Exchange Review Council within 60 days after the date of the hearing, and not later than seven days before the meeting of the Exchange Review Council at which the proceeding shall be considered.[121] The Exchange Review Council must issue a proposed written decision that affirms, modifies, or reverses the Membership Department's decision, or remands the proceedings with instructions and provide the proposed decision to the Exchange Board.[122] If the Exchange Board does not call the decision for review, it shall become final. If the Exchange Review Council does not serve its final written decision within the time period prescribed by Rule 302(g)(10)(C), then the Applicant may file a written request with the Exchange Board for the Board to direct the Exchange Review Council to issue its decision immediately or show good cause why it needs additional time to issue its decision.[123] Proposed Rule 302(h), which mirrors BX Rule 1016, grants the Exchange Board discretion, at the request of a Director, to review decisions of the Exchange Review Council.[124]

Existing Rule 305(b) requires Members to file with the Exchange and keep current their addresses at which notices may be served. The Exchange proposes to amend this Existing Rule to incorporate the language set forth in BX Rule 1160. Rather than merely requiring Members to provide the Exchange with

[116] *See* proposed Rule 302(g)(1). The Exchange notes that the deadline for filing petitions for BCC review of an Exchange action under Existing Rule 1701(a) is 30 days from the date of such action. The Existing Rules pertaining to membership do not reference or define the terms ''Membership Department'' or ''Department.'' As part of this proposal, the Exchange proposes to amend Rule 302(g) to specify that the Exchange's Membership Department—rather than simply the ''Exchange''—makes determinations as to whether to grant, deny, or conditionally grant applications for membership or association or to continue as a Member or an Associated Person.

[117] *See id.*

[118] *See* proposed Rule 302(g)(4). The Exchange notes that Existing Rule 1702 provides for review by a BCC panel composed of two or more of its members.

[119] *See* proposed Rule 302(g)(6)(A).

[120] *See* proposed Rule 302(g)(6)(B) & (C). Unlike Existing Rule 1703, proposed Rule 302(g) does not provide for intervention in proceedings by interested non-Parties.

[121] *See* proposed Rule 302(g)(9).

[122] *See* proposed Rule 302(g)(10)(A).

[123] *See* proposed Rule 302(g)(10)(D).

[124] Unlike Existing Rule 1704, proposed Rule 302(h) does not authorize the applicant or the President of the Exchange to request that the Board review the decision of the Exchange Review Council.

their current address, the proposed amendment more broadly requires Members to report to the Exchange, through the FINRA Contact System, all of their contact information, including their mailing addresses, email addresses, facsimile numbers, and other information. It also requires members to update such contact information in the FINRA System within 30 days of any changes thereto, and to generally verify that such information remains accurate within 17 business days after the end of each calendar year. This proposed amendment to the Existing Rule will ensure that the Exchange has available to it multiple means of contacting its Members, including for purposes of serving the notices specified in the BX Rule 9550 series by email or by facsimile. The Exchange proposes, in its introduction to Chapter 90, to state that cross references in the BX Rule 9000 Series to BX Rule 1160 should be read instead to refer to Exchange Rule 305(b), as modified herein.

To maintain consistency with the BX Rules, the Exchange also proposes to eliminate Existing Rule 305(d), which requires Members to maintain a current copy of the Exchange's governing documents and Rules in an accessible place and make them available for examination by customers, and to replace it with BX Rule 8110, which is materially equivalent.

Existing Rule 307 and its Supplementary Material govern the sale and transfer of market maker rights. Item .01 of the Supplementary Material presently provides that decisions by the Exchange (and specifically, by the Membership Department) to deny approval of such sales and transfers are appealable under Chapter 17 of the Existing Rules. The Exchange proposes to state instead that these decisions are appealable to the Exchange Review Council. The Exchange notes that no analogue exists to this proposal in the BX Rules, which do not provide for the sale and transfer of such rights or reviews of decisions to deny or condition such sales or transfers. Nevertheless, the Exchange believes that the Exchange Review Council is the logical and appropriate body for reviewing such determinations given its other responsibilities. The Exchange also proposes to replace the review procedures set forth in Chapter 17 of the Existing Rules with processes that are substantially the same as those set forth in BX Rules 1015 and 1016. To accomplish the foregoing, the Exchange proposes to eliminate Supplementary Material .01 and insert its substance into the body of Rule 307 as paragraphs (c) and (d). Proposed Rule 307(d) states that the Exchange Review Council will have jurisdiction to review Membership Department decisions to deny the sale and transfer of market maker rights. Proposed Rule 307(d)(1) states that anyone [sic] is an owner or an approved applicant that is a party to an executed transfer agreement that is denied approval may file a written request for review by the Exchange Review Council within 25 days after service of the Exchange's decision. The request must state specifically why the applicant believes that the Membership Department's decision is inconsistent with the permissible bases for denial set forth in Rule 307(c), or otherwise should be set aside and state whether a hearing is requested.[125] The request will be heard by a Subcommittee composed of two or more persons who are either current or past members of the Council or former Directors of the Exchange.[126] If a hearing is requested or directed, the hearing must be held within 45 days after the request for review is filed with the Exchange or service of the notice directing a hearing by the Subcommittee.[127] Applicants and the Membership Department may be represented by counsel at the hearing and formal rules of evidence will not apply during the hearing.[128] The Subcommittee must present a recommended decision in writing to the Exchange Review Council within 60 days after the date of the hearing, and not later than seven days before the meeting of the Exchange Review Council at which the proceeding shall be considered.[129] The Exchange Review Council must issue a proposed written decision that affirms, modifies, or reverses the Membership Department's decision, or remands the proceedings with instructions and provide it to the Exchange Board.[130] If the Exchange Board does not call the decision for review, it shall become final. If the Exchange Review Council does not serve its final written decision within the time period prescribed by Rule 307(d)(9)(C), then the applicant may file a written request with the Exchange Board for the Board to direct the Exchange Review Council to issue its decision immediately or show good cause why it needs additional time to issue its decision.[131] Proposed Rule 307(d)(10), which mirrors BX Rule 1016, grants the Exchange Board discretion, at the request of a Director, to review decisions of the Exchange Review Council.

Existing Rule 310 requires a Member to notify the Exchange upon its adoption of a plan of liquidation or dissolution. The Existing Rule also provides that upon receipt of such notice, the Member's trading privileges may be suspended in accordance with Chapter 15 of the Existing Rules. The Exchange proposes to replace this reference to Chapter 15 with a reference to BX Rule 9558. Again, no analogue to this proposal exists in the BX rules insofar as those rules do not expressly address suspensions for such reasons or reviews of suspension determinations. Nevertheless, the Exchange believes that the process set forth in BX Rule 9558 is most appropriate for reviewing suspension determinations in these circumstances given that they already apply in circumstances where a Member is experiencing extreme financial or operating difficulty such that the Exchange determines that the Member cannot safely continue to do business on the Exchange.

The Supplementary Material to Existing Rule 313 concerns the Exchange's authority to waive the applicable qualification examination requirements and accept other standards as evidence of an applicant's qualifications for registration. The Exchange is amending this Rule to specify that such requests are handled pursuant to the BX Rule 9600 Series process. The BX Rule 9600 Series concerns the procedures for requesting exemptions, and the appeal of adverse decisions regarding an exemptive request. The Exchange notes that the proposed revisions will render the text of the Supplementary Material to Existing Rule 313 consistent with BX Rule 1070(d).

Existing Rule 410 provides for the summary suspension of a Member that fails to perform on its contracts or is insolvent or is in such financial or operational condition or is otherwise conducting business in such a manner that it cannot be permitted to continue in business without compromising the safety of customers, creditors, or the Exchange. The Existing Rule provides for such suspensions to be administered in accordance with Chapter 15 of the Rules. The Exchange proposes to replace this reference to Chapter 15 with a reference to BX Rule 9558, which provides procedures for summary proceedings for actions authorized by Section 6(d)(3) under [sic] the Act.

Existing Rule 413(b)(1) states that decisions denying market makers exemptions from standard position

[125] *See* proposed Rule 307(d)(1).

[126] *See* proposed Rule 307(d)(3).

[127] *See* proposed Rule 307(d)(5)(A).

[128] *See* proposed Rule 307(d)(5)(B) & (C).

[129] *See* proposed Rule 307(d)(8).

[130] *See* proposed Rule 307(d)(9).

[131] *See* proposed Rule 307(d)(9)(D).

limits in options trading on the Exchange are not subject to appeal under Chapter 17 of the Existing Rules. The Exchange proposes to remove this reference to Chapter 17 as the Exchange proposes to delete it.

Existing Rule 720 concerns obvious and catastrophic errors. Existing Rule 720(k) currently references the OEP as the body responsible for reviewing determinations made by Options Exchange Officials pursuant to the Rule and it sets forth procedures to govern OEP review proceedings. In light of the fact that the OEP's responsibilities will be incorporated into those of the Exchange Review Council,[132] the amendments to the Rule remove references to the OEP and replaces [sic] them with references to a panel of the Exchange Review Council. The amended Rule also includes language grafted from the BX Rules prescribing the composition of panels convened for purposes of these reviews.[133]

Existing Rule 720A also provides for reviews by a ''Review Panel'' of decisions nullifying or adjusting transactions arising out of system disruptions or malfunctions. The Exchange proposes to eliminate the Review Panel in the Exchange's Rules and transfer its responsibility to a panel of the Exchange Review Council. The new Rule also includes language grafted from the BX Rules prescribing the composition of Exchange Review Council panels convened for purposes of these reviews.[134]

Existing Rule 804 permits a Primary Market Maker to apply to the Exchange to withdraw temporarily from its Primary Market Maker status in an options class. The Existing Rule does not presently authorize reviews of Exchange determinations to deny requests for temporary withdrawals or to impose conditions on the reentry of quotations. However, BX Rule 4619(f) does provide for such reviews. To provide consistency, the Exchange proposes to amend Existing Rule 804(f) to state that the Exchange Review Council will have authority conduct such reviews.

Existing Rule 1000 provides for the treatment of the options contracts of suspended Members. In discussing the nature of suspensions to which the Existing Rule applies, it references Chapter 15 several times. The Exchange proposes replacing this reference with a reference to the Chapter 90, which comprises the BX Rules that govern suspensions in lieu of Chapter 15.

Existing Rule 1406 states that no Member or Associated Person may refuse to appear or testify before another exchange or SRO in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such information or testimony in connection with an inquiry resulting from an agreement entered into by the Exchange. Existing Rule 1406(d) states that when Members and Associated Persons respond to such requests for appearance, testimony, documents, or information, they shall have the same rights and procedural protections as they would if they were responding to requests from the Exchange pursuant to Existing Rule 1601(b). The Exchange proposes to replace the reference to Existing Rule 1601(b), which is being deleted, with a reference to BX Rule 8210. BX Rule 8210(a) authorizes the Regulation Department, including FINRA staff, to require a Member or Associated Persons to provide information and testimony and to permit inspection and copying of their [sic] books, records, and accounts as to any matters involved in an investigation, complaint, examination, or proceeding. BX Rule 8210(b) provides that the Regulation Department and FINRA may exercise the aforementioned authority with respect to investigations, complaints, examinations, or proceedings conducted by other SROs. Lastly, BX Rule 8210(c) states that no Member or Associated Person may fail to provide information or testimony or to submit to inspection and copying of books, records, or accounts.

Existing Rule 1800 states that any Member or Associated Person that fails to honor an arbitration award shall be subject to disciplinary proceedings in accordance with Chapter 16. The Exchange proposes to replace this reference to Chapter 16 with a reference to BX Rule 9554, which is the BX Rule that governs such sanctions.

Proposed Introductory Paragraphs to Chapters 80 and 90

The Exchange proposes to include introductory paragraphs to both Chapters 80 and 90 which state that they incorporate by reference the BX Rule 8000 and 9000 Series, respectively, and that such BX Rules shall be applicable to Exchange Members, Associated Persons, and other persons subject to the Exchange's jurisdiction.

These proposed introductory paragraphs also list instances in which cross references in the BX Rule 8000 and 9000 Series to other BX rules should be read to refer instead to the Exchange Rules, and references to defined BX terms shall be read to refer to the Exchange-related meanings of those terms. For example, references in both the BX Rule 8000 and 9000 Series to the following defined terms shall be read to refer to the Exchange-specific meanings of those terms: ''Exchange'' or ''Nasdaq BX'' shall be read to refer to the Exchange; ''Rule'' or ''BX Rule'' shall be read to refer to the Exchange Rules; ''Board'' or ''Exchange Board'' shall be read to refer to the Exchange Board of Directors; ''Member'' shall be read to refer to an Exchange Member; ''Associated Person'' shall be read to refer to an Exchange Associated Person; ''BX Regulatory Department'' or ''Regulation Department'' shall be read to refer to the Exchange's Regulatory Department; ''BX Regulation'' shall be read to refer to Exchange Regulation; ''Chief Regulatory Officer'' shall be read to refer to the Chief Regulatory Officer of the Exchange; and ''Equity Rule'' shall be read to refer to an Exchange Rule.

Additionally, the proposed introduction to Chapter 80 states that cross references in the BX Rule 8000 Series to the term ''Rule 0120'' shall be read to refer to Exchange Rule 100 and cross references in the BX Rule 8000 Series to ''Rule 1015'' shall be read to refer to Exchange Rule 302. Similarly, the proposed introduction to Chapter 90 states that cross-references in the BX Rule 9000 Series to the following terms shall be read to refer to the following Exchange Rules: ''Rule 0120'' shall be read to refer to Exchange Rule 100; ''Rule 1013'' shall be read to refer to Exchange Rules 305 and 306; ''Rule 1070'' shall be read to refer to the Supplementary Material to Exchange Rule 313; ''Rule 1160'' shall be read to refer to Exchange Rule 305(b); ''Equity Rule 2110'' shall be read to refer to Exchange Rule 400; ''Equity Rule 2120'' shall be read to refer to Exchange Rule 405; ''Rule 2140'' shall be read to refer to Exchange Rule 312; ''Equity Rule 2150'' shall be read to refer to Exchange Rules Chapter 6; ''Rule 2170'' shall be read to refer to Exchange Rule 403; ''Rule 4110A'' shall be read to refer to Exchange Rules Chapter 13; ''Rule 4120A'' shall be read to refer to Exchange Rules Chapter 13; ''Rule 10000 Series'' shall be read to refer to Exchange Rules Chapter 18; and ''Chapter III, Section 16'' shall be read to refer to Exchange Rule 403.

Finally, as noted above, the introduction to Chapter 90 states that BX IM–9216 in the BX Rules shall not apply to the Exchange, its Members,

[132] *See* proposed Rule 100(a)(20A).

[133] *See* BX Options Rules Ch. V, Sec. 6(l).

[134] *See id.*

Associated Persons, or other persons subject to the jurisdiction of the Exchange and that instead, references to BX IM–9216 shall be read to refer to Exchange Rule 1614(b). Similarly, the introduction states that the Exchange's procedures set forth in BX Rule 9216(b) and 9143(e)(3), which govern its handling of MRVP violations and the issuance of MRVP violation letters, shall also apply to the Exchange's handling of minor rule violations and the issuance of minor rule violation letters, except that the Exchange shall promptly report any final disciplinary action to the Commission, in accordance with SEC Rule 19d–1(c)(1).

Conclusion

The changes proposed herein will allow the Exchange to harmonize its investigatory and disciplinary processes with the processes of BX, thus providing a uniform process for the investigation and discipline of Members and Associated Persons across all of the Nasdaq, Inc. SROs, as administered by FINRA pursuant to RSAs. Harmonizing the investigatory and disciplinary processes of all of the Nasdaq, Inc. SROs will bring efficiency to FINRA's administration of its responsibilities under the RSAs because the process [sic] it must follow are nearly identical, and are all based on the process that FINRA follows. Harmonized processes will bring consistency to investigations and adjudication of rule violations, and will reduce the number of disciplinary processes and requirements with which Members and Associated Persons, as well as their counsel, must be familiar.

The Exchange believes that the new investigatory and disciplinary processes are substantially similar to the existing process, and where there are differences between the new and old processes, the Exchange believes that the new process does not disadvantage its Members or Associated Persons. To the contrary, the Exchange believes that the new process will benefit all parties as it provides greater detail and specificity than the retired Rules, and that it is consequently more transparent.

The Exchange intends to announce the operative date of the new Rules at least 30 days in advance via a regulatory alert.[135] To facilitate an orderly transition from the Existing Rules to the new Rules, the Exchange is proposing to apply the Existing Rules to all Letters of Consent that the CRO has approved and which are pending approval of the BCC prior to the operative date. The Exchange also will apply the Existing Rules to any matter for which, prior to the operative date, the Exchange has provided notice to a Subject of its determination to impose an MRVP fine or a minor rule violation fine whereby the Subject may yet or has contested the determination pursuant to Existing Rule 1614(a). In terms of formal disciplinary matters, any matter that has been approved for the issuance of a statement of charges by the CRO will continue under the Existing Rules. Moreover, any appeal of a matter that is pending before an OEP pursuant to Existing Rule 720, a Review Panel pursuant to Existing Rule 720A, or the BCC pursuant to Existing Rule 302 or Supplementary Material .01 to Existing Rule 307, will continue under the Existing Rules. As a consequence of this transition process, the Exchange will retain the BCC, the OEP, the Review Panel, and the existing processes during the transition period until such time that there are no longer any matters proceeding under the Existing Rules. To facilitate this transition process, the Exchange will retain a transitional Rulebook that will contain the Exchange's Rules as they are at the time of that this proposal is filed with the Commission. This transitional Rulebook will apply only to matters initiated prior to the operational date of the changes proposed herein and it will be posted to the Exchange's public rules website. When the transition is complete and there are no longer any Members, Associated Persons or other persons subject to the existing disciplinary processes, the Exchange will remove the transitional Rulebook from its public rules website.

The Exchange furthermore notes that it expects the transition from the BCC to the Exchange Review Council to be smooth given that it expects to nominate the existing (and common) members of the BX, Nasdaq, and Phlx exchange review councils to also become members of the Exchange Review Council.[136] The Exchange does not expect that any existing members of the BCC will be nominated to become members of the Exchange Review Council; however, the Exchange will ensure that, in advance of the operative day, the members of the Exchange Review Council will familiarize themselves with the Rules and procedures of the Exchange so that they will be prepared to fulfill their responsibilities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[137] in general, and furthers the objectives of Section 6(b)(5) of the Act,[138] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange also believes that the proposal is consistent with Section 6(b)(6) of the Act,[139] which requires that the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or the rules of the Exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

The Exchange believes that the proposed changes are consistent with these requirements because the changes harmonize the Exchange's investigative, disciplinary, and adjudicatory processes with the similar processes used by BX. The new processes are well-established as fair and designed to protect investors and the public interest, providing greater detail and transparency in the processes than is currently provided under the Existing Rules. Because the Exchange is adopting these Rules materially unchanged from the related BX Rules, with minor differences to account for the Exchange's unique MRVP and minor rule violation schedule of fines, the Exchange believes that the proposed changes should facilitate prompt, appropriate, and effective discipline of Members and Associated Persons consistent with the Act.

The proposed Rule change also makes miscellaneous changes to the Existing Rules to account for the adoption of the BX Rule 8000 and 9000 Series and the

[135] The Exchange notes that the proposed changes will not become operative unless and until the Commission approves the Exchange's request, which it has filed pursuant to Section 36 of the Exchange Act and SEC Rule 0–12 thereunder, for an exemption from the rule filing requirements of Section 19(b) of the Exchange Act as to changes to Chapters 80 and 90 that are effected solely by virtue of a change to the BX Rule 8000 or 9000 Series.

[136] The Exchange anticipates that the members of the Exchange Review Council will serve in a manner that is consistent with their tenures on the Nasdaq, BX, and Phlx review councils. That is, to the extent that the tenure of a member of these other review councils is due to expire on a particular date, then the same expiration date will apply to that member's tenure on the Exchange Review Council. All terms for members on the Exchange Review Council will comply with Article VI, Section 4 of the proposed By-Laws.

[137] 15 U.S.C. 78f(b).

[138] 15 U.S.C. 78f(b)(5).

[139] 15 U.S.C. 78f(b)(6).

replacement of the BCC with the Exchange Review Council. For example, subject to Chapter 90, proposed changes to Rule 302 re-assign responsibility to the Exchange Review Council to review decisions of the Exchange's Membership Department to deny or condition applications for membership and association with Exchange Members and to deny or condition continuing membership or association. The proposal also establishes a new process by which the Exchange Review Council will adjudicate such reviews. Likewise, the Exchange proposes to amend Rule 307 to re-assign responsibility to the Exchange Review Council to review decisions of the Exchange to deny sales or transfers of market maker rights. It also proposes to establish a new process by which the Exchange Review Council will adjudicate such reviews. The Exchange believes that these proposed changes to the Existing Rules are consistent with the Act because the new adjudicatory processes that the Exchange proposes to adopt in place of its existing processes are substantially similar to those that BX already utilizes. Moreover, the Exchange believes that the proposed processes will facilitate prompt, appropriate, and fair adjudications, consistent with the Act.

Additionally, the Exchange proposes to make minor updates, corrections, and conforming amendments to the Exchange's Rules, which are consistent with the Act because they are necessary to ensure that the Exchange's cross-references and terminology remain current and accurate.

The Exchange believes that harmonizing its investigative, disciplinary, and adjudicatory processes with those of BX will reduce the burden on Members and Associated Persons that are also members of BX, Nasdaq, Phlx, and/or FINRA. The Exchange notes that all but one of its Members are also members of BX, Nasdaq, Phlx, and/or FINRA. BX, Nasdaq, Phlx, and FINRA already have in place investigative, disciplinary, and adjudicatory processes that are the same or similar to those that the Exchange proposes to incorporate by reference.

As discussed above, the Exchange believes that the proposed Rules will benefit all parties involved in the Exchange's disciplinary and adjudicatory processes as they will include greater detail and specificity than do the Existing Rules. The proposal will render the Exchange's investigatory, disciplinary, and adjudicatory processes more transparent than the Existing Rules.

The Exchange also believes that adopting an Exchange Review Council is consistent with the Act because the Council's mandate is to, among other things, ensure consistent and fair application of the Exchange rules pertaining to discipline of Members and Associated Persons. The Exchange Review Council will be a body appointed by the Exchange Board of Directors and composed of representatives of the securities industry as well as persons from outside the securities industry. The broad membership of the new Exchange Review Council will ensure that the decisions and guidance it provides will be fair and balanced. The Exchange Review Council will be similar in structure and function to the BX exchange review council. In addition to reviewing appeals of disciplinary actions, the Exchange Review Council will also have jurisdiction to review membership decisions (proposed Rule 302) and appeals regarding limitations placed on Members or their employees that are subject to a statutory disqualification (BX Rule 9524). Additionally, the Exchange Review Council may consider and make recommendations to the Board on policy and rule changes relating to business and sales practices of Exchange Members and Associated Persons, and enforcement policies, including policies with respect to fines and other sanctions. Thus, the Exchange Review Council will provide the Exchange and market participants with a fair and impartial body overseeing disciplinary matters, as well as the rules and policies concerning the disciplinary process. For these reasons, the Exchange believes that adoption of the Exchange Review Council is consistent with the Act.

The Exchange believes that eliminating the BCC, the OEP (as provided for under Existing Rule 720), and the Review Panel (as provided for under Existing Rule 720A) is consistent with Sections 6(b)(5) and 6(b)(6) of the Act,[140] because the Exchange Review Council and the New Hearing Panels will assume the responsibilities of the BCC and the Panels. In particular, the functions of the Current Hearing Panels of the BCC will be handled by the New Hearing Panels, which the OHO shall convene. Going forward, the BCC's (and the CRO's) responsibility for approving settlements will be assumed by the Exchange Review Council and, in certain instances, the ODA. The BCC's responsibilities for hearing appeals of Exchange decisions on membership or association with a Member will be assumed by the Exchange Review Council. The responsibilities of the OEP and the Review Panel to hear appeals of Exchange determinations to nullify or adjust transactions that involve obvious errors or that result from system disruptions and malfunctions also will be assumed by the Exchange Review Council. The Exchange believes that the proposal will provide for the Exchange Review Council, the New Hearing Panels, and the ODA to execute the responsibilities of the BCC and the Panels in a manner that the Commission, within the context of the BX Rules, has already deemed to be consistent with the Act.[141] For example, the Exchange proposes to replace its existing process for handling appeals of membership decisions, as set forth in Existing Rule 302 and Chapter 17, with a process that BX already employs in BX Rules 1015 and 1016. Moreover, most Exchange Members and Associated Persons will already be familiar with the proposed responsibilities and procedures of the Exchange Review Council, the New Hearing Panels, and the ODA from their experiences as members of BX and other self-regulatory organizations whose rules provide for similar assignments of responsibilities and processes.

The Exchange believes that its proposal furthers the objectives of Section 6(b)(7) of the Act[142] in that it is designed to provide a fair procedure for the disciplining of members and Associated Persons, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a Member thereof, and the prohibition or limitation by the Exchange of any person with respect to access to services offered by the Exchange or a Member thereof. Specifically, the Exchange believes that the proposed investigatory, disciplinary, and adjudicatory processes are consistent with Section 6(b)(7) of the Act[143] because they are based on the existing processes used by BX. The BX processes are well-established as consistent with the Act.[144]

Last, the Exchange believes that its proposal to phase-in the implementation of the new investigatory, disciplinary, and adjudicatory processes is consistent with Section 6(b)(7)[145] of the Act because both the current and proposed processes are consistent with the Act, providing fair procedures for investigating, disciplining, and

[140] 15 U.S.C. 78f(b)(5)–(6).

[141] *See* Securities Exchange Act Release No. 34–59154 (Dec. 23, 2008), 73 FR 80468 (Dec. 31, 2008) (SR–BSE–2008–048).

[142] 15 U.S.C. 78f(b)(7).

[143] *Id.*

[144] *See* n.141, *supra.*

[145] 15 U.S.C. 78f(b)(7).

adjudicating the rights of Members and Associated Persons. The Exchange is proposing to provide advanced notice of the implementation date of the new processes, and will apply the new processes to new matters that are initiated on or after that implementation date. Any matters initiated prior to the implementation date will be completed using the current processes. As a consequence, the Exchange will delete the applicable portions of Chapters 15–17 from the Exchange's Rulebook, but it will maintain a transitional Rulebook on the Exchange's public rules website (*http://nasdaqISE.cchwallstreet.com/*), which will contain the Exchange Rules as they are at the time of filing this rule change.[146] These transitional Rules will apply exclusively to the matters initiated prior to the implementation date. Upon conclusion of the last matter to which the transitional rules apply, the Exchange will remove the defunct transitional rules from its public rules website. Thus, the transition will be conducted in a fair, orderly, and transparent manner.

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

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended [sic]. The proposed rule change is not intended to address competitive issues, but it should reduce burdens on Members, [sic] and Associated Persons. Specifically and as described in detail above, the Exchange believes that this change will bring efficiency and consistency in application of the investigative, disciplinary, and adjudicatory processes, thereby reducing the burden on Members and Associated Persons who are also members of BX.

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)(iii) of the Act[147] and subparagraph (f)(6) of Rule 19b–4 thereunder.[148]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2018–59 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–ISE–2018–59. 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–ISE–2018–59 and should be submitted on or before August 21, 2018.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[149]

Eduardo A. Aleman,

Assistant Secretary.

[FR Doc. 2018–16271 Filed 7–30–18; 8:45 am]

BILLING CODE 8011–01–P

[146] The posting of the transitional rules on the public rules website will make it clear what disciplinary proceedings are governed by the transitional rules (*i.e.,* matters initiated prior to the implementation date).

[147] 15 U.S.C. 78s(b)(3)(A)(iii).

[148] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[149] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–83704; File No. SR–GEMX–2018–24]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Align Existing Investigatory and Disciplinary Processes and Related Rules With the Investigatory and Disciplinary Processes and Associated Rules of Nasdaq BX, Inc.

July 25, 2018.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2018, Nasdaq GEMX, LLC (''GEMX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.