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Page 1 of \* 164

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549  
Form 19b-4

File No. \* SR 2026 - \* 021

Amendment No. (req. for Amendments \*)

Filing by Cboe BYX Exchange, Inc.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010  
Section 806(e)(1) \*

Section 806(e)(2) \*

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934  
Section 3C(b)(2) \*

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

**Description**

Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).

The Exchange proposes to amend Chapter 8 of its Rulebook relating to investigative and disciplinary matters.

**Contact Information**

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Courtney Last Name \* Smith

Title \* Senior Counsel

E-mail \* csmith@cboe.com

Telephone \* (913) 815-7046 Fax

**Signature**

Pursuant to the requirements of the Securities Exchange of 1934, Cboe BYX Exchange, Inc. has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 05/13/2026 (Title \*)

By Matthew Iwamaye (Name \*) VP, Associate General Counsel

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Matthew Iwamaye Date: 2026.05.13  
13:30:23 -05'00'

Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information \***

Add Remove View

BYX-26-021 19b-4 (BYX OHO to BCC

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

Add Remove View

BYX-26-021 Exhibit 1 (BYX OHO to B

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2- Notices, Written Comments, Transcripts, Other Communications**

Add Remove View

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

**Exhibit 3 - Form, Report, or Questionnaire**

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

Add Remove View

BYX-26-021 Exhibit 5 (BYX OHO to B

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**Item 1. Text of the Proposed Rule Change**

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act” or “Exchange Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> Cboe BYX Exchange, Inc. (“BYX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) proposed rule changes to amend Chapter 8 of the Exchange’s Rulebook relating to investigative and disciplinary matters. Specifically, the Exchange proposes to amend Exchange Rules related to (1) disciplinary jurisdiction; (2) complaints and investigations; (3) expedited proceedings; (4) charges; (5) answers; (6) hearings; (7) offers of settlement; (8) decisions; (9) reviews; (10) judgments and sanctions; (11) service of notice; (12) agency review and reporting; (13) imposition of fines for minor rule violations; (14) ex parte communications; and (15) release of disciplinary complaints, decisions, and other information. The text of the proposed rule change is provided in Exhibit 5.

(b) Not applicable.

(c) Not applicable.

**Item 2. Procedures of the Self-Regulatory Organization**

(a) The Exchange’s Chief Regulatory Officer pursuant to delegated authority approved the proposed rule change on January 29, 2026.

(b) Please refer questions and comments on the proposed rule change to Pat Sexton, Executive Vice President, General Counsel, and Corporate Secretary, (312) 786-

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

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

7467, or Courtney Smith, (913) 222-4652, Cboe BYX Exchange, Inc., 433 West Van Buren Street, Chicago, Illinois 60607.

**Item 3. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

(a) Purpose

The Exchange proposes to amend rules concerning investigative and disciplinary matters involving Exchange Members<sup>3</sup> and persons associated with Members (“associated persons”). Specifically, the Exchange proposes to update its Rules relating to (1) disciplinary jurisdiction; (2) complaints and investigations; (3) expedited proceedings; (4) charges; (5) answers; (6) hearings; (7) offers of settlement; (8) decisions; (9) reviews; (10) judgments and sanctions; (11) service of notice; (12) agency review and reporting; (13) imposition of fines for minor rule violations; (14) ex parte communications; and (15) release of disciplinary complaints, decisions, and other information. The Exchange proposes these updates in an effort to increase efficiency and fairness by harmonizing the Exchange’s Rules concerning investigative and disciplinary matters with those of the Exchange’s affiliate exchanges: Cboe Exchange, Inc. (“C1” or “Cboe Options”)<sup>4</sup> and Cboe C2 Exchange, Inc.

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<sup>3</sup> See Exchange Rule 1.5(n). “The term “Member” shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a “member” of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange.”

<sup>4</sup> See Rules of Cboe Exchange, Inc., specifically Rules 13.1, 13.2, 13.3, 13.4, 13.5, 13.6, 13.8, 13.9, 13.10, 13.11, 13.12, 13.13, 13.14, 13.15, and 13.16.

“C2”<sup>5</sup> (collectively, and hereinafter, referred to as the “Affiliated Exchanges”).<sup>6</sup> In doing so, the Exchange proposes rule changes to adopt new roles for the Exchange’s Business Conduct Committee (“BCC”).<sup>7</sup> As part of the harmonization process between the Exchange and Affiliated Exchanges, the Exchange proposes to align the Exchange’s hearing process and timeliness requirements with those of the Affiliated Exchanges. Additionally, the Exchange proposes to remove Rule 8.14, Agency Review, in its entirety because the Act provides for a statutory right to review<sup>8</sup> and the Affiliated Exchanges do not contain a similar provision. In place of the removed Rule 8.14, the Exchange proposes to add a rule regarding reporting to the Central Registration Depository (“CRD”). The Exchange also proposes to remove Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information, because the Rules of the Affiliated Exchanges do not contain a similar provision. Finally, the Exchange proposes to update certain Rules contained in Chapter 8 of the Exchange’s Rulebook to correct minor errors and update obsolete and outdated language.

By way of background, the Exchange Rules currently divide responsibility for the adjudication of its Rules into two categories: (1) rules for which the Chief Regulatory

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<sup>5</sup> See Rules of Cboe C2 Exchange, Inc., specifically Chapter 13, which incorporates by reference the rules contained in Cboe Exchange, Inc. Chapter 13.

<sup>6</sup> The rules under Chapter 13 of the Affiliated Exchanges are the same in number, form and substance. Therefore, the Exchange refers singularly to the corresponding rule of the “Affiliated Exchanges” throughout this proposed rule filing.

<sup>7</sup> See proposed Rule 8.2(m). The BCC has decision-making authority concerning possible violations within the disciplinary jurisdiction of the Exchange. The BCC is comprised of one or more Members or associated persons, one or more public representatives, and may also include other individuals affiliated with the securities, futures or derivatives industry, all as appointed by the Exchange’s Nominating and Governance Committee with the approval of the Exchange’s Board of Directors.

<sup>8</sup> 15 U.S.C. 78s(d).

Officer (“CRO”) and Hearing Panels are responsible for adjudicating through formal disciplinary proceedings; and (2) rules under which fines may be assessed in lieu of formal disciplinary action. With respect to violations that are adjudicated by the CRO and Hearing Panels, Rule 8.4(b) requires the CRO to prepare a statement of charges whenever it appears that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange has occurred and formal disciplinary action is warranted. Alternatively, in lieu of conducting a formal disciplinary proceeding, Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, provides for disposition of specific violations through assessment of fines. In sum, the current application of the Rules provides for the CRO to determine whether to initiate charges in a regulatory matter and to determine appropriate sanctions for rule violations.

The Exchange believes that harmonizing the composition of the disciplinary Rules between the Exchange and the Affiliated Exchanges benefits Members because those parties who maintain status as both a Member of the Exchange and a Trading Permit Holder<sup>9</sup> (“TPH”) on the Affiliated Exchanges will be subject to substantially similar disciplinary rules and not perceive one set of disciplinary rules to be more lenient or harsh depending on the Exchange’s core business. The Exchange notes that the CRO will continue to supervise the regulatory functions of the Exchange, separate from that of the Exchange’s business interest, reporting directly to the Regulatory Oversight Committee of the Board of Directors

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<sup>9</sup> See Bylaws of Cboe Exchange, Inc. Section 1.1 Definitions. “The term “Trading Permit Holder” means any individual, corporation, partnership, limited liability company or other entity authorized by the Rules that holds a Trading Permit. . . . A Trading Permit Holder is a “member” solely for purposes of the Act; however, one’s status as a Trading Permit Holder does not confer on that Person any ownership interest in the Exchange.”

(“ROC”). Below is a summary of the Exchange’s Rules and their proposed changes concerning investigations and disciplinary matters.

### **Summary of Proposed Rule Changes**

The Exchange proposes the following rule changes, including proposed changes to:

1) Amend Rule 8.1, Disciplinary Jurisdiction, to reflect the Affiliated Exchanges’ Rule 13.1, including adding a provision that Members or associated persons continue to be subject to the disciplinary jurisdiction of the Exchange with respect to the failure to honor arbitration awards and removing the provision specifying that the Exchange may contract with another self-regulatory organization to perform some or all of the Exchange’s disciplinary functions;

2) Amend Rule 8.2, Complaint and Investigation, to reflect the layout and content of Affiliated Exchanges’ Rule 13.2 by:

a. Updating Rule 8.2(a) to place the responsibility of initiating an investigation with the Exchange’s regulatory staff whenever the regulatory staff determines a reasonable basis exists to do so or upon receipt of a complaint by any person or entity including the Board,<sup>10</sup> Exchange employees, and Members;

b. Updating Rule 8.2(b) to specify the appropriate action when the regulatory staff finds reasonable grounds to believe a violation occurred, but no formal regulatory action is warranted in lieu of a statement of charges;

c. Updating Rule 8.2(c) to add that a Member or associated person is obligated to appear and testify, respond to interrogatories, and furnish information as

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<sup>10</sup> See Rule 1.5(f). The terms “Board” and “Board of Directors” shall mean the Board of Directors of the Exchange.

requested by the Exchange in connection with an inquiry resulting from agreement pursuant to Exchange Rules 8.2(f), 8.2(g), or 13.7;

d. Updating Rule 8.2(d) to extend the time in which a Subject<sup>11</sup> has to submit a response to a notification from 15 to 25 days, add a 25-day tolling period while a request for access to the relevant investigative file is pending, and make other non-substantive conforming changes;

e. Updating Rule 8.2(h) to extend the time in which a Subject has to submit a videotaped response to a notification from 15 to 25 days and to specify the length and format of videotaped responses submitted pursuant to the Rule;

f. Adding Interpretation and Policy .03 - .05 of the Affiliated Exchanges' Rule 13.2 as Exchange Rules 8.2(i) – (k) to specify the format of complaints and form of materials to be submitted upon request, and define the term “Regulatory staff” as it is used in Chapter 8 of the Exchange Rules; and

g. Adding Proposed Rule 8.2(m) defining the BCC and outlining the composition of the BCC;

3) Amend Rule 8.3, Expedited Proceeding, to extend the time a Subject has to submit written responses to notices from the Regulatory staff from 15 to 25 days and to make other non-substantive conforming changes to the Rule text;

4) Amend Rule 8.4, Charges, to remove the current text of Rule 8.4(a) and replace it entirely with the text of the Affiliated Exchanges' Rule 13.4(a), add that a

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<sup>11</sup> See Rule 8.2(d). The term “Subject” means the “person(s) who is the subject of the report” issued pursuant to Rule 8.2.

Complainant<sup>12</sup> shall be notified if further proceedings are warranted to Rule 8.4(b), and add Rule 8.4(c) specifying the terms of a Respondent's<sup>13</sup> access to requested documents;

5) Amend Rule 8.5, Answer, to extend the time that a Subject has to submit an answer from 15 to 25 days and add a 25-day tolling period while a request for access to the relevant investigative file is pending;

6) Update Rule 8.6, Hearing, by:

a. Specifying that hearings on charges shall be held before a Hearing Panel comprised of three or five members of the BCC, rather than appointed by the Chief Executive Officer; and that BCC Counsel may assist the Hearing Panel in preparing its written recommendations or judgments;

b. Replacing the current text of Rule 8.6(a)(1) by adopting the Affiliated Exchanges' Rule 13.6(a)(1) regarding the impartiality of Hearing Panel members and deleting Rules 8.6(a)(1)(A) – (B);

c. Adopting the Affiliated Exchanges' Rule 13.6(a)(2) regarding motions for disqualification of Hearing Panel members as Rule 8.6(a)(2) and the Affiliated Exchanges' Rule 13.6(a)(3) regarding rulings on motions for disqualification of Hearing Panel members as Rule 8.6(a)(3);

d. Replacing the current text of Rule 8.6(b) by adopting the Affiliated Exchanges' Rule 13.6(b) regarding prehearing procedures;

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<sup>12</sup> See Proposed Rule 8.2(a). The term "Complainant" means "any person or entity, including the Board, Exchange employees, and Members" that submits a complaint pursuant to Rule 8.2.

<sup>13</sup> See Proposed Rule 8.2(b). The term "Respondent" means "the person or organization alleged to have committed a violation."

- e. Removing current Rule 8.6(c) and renumbering current Rule 8.6(d) as Rule 8.6(c);
  - f. Adopting the Affiliated Exchanges' Rule 13.6(d) regarding documents and witnesses as Rule 8.6(d); and
  - g. Adopting the Affiliated Exchanges' Rule 13.6(d), Interpretations and Policies .01 – .03 regarding interventions as Rule 8.6(e);
- 7) Amend Rule 8.8, Offers of Settlement, to clarify that the staff may also appear before the CRO to make an oral statement if the Respondent elects to make an oral statement before the CRO, and that a Respondent may submit an offer during the course of any proceeding under Chapter 8 of the Exchange Rules;
- 8) Amend Rule 8.9, Decision, to add that a decision shall also include a statement of the sanctions imposed and reasons for the sanctions, that the regulatory division of the Exchange shall also receive a copy of statements, and that the Exchange shall post the complete decision on the appropriate BYX website once the decision is considered final;
- 9) Update Rule 8.10, Review, by:
- a. Extending the time for a Respondent to petition for review of a decision from 10 days to 15 days, specify the process of petitioning for review of a decision, and clarify that other parties to a hearing may also submit petitions for review and responses to petitions for review;
  - b. Allowing the Board or a committee of the Board to ratify a review, clarify that new issues may be raised by the parties involved in the review, and clarify that the Board may affirm, reverse or modify the decision, and that the decision must be served upon the Respondent and the regulatory division of the Exchange;

c. Extending the time the Board has to review a decision from 20 days to 30 days; and

d. Eliminating Rule 8.10(d);

10) Amend Rule 8.11, Judgment and Sanctions, to remove a committee of the Board as an applicable body that may determine penalties and impose discipline upon Members and associated persons and remove Interpretations and Policies .01 to Rule 8.11;

11) Amend Rule 8.12, Miscellaneous Provisions, to clarify that the address a Respondent may be served at is the last known place of business as it appears on the books and records of the Exchange, and to provide an additional three days to the prescribed period a Respondent has to respond in the case of service by certified mail;

12) Remove Rule 8.14, Agency Review, in its entirety and replace it with the text of Rule 13.14 of the Affiliated Exchanges regarding reporting to the CRD;

13) Revise Rule 8.15, Imposition of Fines for Minor Rule Violations, to include additional details about the Minor Rule Violation program and align the Exchange's rule with corresponding Rule 13.15 of the Affiliated Exchanges;

14) Update Rule 8.16. *Ex Parte* Communications, to clarify that the provisions of the Rule apply to all Members and associated persons, amend the definition of Adjudicator<sup>14</sup> under the Rule, add subparagraphs (e), (f), and (g) to define ex parte communication, and add clarifying provisions regarding what may not be considered a violation of Rule 8.16; and

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<sup>14</sup> See Proposed Rule 8.16 (defining "Adjudicator" as "any member of the Hearing Panel, Business Conduct Committee, Board or committee of the Board" participating in a decision with respect to the proceeding at issue).

15) Remove Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information, in its entirety.

Detailed descriptions of the proposed changes to specific rules within Chapter 8 are outlined below.

### **Exchange Rule 8.1, Disciplinary Jurisdiction**

#### **(1) Current Rule 8.1:**

In its current form, Exchange Rule 8.1 sets forth the Exchange's jurisdiction regarding disciplinary matters involving its Members and associated persons. Members and associated persons are subject to the disciplinary jurisdiction of the Exchange pursuant to Chapter 8 of the Exchange's Rulebook and, after notice and opportunity for a hearing may be appropriately disciplined by: expulsion; suspension; limitation of activities, functions and operation; fine; censure; suspension or bar from association with a Member or any other fitting sanction.<sup>15</sup> An individual Member or associated person may be charged with a violation committed by an employee under the Member's supervision or by the Member or associated person, as though such violation was their own.<sup>16</sup> Similarly, a Member organization may be charged with any violation committed by its employees or by any other person who is associated with such Member organization, as though such violation was their own.<sup>17</sup> Members and associated persons continue to be subject to the Exchange's disciplinary jurisdiction following termination of such person's association with a Member with respect to matters that occurred prior to such termination provided that the Exchange

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<sup>15</sup> See Rule 8.1(a).

<sup>16</sup> Id.

<sup>17</sup> Id.

gave written notice to the former Member or former associated person within one year of the Exchange's receipt of written notice of termination of such former Member or such former associated person.<sup>18</sup> Chapter 8 does not apply to summary suspensions or other action taken pursuant to Chapter 7 of the Rules of the Exchange and action taken pursuant to Chapter 7 shall not be deemed disciplinary action under Chapter 8.<sup>19</sup> Rule 8.1(d) provides that Exchange is permitted to contract with another self-regulatory organization ("SRO") to perform some or all of the Exchange's disciplinary functions and allows the Exchange to retain ultimate legal responsibility for and control of such functions.<sup>20</sup>

**(2) Proposed Changes to Rule 8.1:**

The Exchange first proposes to amend Rule 8.1(b) to clarify that former Members or associated people continue to be subject to the Exchange's jurisdiction with respect to their failure to honor an arbitration award pursuant to Chapter 9 of the Exchange Rules. Chapter 9 of the Exchange's Rules governs the BYX arbitration process. Rule 9.5 states that failing to honor a BYX arbitration award may be deemed conduct inconsistent with just and equitable principles of trade. Conduct inconsistent with just and equitable principles of trade is a violation of Rule 3.1 and is thus subject to the disciplinary jurisdiction of the Exchange and should be codified as such.<sup>21</sup> Currently, however, such failure to honor a BYX arbitration award by a *former* Member, or *former* person associated with a Member, may not always be subject to the Exchange's disciplinary jurisdiction.

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<sup>18</sup> See Rule 8.1(b).

<sup>19</sup> See Rule 8.1(c).

<sup>20</sup> See Rule 8.1(d).

<sup>21</sup> See Rule 9.5.

Current Rule 8.1(b) provides that a Member or associated person shall continue to be subject to the disciplinary jurisdiction of the Exchange following such Member's or associated person's termination of membership, or termination of association with such Member, with respect to matters that occurred prior to such termination, provided that written notice of the commencement of an inquiry into such matters is given by the Exchange to such former Member or associated person within one year of the Exchange's receipt of notice of such termination.<sup>22</sup> This provision allows for certain anomalies in the context of failure to pay arbitration awards. For example, consider the following scenario: A customer is involved in a trading dispute with a BYX Member. Months later, the Member terminates its membership on the Exchange. Weeks after the membership termination, the customer properly files an arbitration claim with BYX.<sup>23</sup> One and a half years after the membership termination, the customer prevails in the arbitration proceeding, and a monetary award is imposed against the former Member. Nevertheless, the former Member subsequently fails to honor the arbitration award. Because more than one year has passed since the former Member's termination of membership and the Exchange did not provide written notice of the commencement of an inquiry into the failure to pay the award, the Exchange could not assert disciplinary jurisdiction over the former Member. The Exchange believes this is problematic given the fact that the dispute concerned Exchange-related business, and that the award was pursuant to an Exchange arbitration proceeding. While the

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<sup>22</sup> See Rule 8.1(b).

<sup>23</sup> Rule 9.1 states that Members shall comply with any FINRA rules and interpretations thereof incorporated by reference as if such rules and interpretations were part of the Exchange's Rules. FINRA Rule 12202 states that claims by or against a member or an associated person who is inactive at the time the claim is filed is ineligible for arbitration under the FINRA Code of Arbitration unless the customer agrees in writing to arbitrate after the claim arises.

Exchange notes that the customer in the above example would be able to seek enforcement of the award through the judicial system, the inability of the Exchange to potentially take disciplinary measures undermines the credibility of the Exchange's arbitration forum.

The Exchange also proposes to remove current Rule 8.1(d) in its entirety to remove obsolete and duplicative language regarding the ability of the Exchange to contract with another self-regulatory organization to perform disciplinary functions and replace this text with text found in Rule 13.1, Interpretations and Policies .02 of the Affiliated Exchanges describing when the notice requirement found in current Rule 8.1(b) shall not apply. Rule 8.1(d) currently states that the Exchange may contract with another self-regulatory organization to perform some or all of the Exchange's disciplinary functions, allows the Exchange to specify the extent to which the Rules of Chapter 8 govern disciplinary functions when contracting with an SRO, and allows the Exchange to retain ultimate legal responsibility and control over the Exchange's disciplinary functions. The Exchange proposes to remove the current language of 8.1(d) because its contents are duplicative of Exchange Rule 13.7, Regulatory Services Agreements.<sup>24</sup> The text added to Rule 8.1(d) would eliminate the notice requirement in Rule 8.1(b) solely with respect to instances where the Exchange seeks to take disciplinary measures with respect to a former Member or associated person for failure to honor an arbitration award pursuant to Chapter 9.

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<sup>24</sup> See Affiliated Exchanges' Rule 13.7. "The Exchange may enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Exchange Act. Any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision shall affect the oversight of such other self-regulatory organization by the Commission. . . . the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide."

Accordingly, the Exchange proposes to delete the text of current Rule 8.1(d) and replace this text with the text of Rule 13.1, Interpretations and Policies. 02 of the Affiliated Exchanges in its entirety.<sup>25</sup>

Together, the proposed changes to Rule 8.1(b) and Rule 8.1(d) would provide that failing to pay arbitration awards would remain under the disciplinary jurisdiction of the Exchange. The proposed change to Rule 8.1(b) seeks to clarify that former Members or associated persons continue to be subject to the Exchange's jurisdiction with respect to their failure to honor an arbitration award pursuant to Chapter 9 of the Exchange Rules while the proposed change to Rule 8.1(d) would seek to eliminate the notice requirement in Rule 8.1(b) solely with respect to instances where the Exchange seeks to take disciplinary measures with respect to a former Member or associated person for failure to honor an arbitration award pursuant to Chapter 9. The proposed amendments to Rule 8.1(b) and 8.1(d) will result in Rule 8.1 aligning with Rule 13.1 of the Affiliated Exchanges.

### **Exchange Rule 8.2, Complaint and Investigation**

#### **(1) Current Rule 8.2:**

Current Rule 8.2 states that staff investigates and examines possible violations within the disciplinary jurisdiction of the Exchange (“violations”) whenever possible violations are brought to its attention in any manner, including upon order of the Board, the CRO or other Exchange officials designated by the CRO, or upon receipt of a complaint alleging such violation.<sup>26</sup> Members and associated persons are required to

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<sup>25</sup> The proposed change is substantially similar to SR-CBOE-2001-14, with minor differences for terminology and outdated rule references. Additionally, the Affiliated Exchanges' current arbitration rule (Chapter 14) explicitly states that former TPHs and associated persons of TPHs are considered to be encompassed by Chapter 14.

<sup>26</sup> See Rule 8.2(a).

cooperate with staff inquiries and to furnish information requested in connection with investigations and examinations.<sup>27</sup> Members and associated persons are entitled to be represented by counsel during any such Exchange investigation, proceeding or inquiry.<sup>28</sup> Failure to furnish information requested by the Exchange in the course of an inquiry, investigation, hearing or appeal, or in the course of preparation by the Exchange in anticipation of such hearing or appeal on the date or within the time period specified by the Exchange shall be deemed to be a violation of Rule 8.2.<sup>29</sup> In each instance where an investigation has been instituted as a result of a complaint, and in every other instance in which an investigation finds that there are reasonable grounds to believe that a violation has been committed, the staff (or when appropriate, the designated self-regulatory organization) submits a written report (“report”) of the investigation to the CRO.<sup>30</sup>

Prior to submitting a report to the CRO, staff must notify the subject of the report (“Subject”) of the nature of the alleged violations.<sup>31</sup> Unless the CRO decides expeditious action is required, the Subject has 15 days to submit a written statement to the CRO concerning why no disciplinary action should be taken.<sup>32</sup> The Subject may request access to documents in the investigative file, furnished by the Subject or the Subject’s agents, to assist the Subject in preparing such a written statement.<sup>33</sup> The Subject may

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<sup>27</sup> See Rule 8.2(c).

<sup>28</sup> Id.

<sup>29</sup> See Rule 8.2(e).

<sup>30</sup> See Rule 8.2(b).

<sup>31</sup> See Rule 8.2(d).

<sup>32</sup> Id.

<sup>33</sup> Id.

also submit a videotaped response in lieu of a written statement, the length and format of which is decided by the Exchange.<sup>34</sup>

The Exchange may enter into cooperative agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance or for market surveillance, investigative, enforcement or other regulatory purposes.<sup>35</sup> No Member or associated person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or another self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish testimony, documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such testimony, documentary materials or other information in connection with an inquiry resulting from a cooperative agreement entered into by the Exchange.<sup>36</sup>

**(2) Proposed Changes to Rule 8.2:**

The Exchange proposes to reorganize and amend Rule 8.2 to align with and reflect the layout of the Affiliated Exchanges' Rule 13.2. The Exchange proposes these amendments to Rule 8.2 with the sole purpose of aligning the Rules of the Exchange with the Rules of the Affiliate Exchanges, thereby promoting consistency and efficiency for Members and TPHs.

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<sup>34</sup> See Rule 8.2(h).

<sup>35</sup> See Rule 8.2(g).

<sup>36</sup> See Rule 8.2(f).

First, the Exchange proposes to update Rule 8.2(a) to remove the Exchange's (or designated SRO's) and the Board's ability to initiate an investigation and place the responsibility to initiate an investigation with the Exchange's Regulatory staff, defined *infra*, upon receipt of a complaint. Specifically, Rule 8.2(a) currently provides that an investigation can be initiated in four different ways: (1) by the Exchange, (2) by the Board, (3) by the CRO, or (4) by receipt of a complaint. The Exchange proposes to amend Rule 8.2(a) to place the responsibility to initiate an investigation with the Exchange's Regulatory staff whenever the Regulatory staff determines a reasonable basis to do so exists or upon receipt of a complaint by any person or entity including the Board, Exchange employees, and Members (the "Complainant"), provided that such complaint specifies in reasonable detail the facts constituting the alleged violation. The proposed amendment to Rule 8.2(a) will result in Rule 8.2(a) aligning with Rule 13.2(a) of the Affiliated Exchanges.

Second, the Exchange proposes to replace Rule 8.2(b) with the equivalent Rule 13.2(c) of the Affiliated Exchanges, which specifies the appropriate procedure in circumstances in which the Regulatory staff finds reasonable grounds to believe a violation occurred, but no formal regulatory action is warranted in lieu of a statement of charges. Currently, Rule 8.2(b) provides that a written report of an investigation shall be submitted to the CRO in every instance where an investigation has been instituted and an investigation results in a finding that a violation was committed. Notably, current Rule 8.2(b) does not contemplate the appropriate procedures for when the Regulatory staff determines that a violation occurred, but a non-formal regulatory action is warranted in lieu of issuing a statement of charges or when the Regulatory staff determines no reasonable grounds to believe a violation occurred exist. The Exchange proposes to amend 8.2(b) to provide that

when the Regulatory staff determines that a violation occurred, but a non-formal regulatory action is warranted, in lieu of issuing a statement of charges, the Regulatory staff may impose a non-formal regulatory action without the submission of a written report of its investigation to the CRO. Additionally, the Exchange proposes to amend Rule 8.2(b) to provide that when the Regulatory staff determines no reasonable grounds to believe a violation occurred exist, the Regulatory staff may close the investigation without submission of a written report to the CRO. The proposed Rule 8.2(b) reflects the language and procedures described Affiliated Exchanges' Rule 13.2(c) and differs only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Third, the Exchange proposes to amend Rule 8.2(c) to add that a Member or associated person is obligated to appear and testify, respond to interrogatories, and furnish information requested by the Exchange in connection with an inquiry resulting from an agreement pursuant to Exchange Rules 8.2(f),<sup>37</sup> 8.2(g),<sup>38</sup> or 13.7.<sup>39</sup> Currently, Exchange Rule 8.2(c) provides for circumstances in which a Member or associated person is obligated

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<sup>37</sup> See Rule 8.2(f). "No Member or person associated with a Member or other person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or other self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish testimony, documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such testimony, documentary materials or other information in connection with an inquiry resulting from an agreement entered into by the Exchange pursuant to subsection (g) of this Rule. . . ."

<sup>38</sup> See Rule 8.2(g). "The Exchange may enter into agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance or for market surveillance, investigative, enforcement or other regulatory purposes. . . ."

<sup>39</sup> See Rule 13.7. The Exchange may enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Exchange Act. . . ."

to appear and testify, respond in writing to interrogatories, and furnish documentary materials and other information requested by the Exchange including in connection with an investigation initiated pursuant to the Rule or a hearing or appeal conducted or anticipated to be conducted pursuant to Chapter 8 of the Exchange Rules. Current Rule 8.2(c) does not obligate a Member or associated person to perform the specified actions in connection with an Exchange inquiry resulting from an agreement entered in connection with regulatory cooperation, a cooperative agreement, or a regulatory services agreement. The Exchange proposes to amend Rule 8.2(c) to add that a Member or associated person is obligated to appear and testify, respond to interrogatories, and furnish information requested by the Exchange in connection with an inquiry resulting from agreement pursuant to Exchange Rules 8.2(f), Regulatory Cooperation, 8.2(g), Cooperative Agreements, or 13.7, Regulatory Services Agreements. The proposed change to Rule 8.2(c) reflects the language of Affiliated Exchanges' Rule 13.2(b) and differs only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Fourth, the Exchange proposes to amend Rule 8.2(d) to extend the time in which a Subject<sup>40</sup> has to submit a response to a notification from 15 to 25 days, add a 25-day tolling period while a request for access to the relevant investigative file is pending, and add clarifying language to specify that the reference to any resolution of the Board in Rule 8.2(d) refers only to resolutions of the Board regulating the conduct of business on the Exchange. Currently, Rule 8.2(c) allows Subjects 15 days from the date of notification to submit a written statement to the CRO describing why no disciplinary action should be taken,

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<sup>40</sup> See Rule 8.2(d). The term "Subject" refers to the person(s) who is the subject of the report.

whereas the Affiliated Exchanges allow for 25 days.<sup>41</sup> Additionally, current Rule 8.2(c) does not include a tolling provision for Subjects when they are awaiting access to the relevant investigative file, whereas the Affiliated Exchanges include a tolling provision.<sup>42</sup> Finally, unlike Rule 13.2(d) of the Affiliated Exchanges, current Exchange Rule 8.2(c) refers to resolutions of the Board without specifying that the Rule only refers to resolutions of the Board regulating the conduct of business on the Exchange. To ensure consistency between the Exchange and the Affiliated Exchanges, the Exchange proposes to amend Rule 8.2(d) to extend the time for a Subject to submit a response to a notification from 15 to 25 days, add a 25-day tolling period while a request for access to the relevant investigative file is pending, and add clarifying language to specify that the reference to any resolution of the Board in Rule 8.2(d) refers only to resolutions of the Board regulating the conduct of business on the Exchange. The resulting Rule 8.2(d) will reflect the language of Rule 13.2(d) of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Fifth, the Exchange proposes to amend Rule 8.2(h) to extend the time in which a Subject may submit a videotaped response to a notification from 15 to 25 days and to specify the length and format of videotaped responses submitted pursuant to the Rule 8.2. Currently, Exchange Rule 8.2(h) allows Subjects 15 days to submit a videotaped response to a notification. The current Rule fails to specify the length and format of videotaped

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<sup>41</sup> See Affiliated Exchanges' Rule 13.2(d). "A subject shall have 25 days from the date of notification [] to submit a written statement to the CRO concerning why no disciplinary action should be taken."

<sup>42</sup> See Affiliated Exchanges' Rule 13.2(d). "The 25-day period to submit a written statement shall toll while any request for access to the investigative file pursuant to this section is pending."

responses and states that the Exchange will establish these standards. The Exchange proposes to extend the time in which a Subject may submit a videotaped response to a notification from 15 to 25 days to align the Exchange's Rules with those of the Affiliated Exchanges and proposed Rule 8.2(d), discussed above. The Exchange also proposes to specify that submitted videotaped responses shall not exceed 12 minutes and must be accompanied by a written transcript to align the Exchange's Rules with those of the Affiliated Exchanges and provide clarity to its Members regarding the standards for videotaped responses submitted pursuant to Rule 8.2(h). The resulting Rule 8.2(d) will reflect the exact language of Interpretation and Policy .02 of the Affiliated Exchanges' Rule 13.2.

Sixth, the Exchange proposes to add Interpretation and Policy .03 - .05 of the Affiliated Exchanges' Rule 13.2 as Exchange Rule 8.2(i) – (k) to specify the format of complaints, specify the form of materials to be submitted upon request, and define the term “Regulatory staff” as it is used in Chapter 8 of the Exchange Rules. The Affiliated Exchanges have rules in place specifying (1) that Complainants should sign written complaints or identify themselves when making oral complaints; (2) that data should be furnished upon request in the manner and standard electronic format prescribed by the Exchange; and (3) that define the term “Regulatory staff” as used in the relevant chapter. Conversely, the Exchange currently has no rules making such specifications. As such, the Exchange proposes to amend Rule 8.2 to add the specifications related to identification, furnishing materials upon request, and the definition of Regulatory staff that are included in the Rules of the Affiliated Exchanges. The Exchange proposes to adopt Rule 8.2(i) requiring Complainants to sign written complaints or identify themselves when making oral

complaints and identify the specific rules and regulations allegedly violated. The Exchange also proposes to adopt Rule 8.2(j) requiring each Member to furnish data concerning orders, transactions, and positions upon request in the manner and standard electronic format prescribed by the Exchange. Finally, the Exchange proposes to adopt Rule 8.2(k) to define the term “Regulatory staff,” as used in Chapter 8, to mean the Exchange’s employees in the regulatory division, and, as applicable, employees of FINRA performing regulatory services for the Exchange. The resulting Rules 8.2(i), 8.2(j), and 8.2(k) will reflect Interpretation and Policy .03 - .05 of the Affiliated Exchanges’ Rule 13.2 with the only difference between the rules being the corresponding Exchange Rules and defined terms referenced in each.

Finally, the Exchange proposes to add Rule 8.2(m) to the Rules of the Exchange defining the BCC and detailing its composition. Proposed Rule 8.2(m) will define the BCC as a committee of the Board with decision-making authority concerning possible violation within the discretionary jurisdiction of the Exchange. Further, the proposed rule will detail the composition of the BCC as being comprised of one or more Member or associated person, one or more public representatives, and may also include other individuals affiliated with the securities, futures or derivatives industry, all as appointed by the Exchange’s Nominating and Governance Committee with the approval of the Exchange’s Board of Directors. The resulting Rule 8.2(m) will set forth the definition and composition of the BCC in the Rules of the Exchange thereby adding clarity. The Exchange’s proposed amendments to Rule 8.2 discussed above will result in clarifying the Rules of the Exchange and the terms therein and Rule 8.2 aligning with and reflecting the general format of the Affiliated Exchanges’ Rule 13.2 with differences only where necessary to conform to the

Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

**Exchange Rule 8.3, Expedited Processing**

**(1) Current Rule 8.3:**

Current Rule 8.3, Expedited Proceeding, states that when a Subject receives notice of a report, the Subject may seek to dispose of the matter through a letter of consent.<sup>43</sup> The Subject may submit notice to staff electing to proceed in an expedited manner and shall have 15 days to submit a written statement pursuant to Rule 8.2(d).<sup>44</sup> The Subject and staff may then negotiate a letter of consent outlining stipulations and findings regarding the violation(s) and the sanctions therefore.<sup>45</sup> Disposing of the matter via letter of consent occurs only if the Subject and staff agree on the terms and it is signed by the Subject.<sup>46</sup> The CRO may accept or reject the letter of consent.<sup>47</sup> If the CRO accepts the letter, the Exchange may adopt the letter as its decision.<sup>48</sup> If the CRO rejects the letter, the matter proceeds as if the letter had not been submitted. The CRO's decision to accept or reject the letter is final.<sup>49</sup> Upon rejection, the Subject shall have 15 days to submit a written statement pursuant to Rule 8.2(d).<sup>50</sup> At any time, the Subject or staff may terminate the negotiations via written declaration of an end to the negotiations.<sup>51</sup>

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<sup>43</sup> See Rule 8.3.

<sup>44</sup> Id.

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> Id.

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> Id.

**(2) Proposed Changes to Rule 8.3:**

The Exchange proposes to amend Rule 8.3, Expedited Proceeding, to extend the time for a Subject to submit written responses to notices from the Regulatory staff from 15 to 25 days and to make other non-substantive conforming changes to the rule text. Rule 8.3, Expedited Proceedings, references Rule 8.2(d), regarding notice and time to respond to a notice, multiple times. Currently, Rule 8.2(d) allows Subjects 15 days to respond to a notice from the Exchange's Regulatory staff. As discussed in detail above, the Exchange is proposing to extend time allotted in Rule 8.2(d) to 25 days to align the Rules of the Exchange with those of the Affiliated Exchanges. Similarly, current Rule 8.3 allows Subjects 15 days to submit a written notice in response a notification electing to proceed in an expedited manner, a declaration of an end to negotiations, or a rejection of a letter of consent. The Exchange now proposes to extend the time allotted to a Subject to submit a written response in each of these scenarios to 25 days.

Additionally, the Exchange proposes to make other non-substantive changes to Rule 8.3 to conform the language of the Rule with the language of Affiliated Exchanges' Rule 13.3, Expedited Proceeding. These non-substantive changes include changing references to "Exchange staff" to "Regulatory staff," which the Exchange proposes to define in Rule 8.2(k), discussed above. The Exchange's proposed amendments to Rule 8.3 as discussed above will align Rule 8.3 with the general format and language of the Affiliated Exchanges' Rule 13.3.

**Exchange Rule 8.4, Charges****(1) Current Rule 8.4**

Current Rule 8.4 states that when it appears to the CRO from the staff's report pursuant to Rule 8.2(b) that no probable cause exists for finding a violation occurred or if the CRO otherwise determines that no further action is warranted, the CRO issues a written statement setting out its reasons for that finding.<sup>52</sup> When the CRO determines probable cause exists for finding a violation occurred and further proceedings are warranted, the CRO directs staff to prepare a statement of charges against the Respondent specifying the acts for which the Respondent is charged and setting forth the specific violations.<sup>53</sup> A copy of the statement of charges shall be served upon the Respondent in accordance with Rule 8.12.<sup>54</sup>

## **(2) Proposed Changes to Rule 8.4**

The Exchange proposes to amend Rule 8.4. Charges, to delete the current text of Rule 8.4(a) and replace it entirely with the text of the Affiliated Exchanges' Rule 13.4(a), amend Rule 8.4(b) to provide that a Complainant shall be notified if further proceedings are warranted, and add Rule 8.4(c) specifying the terms of a Respondent's access to requested documents.

First, the Exchange proposes to delete the current text of Rule 8.4(a) and replace it entirely with the text of the Affiliated Exchanges' Rule 13.4(a). Current Rule 8.4(a) describes the steps the CRO must take in the case he or she determines that no probable cause exists for finding a violation occurred or that no further proceedings are warranted. In both cases, current Rule 8.4(a) directs the CRO to issue a written statement setting forth the reasons for his or her finding. Rule 8.4(a) does not specify which materials the CRO must

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<sup>52</sup> See Rule 8.4(a).

<sup>53</sup> See Rule 8.4(b).

<sup>54</sup> Id.

base his or her finding on and requires the CRO, rather than the Regulatory staff, to take the specified action. The Exchange proposes to amend Rule 8.4(a) to adopt the language of the Affiliated Exchange's Rule 13.4(a) in its entirety. As a result, Rule 8.4(a) will continue to describe the steps the CRO must take if he or she determines that no probable cause exists for finding a violation occurred or that no further proceedings are warranted. The amended Rule 8.4(a) will also specify that the CRO should base his or her finding on the report of the Regulatory staff, that the determination should be based on whether a violation occurred within the disciplinary jurisdiction of the Exchange, and direct the Regulatory staff, rather than the CRO, to prepare and issue a written statement setting forth the reasons for the CRO's findings. The resulting Rule 8.4(a) will reflect the exact language of the Affiliated Exchanges' Rule 13.4(a).

Second, the Exchange proposes to amend Rule 8.4(b) to specify that the CRO's finding should be based on the report of the Regulatory staff and that the Regulatory staff prepares and issues the statement of charges. Similar to current Rule 8.4(a), current Rule 8.4(b) does not specify that the CRO's finding should be based on a report from the Regulatory staff or that the Regulatory staff, rather than the CRO, should prepare and issue statements of charges. The Exchange proposes to amend Rule 8.4(b) to add these specifications. Additionally, the Exchange proposes to amend Rule 8.4(b) to specify that the term "Respondent" refers to the person or organization alleged to have committed a violation, and that the Complainant, if any, shall be notified if further proceedings are warranted. Current Rule 8.4(b) does not specifically define the term "Respondent" or whether Complainants will be contacted if further proceedings are warranted. The Exchange proposes to add to Rule 8.4(b) that the term "Respondent" refers to "the person or

organization alleged to have committed a violation.” The Exchange also proposes to add that if further proceedings are warranted, the Complainant shall be notified. The resulting Rule 8.4(b) will reflect the exact language of Rules 13.4(b) of the Affiliated Exchanges.

Finally, the Exchange proposes to add subparagraph (c) to Rule 8.4 to specify the terms of the Respondent’s access to requested documents. Currently, neither Rule 8.4, nor any provision in Chapter 8 of the Exchange’s Rulebook, provides the terms of Respondent’s access to documents relating to their investigation. The Exchange proposes to adopt Rule 8.4(c) to specify that Respondents who have made a request for documents shall have access to all documents concerning their case within 25 days after a statement of charges has been properly served upon the Respondent. If a Respondent requests such documentation, the Regulatory staff may protect the identity of the Complainant. The Exchange seeks to add clarity to the process by which Respondents may obtain all relevant documentation and ensure that procedures for obtaining such information are transparently communicated to all Members of the Exchange. The resulting Rule 8.4(c) will reflect the language of Rules 13.4(c) of the Affiliated Exchanges, with differences only to account for the Exchange Rules referenced therein.

### **Exchange Rule 8.5, Answer**

#### **(1) Current Rule 8.5:**

Currently, Rule 8.5, Answer, states that a Respondent has 15 days after service of the statement of charges to file a written answer to the statement of charges (“Answer”).<sup>55</sup>

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<sup>55</sup> See Rule 8.5.

The Answer must specifically admit or deny any allegation contained in the statement of charges and may be accompanied by supporting documentation.<sup>56</sup>

**(2) Proposed Changes to Rule 8.5:**

The Exchange proposes to amend Rule 8.5, Answer, to extend the time for a Subject to submit an answer from 15 to 25 days and add a 25-day tolling period while a request for access to the relevant investigative file is pending. Similar to Rule 8.2, discussed above, Rule 8.5 currently allows Respondents 15 days after service of the charges to file an answer, whereas the Affiliated Exchanges allow for 25 days.<sup>57</sup> Additionally, current Rule 8.5 does not include a tolling provision for Respondents when they are awaiting access to the relevant investigative file, whereas the Affiliated Exchanges include a tolling provision.<sup>58</sup> To ensure consistency between the Exchange and its Affiliated Exchanges, the Exchange proposes to amend Rule 8.5 to extend the time that a Respondent has to file an answer from 15 to 25 days and add a 25-day tolling period while a request for access to the relevant investigative file is pending. The resulting Rule 8.5 will reflect the language of Rule 13.5 of the Affiliated Exchanges with differences only to account for the Exchange Rules referenced therein.

**Exchange Rule 8.6, Hearings**

**(1) Current Rule 8.6:**

Current Rule 8.6, Hearings, states that subject to Rule 8.7<sup>59</sup> regarding summary proceedings, hearings on charges are held before a panel of three hearing officers (the

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<sup>56</sup> Id.

<sup>57</sup> See Affiliated Exchanges' Rule 13.5. "The Respondent shall have 25 business days after service of the charges to file a written answer thereto."

<sup>58</sup> See Affiliated Exchanges' Rule 13.5. "The 25-day period to submit a written answer shall toll while any request for access to the investigative file pursuant to Rule 13.4(c) is pending."

<sup>59</sup> See Rule 8.7. "Notwithstanding the provisions of Rule 8.6 of this Chapter, the CRO may make a determination without a hearing and may impose a penalty as to violations which the Respondent

“Hearing Panel”) appointed by the Chief Executive Officer.<sup>60</sup> Each Hearing Panel shall be comprised of the following: (i) a professional hearing officer, who shall serve as Chairman; (ii) a hearing officer who is an Industry member;<sup>61</sup> and (iii) a hearing officer who is a Member Representative.<sup>62,63</sup> Exchange counsel may assist the Hearing Panel in preparing its written recommendations or judgments.<sup>64</sup> Within 15 days of the appointment of the Hearing Panel, the Respondent may move, in writing, to disqualify any Hearing Officer sitting on such Hearing Panel based upon bias or conflict of interest.<sup>65</sup> The Exchange may file a brief in opposition to the Respondent’s motion within 15 days of service thereof.<sup>66</sup> The Hearing Panel shall rule upon such motion no later than 30 days from filing by the Respondent.<sup>67</sup>

Participants shall be given at least 15 business days’ notice of the time and place of the hearing and a statement of the matters to be considered therein.<sup>68</sup> Not less than 8 days in

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has admitted or charges which the Respondent has failed to answer or which otherwise are not in dispute. Notice of such summary determination, specifying the violations and penalty, shall be served upon the Respondent, who shall have ten (10) business days from the date of service to notify the CRO that he desires a hearing upon all or a portion of any charges not previously admitted or upon the penalty. Failure to so notify the CRO shall constitute an admission of the violations and acceptance of the penalty as determined by the CRO and a waiver of all rights of review. If the Respondent requests a hearing, the matters which are the subject of the hearing shall be handled in accordance with the hearing and review procedures of this Chapter.”

<sup>60</sup> See Rule 8.6(a)(2).

<sup>61</sup> See Rule 8.6(a)(1)(A). An “Industry member” is generally defined as a person having significant involvement with a broker or dealer, a person who provides professional services to a broker or dealer, or a person who has an employment relationship or consults for or provides professional services to the Exchange or any affiliate thereof.

<sup>62</sup> See Rule 8.6(a)(1)(B). The term “Member Representative” means a member of any hearing panel who is an office, director, employee or agent of an Exchange Member.

<sup>63</sup> See Rule 8.6(a)(2).

<sup>64</sup> See Rule 8.6(b).

<sup>65</sup> Id.

<sup>66</sup> Id.

<sup>67</sup> Id.

<sup>68</sup> See Rule 8.6(c).

advance of the hearing date, the parties must furnish copies of all documentary evidence they wish to present at the hearing, and the parties shall furnish a list of all documents submitted for the record not less than four business days in advance of the hearing.<sup>69</sup> These documents shall be made available to the parties for inspection and copying.<sup>70</sup> The Hearing Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct at the hearing.<sup>71</sup> The charges shall be presented by a representative of the Exchange or the designated SRO who, along with the Respondent, may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the Hearing Panel and opposing parties.<sup>72</sup> The Respondent is entitled to be represented by counsel who may participate fully in the hearing.<sup>73</sup> A transcript of the hearing shall be made and shall become part of the record.<sup>74</sup>

**(2) Proposed Changes to Rule 8.6:**

The Exchange proposes to remove current text of Rule 8.6, Hearings, and replace it entirely with the language of Rule 13.6 of the Affiliated Exchanges, which describes the process of conducting hearings for the Affiliated Exchanges. Proposed changes to Rule 8.6 include amending Rule 8.6(a) to change the composition of the panel overseeing hearings from three hearing officers appointed by the CEO to three to five members of the BCC selected by the Chairperson of the BCC; reorganizing the contents of the Rule to reflect the

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<sup>69</sup> Id.

<sup>70</sup> Id.

<sup>71</sup> See Rule 8.6(d).

<sup>72</sup> Id.

<sup>73</sup> Id.

<sup>74</sup> Id.

format of Rule 13.6 of the Affiliated Exchanges, and adding subparagraphs (d) and (e) to Rule 8.6.

The Exchange proposes to amend Rule 8.6(a) to remove the current rule text and replace it entirely with the text of Rule 13.6(a) of the Affiliated Exchanges. Current Rule 8.6(a) defines the terms “Industry Member” and “Member Representative member,” and then specifies the composition of Hearing Panels that conduct hearings pursuant to the Rule as three hearing officers appointed by the CRO. The amended Rule 8.6(a) will define the term “Hearing Panel” as the selected members of the BCC that shall exercise the authority of the BCC with respect to matters pertaining to the hearing. The proposed rule change will transform the composition of the Hearing Panel from a panel of three hearing officers appointed by the Chief Executive Officer to three to five members of the BCC selected by the Chairperson of the BCC. Proposed Rule 8.6(a) will also provide that the Exchange and the Respondent shall be the parties to the hearing and where a Member organization is a party, it shall be represented at the hearing by one of its Principals or nominees. Additionally, the rule will provide that Hearing Panel members shall remain impartial and function independently from Exchange staff.

Current Rule 8.6(b) imposes the requirement that members of the Hearing Panel must remain impartial and provides the procedures for which a Respondent may move to disqualify a member of the Hearing Panel based on bias or a conflict of interest. The Exchange proposes to remove subparagraph (b) of Rule 8.6 and replace it with a provision describing hearing procedures, discussed in detail *infra*. The Exchange proposes to amend subparagraph (1) of Rule 8.6(a) to set forth the requirement that members of the Hearing Panel remain impartial throughout the proceeding and the procedures for, if at any point in

time, a member of the Hearing Panel determines they have a conflict of interest. These provisions were previously contained in subparagraph (b) of Rule 8.6. If a conflict of interest arises, the Hearing Panel member shall notify the Chairperson of the BCC who shall notify all Parties that the Hearing Panel member withdraws from the hearing and then appoint a replacement. Finally, subparagraph (2) of proposed Rule 8.6(a) will provide for an avenue by which a Respondent may motion for the disqualification of a Hearing Panel member based on bias or a conflict of interest within 15 days of the appointment of the Hearing Panel member. This provision was also previously contained in subparagraph (b) of Rule 8.6. Similar to the requirements of current Rule 8.6(b), motions for disqualification of a Hearing Panel member will be required to be in writing and must state the facts and circumstances giving rise to the alleged bias or conflict. Then, the Exchange will have 15 days to file a brief in opposition to the Respondent's motion. The resulting Rule 8.6(a) will reflect the requirements and format set forth in Affiliated Exchanges' Rule 13.6(a) and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Next, the Exchange proposes to amend current Rule 8.6(b) to remove the existing text and replace it entirely with the text of Rule 13.6(b) of the Affiliated Exchanges. Current Rule 8.6(b) imposes the requirement that members of the Hearing Panel must remain impartial and provides the procedures for which a Respondent may move to disqualify a member of the Hearing Panel based on bias or a conflict of interest. As discussed above, the Exchange proposes to move the requirement of impartiality of Hearing Panel members and the procedures for addressing a Hearing Panel member's conflict of interest to subparagraph

(a) of Rule 8.6. The Exchange proposes to replace current Rule 8.6(b) with a provision specifying prehearing procedures, which are currently found in Rule 8.6(c). As discussed in greater detail *infra*, the Exchange proposes to remove the text of current Rule 8.6(c) and renumber current Rule 8.6(d) as Rule 8.6(c).

The Exchange proposes to amend Rule 8.6(b) to specify the terms of notice before a hearing, location of a hearing, pre-hearing furnishing of documents, and pre-hearing conference requirements. First, the amended Rule 8.6(b) will specify that notice shall be served upon all Parties to a hearing at least 15 days before the hearing specifying the time and location of the hearing which is typically held in Chicago, but may be held outside of Chicago to accommodate hearing participants. Similar to current Rule 8.6(c), proposed Rule 8.6(b) will require 15 business days' notice of a hearing to all parties and require that all evidence each party intends to furnish to the Hearing Panel shall be furnished within 10 business days prior to the hearing. Next, proposed Rule 8.6(b) will specify that each party to a hearing must furnish all documentary evidence it intends to present at the hearing to the Hearing Panel and all other parties to the hearing within 10 days prior to the scheduled hearing. Proposed Rule 8.6(b) will also provide that where time and the nature of a proceeding permit, the parties shall meet in a prehearing conference to clarify and simplify issues and otherwise expediate the hearing process. The Rule will specify that at such pre-hearing conference the parties shall attempt to reach an agreement regarding the authenticity of documents and facts not in dispute, and that either party may request that the Hearing Panel or Chairperson thereof decide any unresolved prehearing issue. Finally, proposed Rule 8.6(b) will set forth the situations in which interlocutory Board review of a decision by the Hearing Panel is permitted. Generally, proposed Rule 8.6(b) will prohibit any interlocutory

review by the Board unless the Hearing Panel agrees to review after determining that the issue is a controlling issue of rule or policy and that immediate Board review would materially advance the ultimate resolution of the case. The resulting Rule 8.6(b) will reflect the language and organization of Rule 13.6(b) of the Affiliated Exchanges.

Next, the Exchange proposes to remove the existing text of Rule 8.6(c) as this text has been incorporated into proposed Rule 8.6(b). The Exchange also proposes to renumber current Rule 8.6(d) concerning the conduct of hearing as Rule 8.6(c) and proposes additional non-substantive changes to reflect the language of the Affiliated Exchanges' Rule 13.6(c). Proposed Rule 8.6(c) will impose the same requirements upon the Hearing Panel at a hearing as current Rule 8.6(d) does and add the opportunity for intervening parties to present evidence at a hearing be represented by counsel. The resulting Rule 8.6(c) will reflect the exact language of Rule 13.6(c) of the Affiliated Exchanges.

Next, the Exchange proposes to adopt Rule 13.6(d) of the Affiliated Exchanges regarding documents and witnesses as Exchange Rule 8.6(d). Proposed Rule 8.6(d) will provide the process by which the Hearing Panel may compel the production of evidence from the Exchange, a Member, or associated person. Proposed Rule 8.6(d) will allow a Respondent to submit a written request to the Hearing Panel asking the Hearing Panel to enter an order compelling the production of non-privileged documents by the Exchange, a Member, or associated person. Before entering an order under proposed Rule 8.6(d), the Hearing Panel will be required to hear any objections raised and weigh the probative value of the requested evidence against considerations including undue delay, waste of time, confusion, and unfair prejudice. As a result of compelled production under proposed Rule 8.6(d), the Hearing Panel may require the Respondent to pay the costs of producing the

requested evidence and no Member or associated person may refuse to furnish relevant evidence requested or ordered by the Hearing Panel. The resulting Rule 8.6(d) will reflect the language and procedures outlined in Rule 13.6(f) of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Finally, the Exchange proposes to adopt the Affiliated Exchanges' Rule 13.6 Interpretations and Policies .01 – .03 regarding parties intervening in a hearing as Rule 8.6(e). Proposed Rule 8.6(e) will set forth the process by which a third party may intervene as a party to a hearing. Under proposed Rule 8.6(e), a party may only intervene in a hearing if (1) the party satisfactorily demonstrates to the Hearing Panel that the party has an interest in the subject of the hearing and that disposition of the matter before the Hearing Panel may impair or impede the party's ability to protect that interest; or (2) the Hearing Panel, in its discretion, permits a party to intervene when the party's claim or defense and the main action have questions of fact or law in common. Proposed Rule 8.6(e) will require any party seeking to intervene in a hearing to file a notice requesting to intervene with the Hearing Panel stating the grounds for intervention. The Exchange proposes to add subparagraphs (1) and (2) to proposed Rule 8.6(d) including specifying that the Hearing Panel has discretion to take into consideration whether intervention will unduly delay a hearing and that the CRO shall have authority to direct that a hearing to be scheduled at any time after the period to answer, specified in Rule 8.5, discussed above, has elapsed. The resulting Rule 8.6(f) will reflect the exact language of Affiliated Exchanges' Rule 13.6 Interpretations and Policies .01 – .03 with the only difference between the Rules being the Rules referenced therein.

The Exchange proposes the aforementioned changes to Rule 8.6, Hearings, with the broader purpose of harmonizing the Rules of the Exchange with the Rules of the Affiliated Exchanges. The changes to Rule 8.6 propose to adopt new roles for the Exchange's Business Conduct Committee similar to the functions of the relevant BCC of the Affiliated Exchanges. The Exchange believes that harmonizing the composition of the disciplinary rules between the Exchange and the Affiliated Exchanges benefits Members because those parties who maintain status as both a Member of the Exchange and a Trading Permit Holder on the Affiliated Exchanges will be subject to substantially similar disciplinary rules and not perceive one set of disciplinary rules to be more lenient or harsh depending on the Exchange's core business.

### **Rule 8.8, Offers of Settlement**

#### **(1) Current Rule 8.8:**

Current Rule 8.8, Offers of Settlement, states that a Respondent may submit an offer of settlement ("offer") to the CRO at any time during the course of any proceeding.<sup>75</sup> If the CRO accepts the offer, it issues a decision consistent with the terms of the offer.<sup>76</sup> If the CRO rejects the offer, it notifies the Respondent and the matter proceeds as if the offer had not been made.<sup>77</sup> In addition, the Respondent is notified if staff will not recommend acceptance of an offer, and the Respondent may then appear before the CRO to make an oral statement in support of the offer.<sup>78</sup> If the CRO rejects an offer that the staff supports, the Respondent may also appear before the CRO to make an oral statement concerning why the

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<sup>75</sup> See Rule 8.8(a).

<sup>76</sup> Id.

<sup>77</sup> Id.

<sup>78</sup> See Rule 8.8(b).

CRO should consider changing its decision.<sup>79</sup> A Respondent must make a request for such an appearance within 5 days of being notified that the offer was rejected or that the staff will not recommend acceptance.<sup>80</sup> Unless otherwise ordered by the CRO, a Respondent shall be entitled to submit a maximum of two written offers of settlement in connection with the statement of charges issued pursuant to Rule 8.4(b).<sup>81</sup>

**(2) Proposed Changes to Rule 8.8:**

The Exchange proposes to amend Rule 8.8, Offers of Settlement, to remove the provision that the staff may also appear before the CRO to make an oral statement if the Respondent elects to make an oral statement before the CRO. Additionally, the Exchange proposes to amend Rule 8.8 to provide that a Respondent may submit an offer during the course of any proceeding under Chapter 8 of the Exchange Rules. Currently, Rule 8.8(b) allows a Respondent to appear before the CRO to make an oral statement in support of an offer. If the CRO rejects the offer, the Respondent may appear in front of the CRO to make an oral statement in support of their offer and the Exchange staff may appear to make an oral statement in support of its position.<sup>82</sup> The Exchange proposes to remove the language in Rule 8.8(b) stating that the staff may also make an oral statement in support of its position. Rule 13.8 of the Affiliated Exchanges contains a similar provision to Exchange Rule 8.8(b), but does not contain a provision allowing the staff to also appear in front of the CRO. The Exchange proposes to remove this provision of Rule 8.8(b) to ensure consistency across the Rules of the Exchange and the Affiliated Exchanges.

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<sup>79</sup> Id.

<sup>80</sup> Id.

<sup>81</sup> See Rule 8.8(c).

<sup>82</sup> See Rule 8.8(a).

The Exchange also proposes to add subparagraph (d) to Rule 8.8 regarding presentment of offers of settlement. The Exchange proposes to add language taken from Affiliated Exchanges' Rule 13.8 Interpretations and Policies .02 which clarifies when a Respondent may propose a written offer and that the Hearing Panel shall grant parties leave from a hearing if an offer of settlement is submitted subsequent to a hearing. The Exchange proposes to adopt similar language to Affiliated Exchanges' Rule 13.8 Interpretations and Policies .02. The resulting Rule 8.8(d) will ensure the granting of leave from hearings when an offer is submitted subsequent to a hearing and clarify that a Respondent may submit a written offer at any time during a proceeding under Chapter 8 of the Exchange Rules, subject to Rule 8.8(c).<sup>83</sup>

### **Rule 8.9, Decision**

#### **(1) Current Rule 8.9:**

Currently, Rule 8.9, Decision, states that following a hearing, the Hearing Panel issues a decision, in writing, determining whether the Respondent has committed a violation.<sup>84</sup> The decision shall include a statement of findings and conclusions upon all material issues presented on the record.<sup>85</sup> Where a penalty is imposed, the decision shall include a statement specifying the acts or practices in which the Respondent has been found

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<sup>83</sup> See Rule 8.8(c). "Unless the CRO shall otherwise order, a Respondent shall be entitled to submit to the CRO a maximum of two written offers of settlement in connection with the statement of charges issued to that Respondent pursuant to Rule 8.4(b)."

<sup>84</sup> See Rule 8.9.

<sup>85</sup> Id.

to have engaged and setting forth the specific provisions of authority of which the acts are deemed to be in violation.<sup>86</sup> The Respondent shall promptly be sent a copy of the decision.<sup>87</sup>

**(2) Proposed Changes to Rule 8.9:**

The Exchange proposes to amend Rule 8.9, Decision, to add that a decision shall also include a statement of the penalties imposed and reasons for the penalties, that the regulatory division shall also receive a copy of the statements, and that the Exchange shall post the complete decision on the appropriate BYX website once the decision is considered final. Current Rule 8.9 sets out the required contents of a decision where a penalty is imposed but does not include that the decision must include a statement of the sanctions and the reasons for their imposition. The Exchange proposes to add to Rule 8.9 that where a penalty is imposed, the decision of the Hearing Panel shall also include a statement of the penalties imposed and the reasons therefor. Additionally, current Rule 8.9 states that a Respondent shall receive a copy of a decision but does not provide that the regulatory division of the Exchange shall receive a copy as well. The Exchange proposes to amend Rule 8.9 to include that the regulatory division shall also receive a copy of the decision. Finally, the Exchange proposes to add to Rule 8.9 that after review of a decision is complete and considered final, the Exchange shall post the complete decision on the appropriate BYX website. The Rules of the Affiliated Exchanges include a similar provision<sup>88</sup> that is currently not contained in the Rules of the Exchange. The Exchange proposes this addition to ensure consistency across the Rules of the Exchange and Affiliated Exchanges and to ensure that

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<sup>86</sup> Id.

<sup>87</sup> Id.

<sup>88</sup> See Affiliated Exchange Rule 13.9.

Members and Trading Permit Holders of each do not perceive the Rules of one exchange as stricter than the other. The resulting Rule 8.9 will closely reflect Rule 13.9 of the Affiliated Exchanges, with the only difference being the Exchange Rules referenced therein.

**Rule 8.10, Review**

**(1) Current Rule 8.10:**

Current Rule 8.10, Review, states that a Respondent has 10 days after service of a decision to petition for review of the decision by submitting a petition, in writing, and specifying the findings and conclusions to which exceptions are taken together with reasons for such exceptions.<sup>89</sup> The review shall be conducted by the Appeals Committee of the Board (the “Committee”).<sup>90</sup> The review shall be based solely upon the record and the written exceptions filed by the parties unless the Committee decides to open the record for introduction of evidence or to hear arguments.<sup>91</sup> The Committee’s decision shall be in writing and shall be final.<sup>92</sup>

The Board may order review of a decision made pursuant to Rule 8.7<sup>93</sup> or 8.9, discussed above, within 20 business days after issuance of the decision.<sup>94</sup> Such review shall

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<sup>89</sup> See Rule 8.10(a).

<sup>90</sup> See Rule 8.10(b).

<sup>91</sup> Id.

<sup>92</sup> Id.

<sup>93</sup> See Rule 8.7. “Notwithstanding the provisions of Rule 8.6 of this Chapter, the CRO may make a determination without a hearing and may impose a penalty as to violations which the Respondent has admitted or charges which the Respondent has failed to answer or which otherwise are not in dispute. Notice of such summary determination, specifying the violations and penalty, shall be served upon the Respondent, who shall have ten (10) business days from the date of service to notify the CRO that he desires a hearing upon all or a portion of any charges not previously admitted or upon the penalty. Failure to so notify the CRO shall constitute an admission of the violations and acceptance of the penalty as determined by the CRO and a waiver of all rights of review. If the Respondent requests a hearing, the matters which are the subject of the hearing shall be handled in accordance with the hearing and review procedures of this Chapter.”

<sup>94</sup> See Rule 8.10(c).

be conducted in accordance with the Committee review procedure described above.<sup>95</sup>

Within 30 days of a decision made to not initiate charges pursuant to Rule 8.4(a), described above, the Board may order review of such decision upon application made by the Chief Executive Officer (“CEO”).<sup>96</sup> Such review shall be conducted in accordance with the Committee review procedure described above.<sup>97</sup>

**(2) Proposed Changes to Rule 8.10:**

The Exchange proposes amend Rule 8.10(a) to reflect the content and format of Rule 13.10 of the Affiliated Exchanges. In doing so, the Exchange proposes to extend the time for a Respondent to petition for review of a decision from 10 days to 15 days, to specify the process of petitioning for review of a decision, and to clarify that other parties to a hearing may also submit a petition for review and a response to petitions for review. The Exchange also proposes to amend Rule 8.10(b) to allow the Board or a committee of the Board, excluding any Board member who participated in the review, to ratify a review, and to clarify that new issues may be raised by the parties involved in the review, but all parties must be given notice and opportunity to address them. Additionally, the Exchange proposes to amend Rule 8.10(b) to further clarify that the Board may affirm, reverse or modify the decision, and that the decision must be served upon the Respondent and the regulatory division of the Exchange. Next, the Exchange proposes to amend Rule 8.10(c) to extend the time allotted for the Board to review a decision from 20 days to 30 days. Finally, the

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<sup>95</sup> Id.

<sup>96</sup> See Rule 8.10(d).

<sup>97</sup> Id.

Exchange proposes to remove subparagraph (d) of Rule 8.10 entirely to eliminate the CEO's role from the disciplinary issues of the Exchange all together.

The Exchange proposes to amend Rule 8.10(a) to allow both the Respondent and the regulatory division the opportunity to petition for review of a decision, extend the period of time allotted to both parties to file such a review from 10 days to 15 days, and specify the process by which the parties may petition for review. Current Rule 8.10(a) allows only the Respondent to petition for review of a decision within 10 days of service of notice of a decision and fails to specify the process for filing a petition for review. The Exchange proposes to extend this time to 15 days, include the regulatory division of the Exchange as a party who may petition for review, and specify that a petitioning party must file a copy of the written petition with the Secretary of the Exchange ("Secretary") shared with all other parties to the hearing. In response to a petition for review all other parties to the hearing shall have 15 days to respond to the petition by serving a written response upon the Secretary and all other parties to the hearing. The resulting Rule 8.10(a) will clarify the processes for submitting petitions for review for all parties to a hearing and closely reflect the language of Rule 13.10(a) of the Affiliated Exchanges. The resulting Rule 8.10(a) will differ from Rule 13.10(a) of the Affiliated Exchanges only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

The Exchange proposes to amend Rule 8.10(b) to reflect the language of the Rule 13.10(b) of the Affiliated Exchanges. Current Rule 8.10(b) provides that the review of a decision shall be conducted by the Appeals Committee of the Board and based solely on the record and written exceptions filed by the parties. The Exchange proposes to allow the

Board or any subcommittee thereof, excluding any Director who took part in the Hearing Panel, to review a decision. The Exchange proposes to allow the reviewing Committee to open the record to introduce additional evidence if it chooses, in which case parties to the hearing shall be given notice and opportunity to address any additional issues. Finally, the Exchange proposes to clarify that the decision of the Board shall be made in writing and served upon the Respondent and the Regulatory Division. The resulting Rule 8.10(b) will closely reflect Rule 13.10(b) of the Affiliated Exchanges with differences to account for the Exchange's existing Rule text and details and descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

The Exchange proposes to amend Rule 8.10(c) to extend the time the Board which the Board can review an order of a decision from 20 days to 30 days and to specify that the 30 period begins at the time service of the decision upon the Respondent and the Regulatory Division. Current Rule 8.10(c) allows the Board to review an order of a decision made pursuant to Rule 8.7 or Rule 8.9, described above, within 20 business days after issuance of the decision. The Exchange proposes to extend the time allotted to the Board to review an order of a decision to 30 days. The resulting Rule 8.10(c) will closely reflect Rule 13.10(c) of the Affiliated Exchanges with differences only to account for the Exchange Rules referenced therein.

Finally, the Exchange proposes to remove current subparagraph (d) from Rule 8.10, which allows the CEO to apply for, and the Board to order for, the review of decisions made pursuant to Rule 8.4(a), discussed above. The Exchange proposes to eliminate subparagraph (d) of Rule 8.10 with the broader purpose of removing the CEO from disciplinary matters within the Exchange. As discussed above, the Exchange seeks to align its Rules with those

of the Affiliated Exchanges, which do not include the CEO as a stakeholder in disciplinary actions taken by the Affiliated Exchanges. The resulting Rule 8.10 will closely reflect the language and processes prescribed by Rule 13.10 of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

### **Rule 8.11, Judgment and Sanction**

#### **(1) Current Rule 8.11:**

Current Rule 8.11, Judgment and Sanction, provides that the CRO, Hearing Panel, or committee of the Board appropriately discipline Members and associated persons for violations by expulsion, suspension, limitation of activities, fine, censure, suspension of association with a Member, suspension or revocation of membership, or any other fitting sanction.<sup>98</sup> Under this Rule, the CRO, Hearing Panel, or a committee of the Board, as applicable, considers several factors when determining sanctions including, but not limited to, deterrence, remediation, precedent and the appropriateness of disgorgement and/or restitution.<sup>99</sup> Penalties imposed under this Rule shall not become effective until the review process is completed or the decision otherwise becomes final.<sup>100</sup> The CRO, Hearing Panel, or committee of the Board, as applicable, may impose such conditions and restrictions on the activities of the Respondent pending effectiveness of a decision imposing a penalty on the Respondent as necessary for the protection of investors, creditors, and the Exchange.<sup>101</sup>

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<sup>98</sup> See Rule 8.11(a).

<sup>99</sup> See Rule 8.11(c).

<sup>100</sup> See Rule 8.11(b).

<sup>101</sup> Id.

The current Rule 8.11 also states that Exchange staff shall make all necessary findings under the Exchange Act and comply with all other applicable laws and regulations.<sup>102</sup>

**(2) Proposed Changes to Rule 8.11:**

The Exchange proposes to amend Rule 8.11, Judgment and Sanctions, to remove a committee of the Board as an applicable body that may determine penalties and impose discipline upon Members and associated persons. Current Rule 8.11(a) lists the CRO, Hearing Panel, and a committee of the Board as persons who may impose appropriate disciplinary actions for violations by expulsion, suspension, limitation of activities, fine, censure, suspension of association with a Member, suspension or revocation of membership, or any other fitting sanction. Current Rule 8.11(b) also includes a committee of the Board as an applicable body that may impose conditions or restrictions upon Members or associated persons for the protection of investors, creditors, and the Exchange pending the effectiveness of a decision imposing a penalty. Similarly, Rule 8.11(c) sets forth the appropriate considerations of the CRO, Hearing Panel, and committee of the Board in determining the imposition of sanctions. The Exchange proposes to remove a committee of the Board as a party that may determine and impose sanctions as described in the Rule. The resulting Rule 8.11 will contain the process for imposing disciplinary actions, but with a committee of the Board removed as a party that may take the actions described in Rule 8.11. The resulting Rule 8.11 will closely reflect Rule 13.11 of the Affiliated Exchanges with differences only to account for the Exchange Rules referenced therein.

The Exchange also proposes to remove Interpretations and Policies .01 to Rule 8.11. Interpretations and Policies .01 to Rule 8.11 currently states that Exchange staff shall make

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<sup>102</sup> See Rule 8.11, *Interpretations and Policies .01 to Rule 8.11*.

all necessary findings under the Exchange Act and comply with all other applicable laws and regulations. The Exchange proposes to remove this portion of Rule 8.11 because it is duplicative of the duties already imposed on the Exchange by the Exchange Act and other laws and regulations. Additionally, the corresponding Rule 13.11 of the Affiliated Exchanges does not contain a similar provision. Accordingly, the Exchange proposes to remove the duplicative language of Interpretations and Policies .01 to Rule 8.11 to align the Rules of the Exchange with those of the Affiliate Exchanges.

### **Rule 8.12, Miscellaneous Provisions**

#### **(1) Current Rule 8.12:**

Current Rule 8.12, Miscellaneous Provisions, states that service may be effected by personally delivering any charges, notices or other documents upon the Respondent, by leaving such charges, notices or other documents at his place of business, or by registered and certified mail addressed to the Respondent at his last known place of business.<sup>103</sup> The Exchange may grant an extension of time limits for the submission of answers, petitions or other materials if the authority to whom such materials are to be submitted grants permission for the extension.<sup>104</sup>

The Exchange's staff, CRO, Board, or designated SRO shall have the right (1) to require any Member to report orally or in writing with regard to any matter involved in any such investigation or hearing, and (2) to investigate the books, records and accounts of any such Member with relation to any matter involved in any such investigation or hearing.<sup>105</sup>

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<sup>103</sup> See Rule 8.12(a).

<sup>104</sup> See Rule 8.12(b).

<sup>105</sup> See Rule 8.12(c).

Members shall comply with requests to make any report as required by Rule 8.12(c) and shall comply with any inspection of books, records and accounts as may be validly called for under Rule 8.12(c).<sup>106</sup>

**(2) Proposed Changes to Rule 8.12:**

The Exchange proposes to amend Rule 8.12, Miscellaneous Provisions, to clarify that the address the Respondent may be served at is the last known place of business as it appears on the books and records of the Exchange, and to provide an additional three days to the prescribed period a Respondent has to respond in the case of service by certified mail. Additionally, the Exchange proposes to clarify all references to Respondent within Rule 8.12. Current Rule 8.12(a) describes where a Respondent may be served, including by mail to his last known place of business. However, the current Rule does not provide the source of the address that may be used in the case of service by certified mail and does not allow for additional time to respond to service in the case of service by certified mail. The Exchange proposes to amend Rule 8.12(a) to clarify that service by mail shall be addressed to the Respondent at the Respondent's last known place of business as it appears on the books and records of the Exchange. The Exchange also proposes to add a provision to Rule 8.12(a) to allow the Respondent three additional days to respond to service delivered by certified mail. Finally, the Exchange proposes to add non-substantive changes to Rule 8.12(a) to clearly use the term "Respondent" instead of "his" when referring to the Respondent in the Rule text. The resulting Rule 8.12(a) will clearly state the address to be used in the case of service by certified mail. The resulting Rule 8.12 will closely reflect the language and processes prescribed by Rule 13.12 of the Affiliated Exchanges and differ only where

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<sup>106</sup>

Id.

necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

#### **8.14, Agency Review**

##### **(1) Current Rule 8.14:**

Current Rule 8.14, Agency Review, states that actions taken by the Exchange pursuant to Chapter 8 shall be subject to the review and action of any appropriate regulatory agency under the Act.<sup>107</sup>

##### **(2) Proposed Changes to Rule 8.14:**

The Exchange proposes to remove current Rule 8.14, Agency Review, in its entirety and replace it with the text of Rule 13.14 of the Affiliated Exchanges. Current Rule 8.14 states that actions taken by the Exchange shall be subject to review by the appropriate regulatory agency under the Act. The Exchange believes this provision is duplicative of rules and restrictions already imposed on disciplinary actions under the Exchange Act.<sup>108</sup> Thus, the Exchange proposes to remove the text of current Rule 8.14 because it is duplicative.

In place of current Rule 8.14, the Exchange proposes adopt language regarding reporting to the CRD using similar language to that of Rule 13.14 of the Affiliated Exchanges. Subparagraph (a) of proposed Rule 8.14, Reporting to the Central Registration Depository, will require the Exchange to report any issuance of a statement of charges

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<sup>107</sup> See Rule 8.14.

<sup>108</sup> See 15 U.S.C. § 78s.

concerning formal Exchange disciplinary proceedings pursuant to Rule 8.4(b), described above, and all significant changes in the status of pending proceedings to the CRD.

The Exchange also proposes to add clarifying descriptions of the terms used in Rule 8.14(a) to subparagraph (b) of proposed Rule 8.14. Proposed subparagraph (b)(1) of proposed Rule 8.14 will clarify that formal Exchange disciplinary proceedings are considered pending from the time the statement of charges is issued pursuant to Exchange Rule 8.4(b), as described above, until the proceeding becomes final. Subparagraph (b)(2) of proposed Rule 8.14 will clarify that an Exchange disciplinary proceeding shall be considered formal if it is initiated by the Exchange pursuant to Exchange Rule 8.1 through 8.13. Finally, subparagraph (b)(3) of proposed Rule 8.14 will list examples of significant changes that shall be reported to the CRD including the scheduling of a disciplinary hearing, the issuance of a decision by the CRO or Hearing Panel, the filing of an appeal to the Board, and the issuance of a decision by the Board. The resulting Rule 8.14 will reflect the language of Rule 13.14 of the Affiliated Exchanges with the only differences between the rules being the references to the Exchange specific rules within them. The Exchange proposes the aforementioned changes to Rule 8.14 with the purpose of clarifying which instances the Exchange reports disciplinary proceedings to the CRD and aligning the Rules of the Exchange with those of the Affiliated Exchanges.

#### **Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules**

##### **(1) Current Rule 8.15:**

Current Rule 8.15, Imposition of Fines for Minor Rule Violations, states that in lieu of commencing disciplinary proceedings, the Exchange may impose fines on Members and associated persons for specified Rule violations that the Exchange has deemed minor in

nature.<sup>109</sup> In any action taken by the Exchange pursuant to Rule 8.15, the person against whom a fine is imposed shall be served, as provided in Rule 8.12 discussed above, with a written statement setting forth the details of each violation, the associated fine for each violation, the date by which the determination becomes final, and the fine due and payable to the Exchange.<sup>110</sup> The person against whom a fine is imposed shall not have less than 15 business days after the date of service to contest the Exchange's determination.<sup>111</sup> Payment of the fine shall be deemed to be a waiver by such person of the right to a disciplinary proceeding under Rule 8.1 – 8.13, discussed above, and any review of the matter by the appeals committee or by the Board.<sup>112</sup> If the person against whom a fine is imposed contests the Exchange's determination through a written response meeting the requirements of an Answer, described in Rule 8.5 above, the matter shall become a disciplinary proceeding subject to the provisions of Rules 8.1 – 8.13, described above.<sup>113</sup> The Exchange periodically announces a listing of Exchange Rules as to which fines may be imposed and the specific dollar amount that may be imposed or the minimum and maximum dollar amounts that may be imposed with respect to such violations.<sup>114</sup> The Exchange is not required to impose a fine pursuant to Rule 8.15 with respect to a violation of any Rule included in such listing.<sup>115</sup>

## **(2) Proposed Changes to Rule 8.15:**

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<sup>109</sup> See Rule 8.15(a).

<sup>110</sup> See Rule 8.15(b).

<sup>111</sup> Id.

<sup>112</sup> See Rule 8.15(c).

<sup>113</sup> See Rule 8.15(d).

<sup>114</sup> See Rule 8.15(e). See also Rule 8.15, *Interpretations and Polices* .01 (List of Exchange Rule Violations and Recommended Fine Schedule Pursuant to Rule 8.15).

<sup>115</sup> Id.

The Exchange proposes to amend Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, to reflect the content and layout of Rule 13.15 of the Affiliated Exchanges, which provides the guidelines for imposing fines for minor rule violations on the Affiliated Exchanges. The Exchange proposes to amend Rule 8.15(a) to limit fines imposed under the Rule to \$5,000, specify the actions constituting minor rule violations, describe the Exchange's treatment of separate and similar offenses for purposes of the Rule, and provide that reporting of uncontested violations to the Commission not exceeding \$2,500 shall be reported on a periodic basis. The Exchange proposes to amend Rule 8.15(b) to extend the time that a determination becomes final or a determination must be contested under the Rule from no less than 15 days to no less than 30 days after service of the written statement and to specify that failure to contest, submission, and/or acceptance of a fine by a member does not constitute admission. The Exchange proposes to remove current rule 8.15(c) in its entirety and replace it with revised Rule 8.15(c). The Exchange proposes revised Rule 8.15(c) with subparagraphs (1) – (4), which will describe the process of contesting a fine. Finally, the Exchange proposes to amend current Rule 8.15(e) to become revised Rule 8.15(d) and make conforming non-substantive changes, authorize the Exchange to impose fines for first or second offenses when warranted under the circumstances as set forth in the Rule's *Interpretations and Policies*,<sup>116</sup> and clarify the Exchange's authority to take formal disciplinary action under Rule 8.2 et seq., rather than Rule 8.15 when warranted by the egregiousness of the violation.

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<sup>116</sup> See *Interpretations and Policies* .01 to Rule 8.15 (List of Exchange Rule Violations and Recommended Fine Schedule Pursuant to Rule 8.15).

The Exchange proposes to amend Rule 8.15(a) to limit fines imposed under the Rule from \$2,500 to \$5,000, specify the actions constituting minor rule violations, describe the Exchange's treatment of separate and similar offenses for purposes of the Rule, and provide that reporting of uncontested violations to the Commission not exceeding \$2,500 shall be reported on a periodic basis. Currently, Rule 8.15(a) contains a limitation on the fine that may be imposed under the Rule of \$2,500 and does not specify the character of rule violations that constitute minor violations within the meaning of Rule 8.15. The Exchange proposes to amend the limit of fines that may be imposed under the Rule to \$5,000. Additionally, the Exchange proposes to specify, within Rule 8.15(a), that minor rule violations within the meaning of the Rule are contained in *Interpretations and Policies* .01 to Rule 8.15 and Rule 25.3, Penalty for Minor Rule Violations.<sup>117</sup> Currently, Rule 8.15(a) also does not contain a provision, such as the one contained in Rule 13.15(a) of the Affiliated Exchanges, allowing the Exchange to aggregate particular violations based on a comprehensive automated surveillance program. The Exchange proposes to amend Rule 8.15 to contain a similar provision providing that the Exchange may aggregate individual violations and treat these violations as a single offense, provided that the aggregation is based on a comprehensive automated surveillance program. Finally, current Rule 8.15(a) provides that uncontested violations shall not be publicly reported, except as may be required by Rule 19d-1 under the Act or as may be required by any other regulatory authority. Currently, the Exchange does not publicly report uncontested violations not exceeding \$2,500, but does notify the Commission on a periodic basis of all fines imposed

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<sup>117</sup> See Rule 25.3 (Penalty for Minor Rule Violations).

pursuant to Rule 8.15. The Exchange proposes to amend Rule 8.15(a) to provide that it shall report uncontested fines not exceeding \$2,500 to the Commission on a periodic basis.

Next, the Exchange proposes to amend Rule 8.15(b) to extend the time that a determination becomes final or a determination must be contested under the Rule from no less than 15 days to no less than 30 days after service of the written statement and to specify that failure to contest, submission, and/or acceptance of a fine by a Member does not constitute admission. Currently, Rule 8.15 states that the date that a determination becomes final or a determination must be contested shall be no less than 15 days. The Exchange proposes to amend Rule 8.15(b) to set the date a determination becomes final or a determination must be contested to not less than 30 days, which is the time provided in Rule 13.15(b) of the Rules of the Affiliated Exchanges. Additionally, current Rule 8.15(b) fails to specify the meaning of a Member's failure to contest a fine or a Member's submission of and/or the Exchange's acceptance of an offer of settlement. The Exchange proposes to amend Rule 8.15(b) to specify that such actions do not constitute admission of the violation the fine is issued for.

Additionally, the Exchange proposes to remove the current text of Rule 8.15(c) and Rule 8.15(d) in their entirety. Current Rule 8.15(c) states that payment of a fine by a person whom a fine is imposed against pursuant to Rule 8.15 constitutes waiver of the person's right to disciplinary proceedings under Rule 8.1 through 8.13, discussed above and any review of the matter thereof. Current Rule 8.15(d) states that if the person against whom a fine is imposed contests the Exchange's determination through a written response meeting the requirements of an Answer, described in Rule 8.5 above, the matter shall become a disciplinary proceeding subject to the provisions of Rules 8.1 through 8.13. The Exchange

proposes to remove the text of Rule 8.15(c) and Rule 8.15(d) in their entirety because the corresponding Rule 13.15 of the Affiliated Exchanges does not contain a similar provision.

Next, the Exchange proposes to add revised Rule 8.15(c) with language taken from the text of Rule 13.15(c) of the Affiliated Exchanges, including subparagraphs (1) – (4), which describe the process of contesting a fine. The resulting subparagraph (1) of revised Rule 8.15(c) will provide that any person against whom a fine is imposed may contest the fine by filing a written Answer, as described in Rule 8.5, with the Secretary of the Exchange. Then the Rule will provide that the Answer will become subject to review by a Hearing Panel and hearings, if requested, will be conducted in accordance with Rule 8.6, discussed above. Next, the resulting subparagraph (2) of revised Rule 8.15(c) will provide that if the Hearing Panel determines that the conduct for which the fine was imposed is a violation of the Rules of the Exchange, then the Hearing Panel may impose applicable disciplinary sanctions and impose a forum fee of \$100, if no hearing is conducted, or \$300, if a hearing is conducted. Additionally, the Rule will provide that the Hearing Panel has discretion to waive the forum fee if it determines that a rule violation occurred but the disciplinary sanction imposed for such rule violation(s) is a fine less than the total fine initially imposed by the Exchange. The resulting subparagraph (3) of revised Rule 8.15(c) will provide that the party that commenced the action, the person charged, or the Board may require a review by the Board of a determination by a Hearing Panel as described in Rule 8.10, discussed above, and that the party who commenced the action shall have the same rights as a Respondent under Rule 8.10. Finally, resulting subparagraph (4) of revised Rule 8.15(c) shall provide that if a fine is upheld after contestation, the party responsible for paying the fine must pay the fine, all interest accrued, and any forum fee imposed

immediately. The proposed amendment to current Rule 8.15(c) will result in the text of the Rule reflecting that of the corresponding Rule 13.15(c) of the Affiliated Exchanges.

Finally, the Exchange proposes to re-number current subparagraph (e) as revised subparagraph (d) and amend revised Rule 8.15(d) to make conforming non-substantive changes, clarify that the Exchange may impose fines for first or second offenses when warranted under the circumstances as set forth in the Rule's *Interpretations and Policies*, and clarify that the Exchange may take formal disciplinary action under Rule 8.2 et seq., rather than Rule 8.15, when warranted by the egregiousness of the violation. With the Exchange's proposal to remove the current text found in Rule 8.15(c) and proposed re-numbering of Rule 8.15(d) to Rule 8.15(c), the Exchange also proposes to re-number current subparagraph (e) as subparagraph (d). Current Rule 8.15(e) requires the Exchange to periodically announce Exchange Rules under which fines may be imposed and the specific dollar amount that may be imposed thereunder. The Exchange proposes to amend the language of current Rule 8.15(e) (proposed Rule 8.15(d)) to reflect the language of Rule 13.15(f) of the Affiliated Exchanges. As a result, revised Rule 8.15(d) will allow the Exchange to impose fines for first or second offenses when warranted under the circumstances as set forth in the Rule's *Interpretations and Policies* and authorize the Exchange to take formal disciplinary action under Rule 8.2 et seq., rather than Rule 8.15, when warranted by the egregiousness of the violation. The resulting Rule 8.15(d) will also clarify that the Exchange shall issue regulatory circulars to its Members and Member organizations containing a list of Exchange Rules and Bylaws for which the Exchange may impose fines as provided in Rule 8.15. The Exchanges proposes all of the changes to Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, with the broader purpose of

clarifying the process by which the Exchange may impose fines for minor violations and harmonizing the Rules of the Exchange with the Rules of the Affiliated Exchanges. The Exchange notes that the proposed changes include language taken solely from the Rules of the Affiliated Exchanges and do not substantively alter the Exchange's Rules regarding minor rule violations. As such, the proposed changes do not pose any novel legal or regulatory issues for the Commission's consideration.

**Rule 8.16, *Ex Parte* Communications)**

**(1) Current Rule 8.16:**

Current Rule 8.16, *Ex Parte* Communications, states that the Exchange has in place rules prohibiting ex parte communications relevant to the merits of a proceeding between Respondents and Exchange staff members and any Hearing Officer, any member of the Board, or a member of a committee of the Board who is participating in a decision with respect to that proceeding (an "Adjudicator") unless all parties are on notice and have an opportunity to participate in the communication.<sup>118</sup> If an ex parte communication occurs in violation of Rule 8.16, an Adjudicator shall place in the record: (1) all such written communications; (2) memoranda stating the substance of all such oral communications; and (3) all written responses and memoranda stating the substance of all oral responses to all such communications.<sup>119</sup> Further, the Board or a committee thereof may take whatever action it deems appropriate if a prohibited ex parte communication has occurred.<sup>120</sup> Participants to a proceeding may respond to any allegations relating to a prohibited ex parte

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<sup>118</sup> See Rule 8.16 (a)(1) and Rule 8.16(a)(2).

<sup>119</sup> See Rule 8.16(b).

<sup>120</sup> See Rule 8.16(c).

communication placed in the record.<sup>121</sup> The prohibitions of Rule 8.16 apply beginning with the initiation of an investigation pursuant to Rule 8.2(a) (described above), unless the person responsible for the communication knows that an investigation shall be initiated.<sup>122</sup> In such instances, the prohibition on *ex parte* communication shall apply beginning at the time such person knows the investigation shall be initiated.<sup>123</sup>

**(2) Proposed Changes to Rule 8.16:**

The Exchange proposes to amend Rule 8.16, *Ex Parte* Communications, to clarify that the provisions of the Rule apply to all Members and associated persons, amend the definition of Adjudicator under the Rule, add subparagraph (e) to define *ex parte* communication, and add subparagraphs (f) and (g) which provide guidance regarding what may not be considered a violation of Rule 8.16. Current Rule 8.16(a) provides that no Respondent or Exchange staff member may make an *ex parte* communication in violation of the Rule. Additionally, the Rule currently includes in the definition of “Adjudicator” any Officer or member of the Board or a committee of the Board who is participating in the decision in a proceeding.

The Exchange proposes to amend Rule 8.16(a) to clarify that the prohibition against *ex parte* communications under the Rule applies to all members and associated persons and Exchange staff members. The Exchange also proposes to amend the definition of Adjudicator provided in subparagraph (a) to include any member of the Hearing Panel, Business Conduct Committee, Board or committee of the Board who is participating in a

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<sup>121</sup> Id.

<sup>122</sup> See Rule 8.16(d).

<sup>123</sup> Id.

decision. The proposed definition will eliminate Officers and add the Hearing Panel and Business Conduct Committee members to the definition of Adjudicator as it is used in Rule 8.16.

Next, the Exchange proposes to add subparagraphs (e), (f), and (g) to Rule 8.16 closely resembling the language of subparagraphs (e), (f), and (g) of Rule 13.16 of the Affiliated Exchanges. Proposed Rule 8.16(e) will include a definition of “*ex parte* communication” including that the term means an oral or written communication made without notice to all parties, unless a copy has been delivered to all interested parties or it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present. Proposed Rule 8.16(f) will clarify that *ex parte* communications solely regarding procedural matters are not a violation of the Rule. Proposed Rule 8.16(g) will add an exception to the Rule if a person refuses an attempted *ex parte* communication once it becomes apparent that communication concerns the merits of the proceeding at issue. Proposed rule 8.16(g) will also specify that for the exception contained therein to apply, the person refusing the attempted communication must notify the Regulatory staff of the attempted communication and how the person responded. The resulting Rule 8.16 will and conform the definition of Adjudicator as it is used in Rule 8.16 with the language of proposed Rule 8.6, discussed above. Additionally, the resulting Rule 8.16 will closely resemble Rule 13.16 of the Affiliated Exchanges and differ only where necessary to conform to the Exchange’s existing Rule text and to account for details or descriptions included in the Exchange’s Rules but not in the applicable Rules of the Affiliated Exchanges.

**Rule 8.18, Release of Disciplinary Complaints, Decisions and Other****Information****(1) Current Rule 8.18:**

Current Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information, states that the Exchange shall release a copy to the public of, subject to the Exchange's discretion, any disciplinary complaint,<sup>124</sup> disciplinary decision,<sup>125</sup> or any client suspension order issued by the Exchange.<sup>126</sup> Any release to the public of a disciplinary complaint must indicate that the complaint represents the initiation of a formal proceeding by the Exchange and does not represent a final decision as to any of the allegations contained in the complaint.<sup>127</sup> Copies of any disciplinary decision provided to the public prior to the expiration of the time period for appeal or review, or while such appeal or review is pending, shall indicate that the findings and sanctions imposed therein are subject to review and modification by the Exchange or the Commission.<sup>128</sup> The Exchange reserves the right to redact information that contains confidential customer information and, in extraordinary circumstances, may decline to release a copy of or information related to a disciplinary complaint or a disciplinary decision.<sup>129</sup> The Exchange shall provide notice to the public in the event that a disciplinary decision is appealed to the Commission and

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<sup>124</sup> See Rule 8.18 (e)(1). A disciplinary complaint shall mean any statement of charges issued pursuant to Rule 8.4 or any notice served pursuant to Rule 8.17.

<sup>125</sup> See Rule 8.18(e)(2). A disciplinary decision shall mean any decision issued pursuant to Chapter 8, including, decisions issued by a Hearing Panel or the Appeals Committee, accepted offers of settlement, and suspension order pursuant to Rule 8.17; provided, however, minor rule violation plan letter issued pursuant to Rules 8.15 and 25.3 are not subject to this Rule.

<sup>126</sup> See Rule 8.18(a)(1) and Rule 8.18(a)(2).

<sup>127</sup> See Rule 8.18(b)(1).

<sup>128</sup> See Rule 8.18(b)(2).

<sup>129</sup> See Rule 8.18(c).

whether the effectiveness of such decision has been stayed pending the outcome of the proceedings before the Commission.<sup>130</sup>

**(2) Proposed Changes to Rule 8.18:**

The Exchange proposes to eliminate current Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information, in its entirety. Current Rule 8.18 sets out the procedures for releasing to the public disciplinary complaints and disciplinary decisions issued by the Exchange. The Exchange proposes to eliminate Rule 8.18 because the Rules of the Affiliated Exchanges do not contain a similar provision and proposed amendments to the Exchange's rulebook, including the proposed amendment to Rule 8.9, discussed above, include provisions for the release of complete decisions on the appropriate BYX website. Thus, the specifications included in current Rule 8.18 are no longer necessary.

The Exchange proposes all amendments discussed about with the broader purpose of aligning the Rules of the Exchange with the Rules of the Affiliated Exchanges. The Exchange believes that harmonizing the Rules of the Exchange with the Rules of the Affiliated Exchanges benefits Members because those parties who maintain status as both a Member of the Exchange and a Trading Permit Holder on the Affiliated Exchanges will be subject to substantially similar disciplinary rules and not perceive one set of disciplinary rules to be more lenient or harsh depending on the Exchange's core business.

(b) Statutory Basis

The Exchange believes the proposed rule changes are consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the

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<sup>130</sup> See Rule 8.18(d).

Act.<sup>131</sup> Specifically, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5)<sup>132</sup> requirements that the rules of an exchange be designed to present fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5)<sup>133</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Exchange believes that the proposed rule changes further the objectives of Section 6(b)(7) of the Act,<sup>134</sup> in that they provides fair procedures for the disciplining of Members and associated persons, the denial of Member status to any person, 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.

In particular, the Exchange believes the proposed rule changes will contribute to the protection of investor and public by having rules related to all disciplinary matters consistent among Cboe BYX Exchange and the Affiliated Exchanges, Cboe Exchange and Cboe C2 Exchange, as well as by bolstering participants' collective understanding of

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<sup>131</sup> 15 U.S.C. 78f(b).

<sup>132</sup> 15 U.S.C. 78f(b)(5).

<sup>133</sup> Id.

<sup>134</sup> 15 U.S.C. 78f(b)(7).

the Exchange's Rules and the Rules of the Affiliated Exchanges. All proposed rule changes are intended to provide clarification and alignment with the Rules of the Affiliated Exchanges. Further, the proposed changes are derived from the Rules of the Affiliated Exchanges, which have been previously reviewed by the Commission.

In particular, the Exchange proposes to amend Rule 8.6, Hearings, to adopt new roles for the Exchange's Business Conduct Committee to compose the Hearing Panel to hear and decide applicable matters under Chapter 8 of the Exchange's Rules. The Exchange proposes to adopt new roles for the Exchange's Business Conduct Committee, which will perform a substantially similar function to the current panel overseeing disciplinary hearings. A Hearing Panel consisting of impartial members will continue to be available to Members and associated persons. Thus, the Exchange believes the proposed changes to Rule 8.6 regarding hearings will not impose any additional burden upon Members or associated persons and will ensure continued fairness in the Exchange's disciplinary procedures. The Exchange believes the proposed changes to Rule 8.6, Hearings, ensures the hearing process for disciplinary matters within the jurisdiction of the Exchange is clearly articulated and easily understandable for all Members and associated persons. The proposed changes to Rule 8.6 will align the structure of Chapter 8 with that of the corresponding Rulebooks of the Affiliate Exchanges, thus promoting consistency amongst the Exchange and its Affiliate Exchanges. The introduction of the proposed subparagraphs does not present any new or novel issues for the Commission to consider, as the proposed text is identical to text already approved by the Commission, however the Exchange notes that the proposed rule may differ slightly where necessary to conform to existing Exchange rule text.

The proposed rule changes to Rule 8.1, Disciplinary Jurisdiction, Rule 8.2, Complaint and Investigation, Rule 8.3, Expediated Proceeding, Rule 8.4, Charges, Rule 8.5, Answer, Rule 8.8, Offers of Settlement, Rule 8.9, Decision, Rule 8.10, Petition, Rule 8.11, Judgment and Sanction, Rule 8.12, Miscellaneous Provisions, and Rule 8.16, *Ex Parte* Communications provide both clarification and alignment with the Rules of the Affiliated Exchanges. These proposed rule changes amend the language of the Exchange Rules using language taken from the Rules of the Affiliated Exchanges and does not raise any novel rule text that the Commission has not already reviewed. The additional proposal of adding Rule 8.2(m) defining the BCC and detailing its composition adds clarity to the Rules of the Exchange by adding a concrete definition of a term used in both the Rules of the Exchange and its Affiliated Exchanges. Each of these rules changes results in rules no more stringent for Members and associated persons than are currently in place. Therefore, the Exchange believes the proposed changes will not significantly alter the disciplinary standards imposed on Members and associated persons nor impose any significant additional burden. As such, the Exchange believes the proposed changes will continue to ensure the Exchange's disciplinary procedures remain fair to all Members and associated persons. Additionally, the Exchange believes the proposed changes will result in greater uniformity and less burdensome regulatory compliance for Members and associated persons. Greater uniformity in disciplinary rules across the Exchange and the Affiliated Exchanges will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed amendments to Rule 8.1, Disciplinary Jurisdiction seek to clarify that former Members or associated persons continue to be subject to the Exchange's jurisdiction with respect to their failure to honor an arbitration award. As discussed above, the proposed amendments to Rule 8.1 ensure that a failure to honor a BYX arbitration award by a former Member, or former person associated with a Member remains within the disciplinary jurisdiction of the Exchange. Thus, the proposed change to Rule 8.1 ensures the credibility of the Exchange's arbitration forum thereby protecting investors and the public interest. The Exchange also believes the proposed changes to Rule 8.1 will ensure fairness in the disciplinary procedures of the Exchange by ensuring that failures to pay arbitration awards by former Members and associated persons will remain under the disciplinary jurisdiction of the Exchange. Additionally, the proposed changes to Rule 8.1 will result in aligning the Rules of the Exchange with those of the Affiliated Exchanges, providing greater uniformity in disciplinary rules across the Exchange and the Affiliated Exchanges.

The proposed changes to Rule 8.2, Complaint and Investigation, clarify the contents of the Rule and extend the time a Subject or Respondent has to respond to an inquiry from the Exchange. The proposed addition of subparagraphs (i) – (k) regarding Identification, Furnishing Materials Upon Request, and the definition of the term "Regulatory Staff" to Rule 8.2 will offer clarity to Members and associated persons regarding the procedures and complaint process and terms used throughout the Rule. Additionally, the proposed changes to Rule 8.2 will align the structure of Chapter 8 with that of the corresponding Rulebooks of the Affiliate Exchanges, thus promoting consistency amongst the Exchange and its Affiliate Exchanges. The introduction of the

proposed subparagraphs does not present any new or novel issues for the Commission to consider, as the proposed text is identical to text already approved by the Commission, however the Exchange notes that the proposed rule may differ slightly where necessary to conform to existing Exchange rule text. None of the proposed changes to Rule 8.2 shortens the amount of time allotted to a Subject or Respondent to respond to an inquiry from the Exchange, but rather extends the amount of time that a Subject or Respondent has to respond to an inquiry from the Exchange. As such, the Exchange believes the proposed changes to Rule 8.2 ensure that the Exchange's disciplinary procedures remain fair to all Members and associated persons. Additionally, the Exchange believes that each of these proposed rule changes protects investors and the public by providing additional information regarding the disciplinary processes of the Exchange and by providing additional time for Subjects and Respondents to respond to an inquiry from the Exchange.

The proposed changes to Rule 8.3, Expedited Proceeding, Rule 8.4, Charges, Rule 8.5, Answer, Rule 8.8, Offers of Settlement, Rule 8.9, Decision, Rule 8.10, Review, Rule 8.11, Judgment and Sanction, Rule 8.12, Miscellaneous Provisions, and Rule 8.16, *Ex Parte* Communications are proposed in order to define terms used throughout the Rules and make other non-substantive conforming provisions with the purpose of clarifying the language of the Rules and aligning the contents of the Rules with Rules of the Affiliated Exchanges. The Exchange notes that none of these proposed rule changes shortens the amount of time allotted to a Subject or Respondent to respond to an inquiry from the Exchange, but rather extends the amount of time that a Subject or Respondent has to respond to an inquiry from the Exchange. The Exchange believes the proposed changes

will not significantly alter the disciplinary procedures of the Exchange nor impose any significant additional burden thereby protecting investors and the public interest and ensuring fairness in the disciplinary procedures of the Exchange. Further, the proposed changes to these Rules are necessary to align the Answer, Decision, and Review sections of Chapter 8 with the proposed changes to Rule 8.6.

Additionally, the Exchange believes the proposed deletion of rule text in Rule 8.14, Agency Review, and Rule 8.18, Release of Disciplinary Complaints, Decisions, and Other Information, contribute to the protection of investors and the public interest by both aligning the Rules of the Exchange with the Rules of the Affiliate Exchanges and by removing duplicative language from the Rules of the Exchange. The Exchange proposes to remove the entire text of both current Rule 8.14, regarding the right to agency review of Exchange disciplinary actions, and Rule 8.18, regarding the release of final disciplinary actions, because each of these rules are duplicative of the rights of Members under other Exchange Rules and the Exchange Act itself. The Exchange believes the proposed changes will continue to ensure fairness in the Exchange's disciplinary procedures because they do not remove or alter any of the rights of Members of associated persons. The Exchange believes that removing the text of each of these rules will provide clarity to investors regarding the disciplinary processes of the Exchange by eliminating duplicative, and potentially confusing, text from the Rules of the Exchange.

Further, the Exchange believes that revising current Rule 8.14, Agency Review, and replacing the existing text (which is proposed to be deleted) with rule text regarding reporting to the CRD that is substantially similar to Rule 13.4 of the Affiliated Exchanges, contributes to the protection of investors and the public interest by providing

investors, the public, and Members with notice of the information the Exchange reports to the CRD regarding disciplinary matters. Together, these changes benefit investors and the public interest by providing additional clarity in the Exchange's rulebook and aligning the Exchange's Rules with that of its Affiliate Exchanges. The proposed addition of rule text regarding reporting to the CRD in proposed Rule 8.14 will also align the structure of Chapter 8 with that of the corresponding rulebooks of the Affiliate Exchanges, thus promoting consistency amongst the Exchange and its Affiliate Exchanges. Additionally, the introduction of the proposed rule text in Rule 8.14 following the deletion of existing rule text does not present any new or novel issues for the Commission to consider, as the proposed text is identical to text already reviewed by the Commission, however the Exchange notes that the proposed rule may differ slightly where necessary to conform to existing Exchange rule text.

Further, the Exchange believes the proposed changes to Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, contribute to the protection of investors and the public interest by both aligning the Rules and procedures of the Exchange with the Rules and procedures of the Affiliate Exchanges and by clearly setting forth the process and requirements of the imposition of fines for minor rule violations. The Exchange is not proposing to amend any of the rates associated with the imposition of fines for minor rule violations, but rather seeks to clarify only how and when a fine may be imposed. Further, the Exchange seeks to provide additional detail about how a Member may contest a fine imposed by the Exchange. These proposed changes do not impose additional regulatory burdens on Members but instead provide greater clarity and reduce confusion by aligning the process of imposing a fine for a minor rule violation across the Exchange and its

Affiliated Exchanges. By clarifying rules and reducing confusion, the Exchange believes the proposed changes to Rule 8.15 collectively ensure fairness in the disciplinary procedures of the Exchange. The proposed amendments to Rule 8.15 are based solely on existing Rule 13.15 of the Affiliated Exchanges. However, the language of the Exchange Rules and the Rules of the Affiliated Exchanges may differ slightly where necessary to conform to existing Exchange rule text or to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Additionally, the Exchange believes the proposed changes to align the language of the Rules of the Exchange with those of the Affiliated Exchanges promote consistency and improve understanding of the Rules across BYX Exchange and its Affiliated Exchanges. The proposed rule changes to Chapter 8 are based on the existing Rules of the Affiliated Exchanges. However, the language of the Exchange Rules and the Rules of the Affiliated Exchanges may differ slightly where necessary to conform to existing Exchange rule text or to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges. The Exchange believes aligning the Rules of the Exchange with the Rules of the Affiliated Exchanges will result in greater uniformity and less burdensome regulatory compliance for the Exchange and its Members. As such, the Exchange believes maintaining uniformity will foster cooperation and coordination with persons engaged in facilitating trading on the Exchange and its Affiliated Exchanges and will remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the proposed rule changes apply equally to all Members, persons associated with a Member, and former Members in that each of these parties are subject to the proposed disciplinary

rules, thereby ensuring fairness in the disciplinary procedures of the Exchange. As such, the Exchange believes the proposed rule changes also promote the just and equitable principles of trade and are not unfairly discriminatory.

The Exchange also believes that the proposed amendments will collectively contribute to the protection of investors and the public interest by making the Exchange's Rules easier to understand, standing alone and collectively with the rules of its Affiliated Exchanges. In addition, the proposed rule changes include other non-substantive changes throughout the rules that will protect investors and benefit market participants, as these changes simplify or clarify rules, delete duplicative rule provisions, conform paragraph numbering and lettering throughout the rules, use plain English, and conform language to the corresponding rules of its Affiliated Exchanges where feasible. By simplifying and clarifying rules, the Exchange believes the proposed changes also collectively ensure fairness in the disciplinary procedures of the Exchange.

Finally, the Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Members and associated persons with the Act, the rules and regulations thereunder, and the Rules of the Exchange. As stated, the proposed rule changes conform the Exchange's disciplinary procedures and Rules to the disciplinary procedures and Rules of its Affiliated Exchanges. Thus, the Exchange believes these proposed changes create uniformity, which allows for the Exchange to organize consistently with the Affiliated Exchanges and to more easily apply its disciplinary rules to Members of the Exchange and Trading Permit Holders on the Affiliated Exchanges.

**Item 4. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes do not create an unnecessary or inappropriate intra-market burden on competition because the proposed changes will apply uniformly to all Members of the Exchange. Thus, the Exchange believes this proposed rule changes will reduce the burden on Exchange participants by providing consistent and clear Rules among the Exchange and the Affiliated Exchanges. Further, the proposed changes are not designed to address any competitive issues. Indeed, the proposed rule changes do not create an unnecessary or inappropriate inter-market burden on competition because the proposed rule changes are intended to harmonize the Exchange Rules with that of the Affiliated Exchanges.

**Item 5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others**

The Exchange neither solicited nor received comments on the proposed rule change.

**Item 6. Extension of Time Period for Commission Action**

Not applicable.

**Item 7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)**

(a) The proposed rule change is filed for immediate effectiveness pursuant to Section 19(b)(3)(A) of Act<sup>135</sup> and Rule 19b-4(f)(6)<sup>136</sup> thereunder.

(b) The Exchange designates that the proposed rule change effects a change that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Additionally, the Exchange has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

As noted above, the proposed changes are not designed to address any competitive issues but rather are being proposed in order to align the disciplinary Rules of the Exchange with the disciplinary Rules of its Affiliate Exchanges. Such consistent procedures and rules may, in turn, simplify and clarify the disciplinary procedures and rules for Members of the Exchange that are also participants on the Affiliated Exchanges. Further, the Exchange proposes to introduce language that is substantively similar to language contained in the disciplinary Rules of the Affiliate Exchanges, as well as define a term also used in the Rules of the Affiliated Exchanges. As such, the proposed rule

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<sup>135</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>136</sup> 17 CFR 240.19b-4(f)(6).

changes do not pose any novel legal or regulatory issues for the Commission's consideration. The Exchange is not imposing any more stringent requirements on its Members than are already in existence and instead is providing Subjects and Respondents with additional protections (e.g., additional time to respond to inquiries, more detailed descriptions of disciplinary procedures).

For the foregoing reasons, this rule filing qualifies as a "non-controversial" rule change under Rule 19b-4(f)(6), which renders the proposed rule changes effective upon filing with the Commission. At any time within 60 days of the filing of these proposed rule changes, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

(c) Not applicable.

(d) Not applicable.

**Item 8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

As noted above, the proposed rule changes are based on and substantially similar to the Rules contained in Chapter 13 of the Affiliated Exchanges, C1 and C2.

**Item 9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act**

Not applicable.

**Item 10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act**

Not applicable.

**Item 11.      Exhibits**

Exhibit 1.      Completed Notice of Proposed Rule Change for publication in the  
Federal Register.

Exhibit 5.      Proposed rule text.

EXHIBIT 1

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34- ; File No. SR-CboeBYX-2026-021]

[Insert date]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Chapter 8 of the Exchange’s Rulebook Relating to Investigative and Disciplinary Matters

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on [insert date], Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a “non-controversial” proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe BYX Exchange, Inc. (“BYX” or the “Exchange”) is filing with the Securities and Exchange Commission (the “Commission”) proposed rule changes to amend Chapter 8 of the Exchange’s Rulebook relating to investigative and disciplinary matters. The text of the proposed rule change is provided in Exhibit 5.

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

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

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

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

The text of the proposed rule change is also available on the Commission's website (<https://www.sec.gov/rules/sro.shtml>), the Exchange's website ([https://www.cboe.com/us/equities/regulation/rule\\_filings/bzx/](https://www.cboe.com/us/equities/regulation/rule_filings/bzx/)), and at the principal office of the Exchange.

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

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

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

#### **1. Purpose**

The Exchange proposes to amend rules concerning investigative and disciplinary matters involving Exchange Members<sup>5</sup> and persons associated with Members ("associated persons"). Specifically, the Exchange proposes to update its Rules relating to (1) disciplinary jurisdiction; (2) complaints and investigations; (3) expedited proceedings; (4) charges; (5) answers; (6) hearings; (7) offers of settlement; (8) decisions; (9) reviews; (10) judgments and sanctions; (11) service of notice; (12) agency review and reporting; (13) imposition of fines for minor rule violations; (14) ex parte communications; and (15) release

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<sup>5</sup> See Exchange Rule 1.5(n). "The term "Member" shall mean any registered broker or dealer that has been admitted to membership in the Exchange. A Member will have the status of a "member" of the Exchange as that term is defined in Section 3(a)(3) of the Act. Membership may be granted to a sole proprietor, partnership, corporation, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange."

of disciplinary complaints, decisions, and other information. The Exchange proposes these updates in an effort to increase efficiency and fairness by harmonizing the Exchange's Rules concerning investigative and disciplinary matters with those of the Exchange's affiliate exchanges: Cboe Exchange, Inc. ("C1" or "Cboe Options")<sup>6</sup> and Cboe C2 Exchange, Inc. ("C2")<sup>7</sup> (collectively, and hereinafter, referred to as the "Affiliated Exchanges").<sup>8</sup> In doing so, the Exchange proposes rules changes to adopt new roles for the Exchange's Business Conduct Committee ("BCC").<sup>9</sup> As part of the harmonization process between the Exchange and Affiliated Exchanges, the Exchange proposes to align the Exchange's hearing process and timeliness requirements with those of the Affiliated Exchanges. Additionally, the Exchange proposes to remove Rule 8.14, Agency Review, in its entirety because the Act provides for a statutory right to review<sup>10</sup> and the Affiliated Exchanges do not contain a similar provision. In place of the removed Rule 8.14, the Exchange proposes to add a rule regarding reporting to the Central Registration Depository ("CRD"). The Exchange also proposes to remove Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information, because the Rules of the Affiliated Exchanges do not contain a similar provision. Finally, the Exchange proposes to update certain Rules contained in Chapter 8 of

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<sup>6</sup> See Rules of Cboe Exchange, Inc., specifically Rules 13.1, 13.2, 13.3, 13.4, 13.5, 13.6, 13.8, 13.9, 13.10, 13.11, 13.12, 13.13, 13.14, 13.15, and 13.16.

<sup>7</sup> See Rules of Cboe C2 Exchange, Inc., specifically Chapter 13, which incorporates by reference the rules contained in Cboe Exchange, Inc. Chapter 13.

<sup>8</sup> The rules under Chapter 13 of the Affiliated Exchanges are the same in number, form and substance. Therefore, the Exchange refers singularly to the corresponding rule of the "Affiliated Exchanges" throughout this proposed rule filing.

<sup>9</sup> See proposed Rule 8.2(m). The BCC has decision-making authority concerning possible violations within the disciplinary jurisdiction of the Exchange. The BCC is comprised of one or more Members or associated persons, one or more public representatives, and may also include other individuals affiliated with the securities, futures or derivatives industry, all as appointed by the Exchange's Nominating and Governance Committee with the approval of the Exchange's Board of Directors.

<sup>10</sup> 15 U.S.C. 78s(d).

the Exchange's Rulebook to correct minor errors and update obsolete and outdated language.

By way of background, the Exchange Rules currently divide responsibility for the adjudication of its Rules into two categories: (1) rules for which the Chief Regulatory Officer ("CRO") and Hearing Panels are responsible for adjudicating through formal disciplinary proceedings; and (2) rules under which fines may be assessed in lieu of formal disciplinary action. With respect to violations that are adjudicated by the CRO and Hearing Panels, Rule 8.4(b) requires the CRO to prepare a statement of charges whenever it appears that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange has occurred and formal disciplinary action is warranted. Alternatively, in lieu of conducting a formal disciplinary proceeding, Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, provides for disposition of specific violations through assessment of fines. In sum, the current application of the Rules provides for the CRO to determine whether to initiate charges in a regulatory matter and to determine appropriate sanctions for rule violations.

The Exchange believes that harmonizing the composition of the disciplinary Rules between the Exchange and the Affiliated Exchanges benefits Members because those parties who maintain status as both a Member of the Exchange and a Trading Permit Holder<sup>11</sup> ("TPH") on the Affiliated Exchanges will be subject to substantially similar disciplinary rules and not perceive one set of disciplinary rules to be more lenient or harsh depending on

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<sup>11</sup> See Bylaws of Cboe Exchange, Inc. Section 1.1 Definitions. "The term "Trading Permit Holder" means any individual, corporation, partnership, limited liability company or other entity authorized by the Rules that holds a Trading Permit. . . . A Trading Permit Holder is a "member" solely for purposes of the Act; however, one's status as a Trading Permit Holder does not confer on that Person any ownership interest in the Exchange."

the Exchange's core business. The Exchange notes that the CRO will continue to supervise the regulatory functions of the Exchange, separate from that of the Exchange's business interest, reporting directly to the Regulatory Oversight Committee of the Board of Directors ("ROC"). Below is a summary of the Exchange's Rules and their proposed changes concerning investigations and disciplinary matters.

### **Summary of Proposed Rule Changes**

The Exchange proposes the following rule changes, including proposed changes to:

- 1) Amend Rule 8.1, Disciplinary Jurisdiction, to reflect the Affiliated Exchanges' Rule 13.1, including adding a provision that Members or associated persons continue to be subject to the disciplinary jurisdiction of the Exchange with respect to the failure to honor arbitration awards and removing the provision specifying that the Exchange may contract with another self-regulatory organization to perform some or all of the Exchange's disciplinary functions;
- 2) Amend Rule 8.2, Complaint and Investigation, to reflect the layout and content of Affiliated Exchanges' Rule 13.2 by:
  - a. Updating Rule 8.2(a) to place the responsibility of initiating an investigation with the Exchange's regulatory staff whenever the regulatory staff determines a reasonable basis exists to do so or upon receipt of a complaint by any person or entity including the Board,<sup>12</sup> Exchange employees, and Members;

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<sup>12</sup> See Rule 1.5(f). The terms "Board" and "Board of Directors" shall mean the Board of Directors of the Exchange.

- b. Updating Rule 8.2(b) to specify the appropriate action when the regulatory staff finds reasonable grounds to believe a violation occurred, but no formal regulatory action is warranted in lieu of a statement of charges;
- c. Updating Rule 8.2(c) to add that a Member or associated person is obligated to appear and testify, respond to interrogatories, and furnish information as requested by the Exchange in connection with an inquiry resulting from agreement pursuant to Exchange Rules 8.2(f), 8.2(g), or 13.7;
- d. Updating Rule 8.2(d) to extend the time in which a Subject<sup>13</sup> has to submit a response to a notification from 15 to 25 days, add a 25-day tolling period while a request for access to the relevant investigative file is pending, and make other non-substantive conforming changes;
- e. Updating Rule 8.2(h) to extend the time in which a Subject has to submit a videotaped response to a notification from 15 to 25 days and to specify the length and format of videotaped responses submitted pursuant to the Rule;
- f. Adding Interpretation and Policy .03 - .05 of the Affiliated Exchanges' Rule 13.2 as Exchange Rules 8.2(i) – (k) to specify the format of complaints and form of materials to be submitted upon request, and define the term “Regulatory staff” as it is used in Chapter 8 of the Exchange Rules; and
- g. Adding Proposed Rule 8.2(m) defining the BCC and outlining the composition of the BCC;

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<sup>13</sup> See Rule 8.2(d). The term “Subject” means the “person(s) who is the subject of the report” issued pursuant to Rule 8.2.

3) Amend Rule 8.3, Expedited Proceeding, to extend the time a Subject has to submit written responses to notices from the Regulatory staff from 15 to 25 days and to make other non-substantive conforming changes to the Rule text;

4) Amend Rule 8.4, Charges, to remove the current text of Rule 8.4(a) and replace it entirely with the text of the Affiliated Exchanges' Rule 13.4(a), add that a Complainant<sup>14</sup> shall be notified if further proceedings are warranted to Rule 8.4(b), and add Rule 8.4(c) specifying the terms of a Respondent's<sup>15</sup> access to requested documents;

5) Amend Rule 8.5, Answer, to extend the time that a Subject has to submit an answer from 15 to 25 days and add a 25-day tolling period while a request for access to the relevant investigative file is pending;

6) Update Rule 8.6, Hearing, by:

a. Specifying that hearings on charges shall be held before a Hearing Panel comprised of three or five members of the BCC, rather than appointed by the Chief Executive Officer; and that BCC Counsel may assist the Hearing Panel in preparing its written recommendations or judgments;

b. Replacing the current text of Rule 8.6(a)(1) by adopting the Affiliated Exchanges' Rule 13.6(a)(1) regarding the impartiality of Hearing Panel members and deleting Rules 8.6(a)(1)(A) – (B);

c. Adopting the Affiliated Exchanges' Rule 13.6(a)(2) regarding motions for disqualification of Hearing Panel members as Rule 8.6(a)(2) and the Affiliated

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<sup>14</sup> See Proposed Rule 8.2(a). The term "Complainant" means "any person or entity, including the Board, Exchange employees, and Members" that submits a complaint pursuant to Rule 8.2.

<sup>15</sup> See Proposed Rule 8.2(b). The term "Respondent" means "the person or organization alleged to have committed a violation."

Exchanges' Rule 13.6(a)(3) regarding rulings on motions for disqualification of Hearing Panel members as Rule 8.6(a)(3);

d. Replacing the current text of Rule 8.6(b) by adopting the Affiliated Exchanges' Rule 13.6(b) regarding prehearing procedures;

e. Removing current Rule 8.6(c) and renumbering current Rule 8.6(d) as Rule 8.6(c);

f. Adopting the Affiliated Exchanges' Rule 13.6(d) regarding documents and witnesses as Rule 8.6(d); and

g. Adopting the Affiliated Exchanges' Rule 13.6(d), Interpretations and Policies .01 – .03 regarding interventions as Rule 8.6(e);

7) Amend Rule 8.8, Offers of Settlement, to clarify that the staff may also appear before the CRO to make an oral statement if the Respondent elects to make an oral statement before the CRO, and that a Respondent may submit an offer during the course of any proceeding under Chapter 8 of the Exchange Rules;

8) Amend Rule 8.9, Decision, to add that a decision shall also include a statement of the sanctions imposed and reasons for the sanctions, that the regulatory division of the Exchange shall also receive a copy of statements, and that the Exchange shall post the complete decision on the appropriate BYX website once the decision is considered final;

9) Update Rule 8.10, Review, by:

a. Extending the time for a Respondent to petition for review of a decision from 10 days to 15 days, specify the process of petitioning for review of a decision, and clarify that other parties to a hearing may also submit petitions for review and responses to petitions for review;

b. Allowing the Board or a committee of the Board to ratify a review, clarify that new issues may be raised by the parties involved in the review, and clarify that the Board may affirm, reverse or modify the decision, and that the decision must be served upon the Respondent and the regulatory division of the Exchange;

c. Extending the time the Board has to review a decision from 20 days to 30 days; and

d. Eliminating Rule 8.10(d);

10) Amend Rule 8.11, Judgment and Sanctions, to remove a committee of the Board as an applicable body that may determine penalties and impose discipline upon Members and associated persons and remove Interpretations and Policies .01 to Rule 8.11;

11) Amend Rule 8.12, Miscellaneous Provisions, to clarify that the address a Respondent may be served at is the last known place of business as it appears on the books and records of the Exchange, and to provide an additional three days to the prescribed period a Respondent has to respond in the case of service by certified mail;

12) Remove Rule 8.14, Agency Review, in its entirety and replace it with the text of Rule 13.14 of the Affiliated Exchanges regarding reporting to the CRD;

13) Revise Rule 8.15, Imposition of Fines for Minor Rule Violations, to include additional details about the Minor Rule Violation program and align the Exchange's rule with corresponding Rule 13.15 of the Affiliated Exchanges;

14) Update Rule 8.16. *Ex Parte* Communications, to clarify that the provisions of the Rule apply to all Members and associated persons, amend the definition of Adjudicator<sup>16</sup> under the Rule, add subparagraphs (e), (f), and (g) to

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<sup>16</sup> See Proposed Rule 8.16 (defining "Adjudicator" as "any member of the Hearing Panel, Business Conduct Committee, Board or committee of the Board" participating in a decision with respect to

define ex parte communication, and add clarifying provisions regarding what may not be considered a violation of Rule 8.16; and

15) Remove Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information, in its entirety.

Detailed descriptions of the proposed changes to specific rules within Chapter 8 are outlined below.

### **Exchange Rule 8.1, Disciplinary Jurisdiction**

#### **(1) Current Rule 8.1:**

In its current form, Exchange Rule 8.1 sets forth the Exchange's jurisdiction regarding disciplinary matters involving its Members and associated persons. Members and associated persons are subject to the disciplinary jurisdiction of the Exchange pursuant to Chapter 8 of the Exchange's Rulebook and, after notice and opportunity for a hearing may be appropriately disciplined by: expulsion; suspension; limitation of activities, functions and operation; fine; censure; suspension or bar from association with a Member or any other fitting sanction.<sup>17</sup> An individual Member or associated person may be charged with a violation committed by an employee under the Member's supervision or by the Member or associated person, as though such violation was their own.<sup>18</sup> Similarly, a Member organization may be charged with any violation committed by its employees or by any other person who is associated with such Member organization, as though such violation was their own.<sup>19</sup> Members and associated persons continue to be subject to the Exchange's

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the proceeding at issue).

<sup>17</sup> See Rule 8.1(a).

<sup>18</sup> Id.

<sup>19</sup> Id.

disciplinary jurisdiction following termination of such person's association with a Member with respect to matters that occurred prior to such termination provided that the Exchange gave written notice to the former Member or former associated person within one year of the Exchange's receipt of written notice of termination of such former Member or such former associated person.<sup>20</sup> Chapter 8 does not apply to summary suspensions or other action taken pursuant to Chapter 7 of the Rules of the Exchange and action taken pursuant to Chapter 7 shall not be deemed disciplinary action under Chapter 8.<sup>21</sup> Rule 8.1(d) provides that Exchange is permitted to contract with another self-regulatory organization ("SRO") to perform some or all of the Exchange's disciplinary functions and allows the Exchange to retain ultimate legal responsibility for and control of such functions.<sup>22</sup>

**(2) Proposed Changes to Rule 8.1:**

The Exchange first proposes to amend Rule 8.1(b) to clarify that former Members or associated people continue to be subject to the Exchange's jurisdiction with respect to their failure to honor an arbitration award pursuant to Chapter 9 of the Exchange Rules. Chapter 9 of the Exchange's Rules governs the BYX arbitration process. Rule 9.5 states that failing to honor a BYX arbitration award may be deemed conduct inconsistent with just and equitable principles of trade. Conduct inconsistent with just and equitable principles of trade is a violation of Rule 3.1 and is thus subject to the disciplinary jurisdiction of the Exchange and should be codified as such.<sup>23</sup> Currently, however, such failure to honor a BYX arbitration

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<sup>20</sup> See Rule 8.1(b).

<sup>21</sup> See Rule 8.1(c).

<sup>22</sup> See Rule 8.1(d).

<sup>23</sup> See Rule 9.5.

award by a *former* Member, or *former* person associated with a Member, may not always be subject to the Exchange's disciplinary jurisdiction.

Current Rule 8.1(b) provides that a Member or associated person shall continue to be subject to the disciplinary jurisdiction of the Exchange following such Member's or associated person's termination of membership, or termination of association with such Member, with respect to matters that occurred prior to such termination, provided that written notice of the commencement of an inquiry into such matters is given by the Exchange to such former Member or associated person within one year of the Exchange's receipt of notice of such termination.<sup>24</sup> This provision allows for certain anomalies in the context of failure to pay arbitration awards. For example, consider the following scenario: A customer is involved in a trading dispute with a BYX Member. Months later, the Member terminates its membership on the Exchange. Weeks after the membership termination, the customer properly files an arbitration claim with BYX.<sup>25</sup> One and a half years after the membership termination, the customer prevails in the arbitration proceeding, and a monetary award is imposed against the former Member. Nevertheless, the former Member subsequently fails to honor the arbitration award. Because more than one year has passed since the former Member's termination of membership and the Exchange did not provide written notice of the commencement of an inquiry into the failure to pay the award, the Exchange could not assert disciplinary jurisdiction over the former Member. The Exchange believes this is problematic given the fact that the dispute concerned Exchange-related

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<sup>24</sup> See Rule 8.1(b).

<sup>25</sup> Rule 9.1 states that Members shall comply with any FINRA rules and interpretations thereof incorporated by reference as if such rules and interpretations were part of the Exchange's Rules. FINRA Rule 12202 states that claims by or against a member or an associated person who is inactive at the time the claim is filed is ineligible for arbitration under the FINRA Code of Arbitration unless the customer agrees in writing to arbitrate after the claim arises.

business, and that the award was pursuant to an Exchange arbitration proceeding. While the Exchange notes that the customer in the above example would be able to seek enforcement of the award through the judicial system, the inability of the Exchange to potentially take disciplinary measures undermines the credibility of the Exchange's arbitration forum.

The Exchange also proposes to remove current Rule 8.1(d) in its entirety to remove obsolete and duplicative language regarding the ability of the Exchange to contract with another self-regulatory organization to perform disciplinary functions and replace this text with text found in Rule 13.1, Interpretations and Policies .02 of the Affiliated Exchanges describing when the notice requirement found in current Rule 8.1(b) shall not apply. Rule 8.1(d) currently states that the Exchange may contract with another self-regulatory organization to perform some or all of the Exchange's disciplinary functions, allows the Exchange to specify the extent to which the Rules of Chapter 8 govern disciplinary functions when contracting with an SRO, and allows the Exchange to retain ultimate legal responsibility and control over the Exchange's disciplinary functions. The Exchange proposes to remove the current language of 8.1(d) because its contents are duplicative of Exchange Rule 13.7, Regulatory Services Agreements.<sup>26</sup> The text added to Rule 8.1(d) would eliminate the notice requirement in Rule 8.1(b) solely with respect to instances where the Exchange seeks to take disciplinary measures with respect to a former Member or associated person for failure to honor an arbitration award pursuant to Chapter 9.

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<sup>26</sup> See Affiliated Exchanges' Rule 13.7. "The Exchange may enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Exchange Act. Any action taken by another self-regulatory organization, or its employees or authorized agents, acting on behalf of the Exchange pursuant to a regulatory services agreement shall be deemed to be an action taken by the Exchange; provided, however, that nothing in this provision shall affect the oversight of such other self-regulatory organization by the Commission. . . . the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities, and any such regulatory services agreement shall so provide."

Accordingly, the Exchange proposes to delete the text of current Rule 8.1(d) and replace this text with the text of Rule 13.1, Interpretations and Policies. 02 of the Affiliated Exchanges in its entirety.<sup>27</sup>

Together, the proposed changes to Rule 8.1(b) and Rule 8.1(d) would provide that failing to pay arbitration awards would remain under the disciplinary jurisdiction of the Exchange. The proposed change to Rule 8.1(b) seeks to clarify that former Members or associated persons continue to be subject to the Exchange's jurisdiction with respect to their failure to honor an arbitration award pursuant to Chapter 9 of the Exchange Rules while the proposed change to Rule 8.1(d) would seek to eliminate the notice requirement in Rule 8.1(b) solely with respect to instances where the Exchange seeks to take disciplinary measures with respect to a former Member or associated person for failure to honor an arbitration award pursuant to Chapter 9. The proposed amendments to Rule 8.1(b) and 8.1(d) will result in Rule 8.1 aligning with Rule 13.1 of the Affiliated Exchanges.

### **Exchange Rule 8.2, Complaint and Investigation**

#### **(1) Current Rule 8.2:**

Current Rule 8.2 states that staff investigates and examines possible violations within the disciplinary jurisdiction of the Exchange ("violations") whenever possible violations are brought to its attention in any manner, including upon order of the Board, the CRO or other Exchange officials designated by the CRO, or upon receipt of a complaint alleging such violation.<sup>28</sup> Members and associated persons are required to

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<sup>27</sup> The proposed change is substantially similar to SR-CBOE-2001-14, with minor differences for terminology and outdated rule references. Additionally, the Affiliated Exchanges' current arbitration rule (Chapter 14) explicitly states that former TPHs and associated persons of TPHs are considered to be encompassed by Chapter 14.

<sup>28</sup> See Rule 8.2(a).

cooperate with staff inquiries and to furnish information requested in connection with investigations and examinations.<sup>29</sup> Members and associated persons are entitled to be represented by counsel during any such Exchange investigation, proceeding or inquiry.<sup>30</sup> Failure to furnish information requested by the Exchange in the course of an inquiry, investigation, hearing or appeal, or in the course of preparation by the Exchange in anticipation of such hearing or appeal on the date or within the time period specified by the Exchange shall be deemed to be a violation of Rule 8.2.<sup>31</sup> In each instance where an investigation has been instituted as a result of a complaint, and in every other instance in which an investigation finds that there are reasonable grounds to believe that a violation has been committed, the staff (or when appropriate, the designated self-regulatory organization) submits a written report (“report”) of the investigation to the CRO.<sup>32</sup>

Prior to submitting a report to the CRO, staff must notify the subject of the report (“Subject”) of the nature of the alleged violations.<sup>33</sup> Unless the CRO decides expeditious action is required, the Subject has 15 days to submit a written statement to the CRO concerning why no disciplinary action should be taken.<sup>34</sup> The Subject may request access to documents in the investigative file, furnished by the Subject or the Subject’s agents, to assist the Subject in preparing such a written statement.<sup>35</sup> The Subject may

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<sup>29</sup> See Rule 8.2(c).

<sup>30</sup> Id.

<sup>31</sup> See Rule 8.2(e).

<sup>32</sup> See Rule 8.2(b).

<sup>33</sup> See Rule 8.2(d).

<sup>34</sup> Id.

<sup>35</sup> Id.

also submit a videotaped response in lieu of a written statement, the length and format of which is decided by the Exchange.<sup>36</sup>

The Exchange may enter into cooperative agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance or for market surveillance, investigative, enforcement or other regulatory purposes.<sup>37</sup> No Member or associated person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or another self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish testimony, documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such testimony, documentary materials or other information in connection with an inquiry resulting from a cooperative agreement entered into by the Exchange.<sup>38</sup>

**(2) Proposed Changes to Rule 8.2:**

The Exchange proposes to reorganize and amend Rule 8.2 to align with and reflect the layout of the Affiliated Exchanges' Rule 13.2. The Exchange proposes these amendments to Rule 8.2 with the sole purpose of aligning the Rules of the Exchange with the Rules of the Affiliate Exchanges, thereby promoting consistency and efficiency for Members and TPHs.

First, the Exchange proposes to update Rule 8.2(a) to remove the Exchange's (or designated SRO's) and the Board's ability to initiate an investigation and place the

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<sup>36</sup> See Rule 8.2(h).

<sup>37</sup> See Rule 8.2(g).

<sup>38</sup> See Rule 8.2(f).

responsibility to initiate an investigation with the Exchange's Regulatory staff, defined *infra*, upon receipt of a complaint. Specifically, Rule 8.2(a) currently provides that an investigation can be initiated in four different ways: (1) by the Exchange, (2) by the Board, (3) by the CRO, or (4) by receipt of a complaint. The Exchange proposes to amend Rule 8.2(a) to place the responsibility to initiate an investigation with the Exchange's Regulatory staff whenever the Regulatory staff determines a reasonable basis to do so exists or upon receipt of a complaint by any person or entity including the Board, Exchange employees, and Members (the "Complainant"), provided that such complaint specifies in reasonable detail the facts constituting the alleged violation. The proposed amendment to Rule 8.2(a) will result in Rule 8.2(a) aligning with Rule 13.2(a) of the Affiliated Exchanges.

Second, the Exchange proposes to replace Rule 8.2(b) with the equivalent Rule 13.2(c) of the Affiliated Exchanges, which specifies the appropriate procedure in circumstances in which the Regulatory staff finds reasonable grounds to believe a violation occurred, but no formal regulatory action is warranted in lieu of a statement of charges. Currently, Rule 8.2(b) provides that a written report of an investigation shall be submitted to the CRO in every instance where an investigation has been instituted and an investigation results in a finding that a violation was committed. Notably, current Rule 8.2(b) does not contemplate the appropriate procedures for when the Regulatory staff determines that a violation occurred, but a non-formal regulatory action is warranted in lieu of issuing a statement of charges or when the Regulatory staff determines no reasonable grounds to believe a violation occurred exist. The Exchange proposes to amend 8.2(b) to provide that when the Regulatory staff determines that a violation occurred, but a non-formal regulatory action is warranted, in lieu of issuing a statement of charges, the Regulatory staff may

impose a non-formal regulatory action without the submission of a written report of its investigation to the CRO. Additionally, the Exchange proposes to amend Rule 8.2(b) to provide that when the Regulatory staff determines no reasonable grounds to believe a violation occurred exist, the Regulatory staff may close the investigation without submission of a written report to the CRO. The proposed Rule 8.2(b) reflects the language and procedures described Affiliated Exchanges' Rule 13.2(c) and differs only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Third, the Exchange proposes to amend Rule 8.2(c) to add that a Member or associated person is obligated to appear and testify, respond to interrogatories, and furnish information requested by the Exchange in connection with an inquiry resulting from an agreement pursuant to Exchange Rules 8.2(f),<sup>39</sup> 8.2(g),<sup>40</sup> or 13.7.<sup>41</sup> Currently, Exchange Rule 8.2(c) provides for circumstances in which a Member or associated person is obligated to appear and testify, respond in writing to interrogatories, and furnish documentary materials and other information requested by the Exchange including in connection with a

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<sup>39</sup> See Rule 8.2(f). "No Member or person associated with a Member or other person or entity subject to the jurisdiction of the Exchange shall refuse to appear and testify before another exchange or other self-regulatory organization in connection with a regulatory investigation, examination or disciplinary proceeding or refuse to furnish testimony, documentary materials or other information or otherwise impede or delay such investigation, examination or disciplinary proceeding if the Exchange requests such testimony, documentary materials or other information in connection with an inquiry resulting from an agreement entered into by the Exchange pursuant to subsection (g) of this Rule. . . ."

<sup>40</sup> See Rule 8.2(g). "The Exchange may enter into agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance or for market surveillance, investigative, enforcement or other regulatory purposes. . . ."

<sup>41</sup> See Rule 13.7. The Exchange may enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Exchange Act. . . ."

an investigation initiated pursuant to the Rule or a hearing or appeal conducted or anticipated to be conducted pursuant to Chapter 8 of the Exchange Rules. Current Rule 8.2(c) does not obligate a Member or associated person to perform the specified actions in connection with an Exchange inquiry resulting from an agreement entered in connection with regulatory cooperation, a cooperative agreement, or a regulatory services agreement. The Exchange proposes to amend Rule 8.2(c) to add that a Member or associated person is obligated to appear and testify, respond to interrogatories, and furnish information requested by the Exchange in connection with an inquiry resulting from agreement pursuant to Exchange Rules 8.2(f), Regulatory Cooperation, 8.2(g), Cooperative Agreements, or 13.7, Regulatory Services Agreements. The proposed change to Rule 8.2(c) reflects the language of Affiliated Exchanges' Rule 13.2(b) and differs only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Fourth, the Exchange proposes to amend Rule 8.2(d) to extend the time in which a Subject<sup>42</sup> has to submit a response to a notification from 15 to 25 days, add a 25-day tolling period while a request for access to the relevant investigative file is pending, and add clarifying language to specify that the reference to any resolution of the Board in Rule 8.2(d) refers only to resolutions of the Board regulating the conduct of business on the Exchange. Currently, Rule 8.2(c) allows Subjects 15 days from the date of notification to submit a written statement to the CRO describing why no disciplinary action should be taken, whereas the Affiliated Exchanges allow for 25 days.<sup>43</sup> Additionally, current Rule 8.2(c) does

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<sup>42</sup> See Rule 8.2(d). The term "Subject" refers to the person(s) who is the subject of the report.

<sup>43</sup> See Affiliated Exchanges' Rule 13.2(d). "A subject shall have 25 days from the date of notification [] to submit a written statement to the CRO concerning why no disciplinary action

not include a tolling provision for Subjects when they are awaiting access to the relevant investigative file, whereas the Affiliated Exchanges include a tolling provision.<sup>44</sup> Finally, unlike Rule 13.2(d) of the Affiliated Exchanges, current Exchange Rule 8.2(c) refers to resolutions of the Board without specifying that the Rule only refers to resolutions of the Board regulating the conduct of business on the Exchange. To ensure consistency between the Exchange and the Affiliated Exchanges, the Exchange proposes to amend Rule 8.2(d) to extend the time for a Subject to submit a response to a notification from 15 to 25 days, add a 25-day tolling period while a request for access to the relevant investigative file is pending, and add clarifying language to specify that the reference to any resolution of the Board in Rule 8.2(d) refers only to resolutions of the Board regulating the conduct of business on the Exchange. The resulting Rule 8.2(d) will reflect the language of Rule 13.2(d) of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Fifth, the Exchange proposes to amend Rule 8.2(h) to extend the time in which a Subject may submit a videotaped response to a notification from 15 to 25 days and to specify the length and format of videotaped responses submitted pursuant to the Rule 8.2. Currently, Exchange Rule 8.2(h) allows Subjects 15 days to submit a videotaped response to a notification. The current Rule fails to specify the length and format of videotaped responses and states that the Exchange will establish these standards. The Exchange proposes to extend the time in which a Subject may submit a videotaped response to a

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should be taken.”

<sup>44</sup> See Affiliated Exchanges' Rule 13.2(d). “The 25-day period to submit a written statement shall toll while any request for access to the investigative file pursuant to this section is pending.”

notification from 15 to 25 days to align the Exchange's Rules with those of the Affiliated Exchanges and proposed Rule 8.2(d), discussed above. The Exchange also proposes to specify that submitted videotaped responses shall not exceed 12 minutes and must be accompanied by a written transcript to align the Exchange's Rules with those of the Affiliated Exchanges and provide clarity to its Members regarding the standards for videotaped responses submitted pursuant to Rule 8.2(h). The resulting Rule 8.2(d) will reflect the exact language of Interpretation and Policy .02 of the Affiliated Exchanges' Rule 13.2.

Sixth, the Exchange proposes to add Interpretation and Policy .03 - .05 of the Affiliated Exchanges' Rule 13.2 as Exchange Rule 8.2(i) – (k) to specify the format of complaints, specify the form of materials to be submitted upon request, and define the term “Regulatory staff” as it is used in Chapter 8 of the Exchange Rules. The Affiliated Exchanges have rules in place specifying (1) that Complainants should sign written complaints or identify themselves when making oral complaints; (2) that data should be furnished upon request in the manner and standard electronic format prescribed by the Exchange; and (3) that define the term “Regulatory staff” as used in the relevant chapter. Conversely, the Exchange currently has no rules making such specifications. As such, the Exchange proposes to amend Rule 8.2 to add the specifications related to identification, furnishing materials upon request, and the definition of Regulatory staff that are included in the Rules of the Affiliated Exchanges. The Exchange proposes to adopt Rule 8.2(i) requiring Complainants to sign written complaints or identify themselves when making oral complaints and identify the specific rules and regulations allegedly violated. The Exchange also proposes to adopt Rule 8.2(j) requiring each Member to furnish data concerning orders,

transactions, and positions upon request in the manner and standard electronic format prescribed by the Exchange. Finally, the Exchange proposes to adopt Rule 8.2(k) to define the term “Regulatory staff,” as used in Chapter 8, to mean the Exchange’s employees in the regulatory division, and, as applicable, employees of FINRA performing regulatory services for the Exchange. The resulting Rules 8.2(i), 8.2(j), and 8.2(k) will reflect Interpretation and Policy .03 - .05 of the Affiliated Exchanges’ Rule 13.2 with the only difference between the rules being the corresponding Exchange Rules and defined terms referenced in each.

Finally, the Exchange proposes to add Rule 8.2(m) to the Rules of the Exchange defining the BCC and detailing its composition. Proposed Rule 8.2(m) will define the BCC as a committee of the Board with decision-making authority concerning possible violation within the discretionary jurisdiction of the Exchange. Further, the proposed rule will detail the composition of the BCC as being comprised of one or more Member or associated person, one or more public representatives, and may also include other individuals affiliated with the securities, futures or derivatives industry, all as appointed by the Exchange’s Nominating and Governance Committee with the approval of the Exchange’s Board of Directors. The resulting Rule 8.2(m) will set forth the definition and composition of the BCC in the Rules of the Exchange thereby adding clarity. The Exchange’s proposed amendments to Rule 8.2 discussed above will result in clarifying the Rules of the Exchange and the terms therein and Rule 8.2 aligning with and reflecting the general format of the Affiliated Exchanges’ Rule 13.2 with differences only where necessary to conform to the Exchange’s existing Rule text and to account for details or descriptions included in the Exchange’s Rules but not in the applicable Rules of the Affiliated Exchanges.

### **Exchange Rule 8.3, Expedited Processing**

**(1) Current Rule 8.3:**

Current Rule 8.3, Expedited Proceeding, states that when a Subject receives notice of a report, the Subject may seek to dispose of the matter through a letter of consent.<sup>45</sup> The Subject may submit notice to staff electing to proceed in an expedited manner and shall have 15 days to submit a written statement pursuant to Rule 8.2(d).<sup>46</sup> The Subject and staff may then negotiate a letter of consent outlining stipulations and findings regarding the violation(s) and the sanctions therefore.<sup>47</sup> Disposing of the matter via letter of consent occurs only if the Subject and staff agree on the terms and it is signed by the Subject.<sup>48</sup> The CRO may accept or reject the letter of consent.<sup>49</sup> If the CRO accepts the letter, the Exchange may adopt the letter as its decision.<sup>50</sup> If the CRO rejects the letter, the matter proceeds as if the letter had not been submitted. The CRO's decision to accept or reject the letter is final.<sup>51</sup> Upon rejection, the Subject shall have 15 days to submit a written statement pursuant to Rule 8.2(d).<sup>52</sup> At any time, the Subject or staff may terminate the negotiations via written declaration of an end to the negotiations.<sup>53</sup>

**(2) Proposed Changes to Rule 8.3:**

The Exchange proposes to amend Rule 8.3, Expedited Proceeding, to extend the time for a Subject to submit written responses to notices from the Regulatory staff from

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<sup>45</sup> See Rule 8.3.

<sup>46</sup> Id.

<sup>47</sup> Id.

<sup>48</sup> Id.

<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> Id.

<sup>52</sup> Id.

<sup>53</sup> Id.

15 to 25 days and to make other non-substantive conforming changes to the rule text. Rule 8.3, Expedited Proceedings, references Rule 8.2(d), regarding notice and time to respond to a notice, multiple times. Currently, Rule 8.2(d) allows Subjects 15 days to respond to a notice from the Exchange's Regulatory staff. As discussed in detail above, the Exchange is proposing to extend time allotted in Rule 8.2(d) to 25 days to align the Rules of the Exchange with those of the Affiliated Exchanges. Similarly, current Rule 8.3 allows Subjects 15 days to submit a written notice in response a notification electing to proceed in an expedited manner, a declaration of an end to negotiations, or a rejection of a letter of consent. The Exchange now proposes to extend the time allotted to a Subject to submit a written response in each of these scenarios to 25 days.

Additionally, the Exchange proposes to make other non-substantive changes to Rule 8.3 to conform the language of the Rule with the language of Affiliated Exchanges' Rule 13.3, Expedited Proceeding. These non-substantive changes include changing references to "Exchange staff" to "Regulatory staff," which the Exchange proposes to define in Rule 8.2(k), discussed above. The Exchange's proposed amendments to Rule 8.3 as discussed above will align Rule 8.3 with the general format and language of the Affiliated Exchanges' Rule 13.3.

#### **Exchange Rule 8.4, Charges**

##### **(1) Current Rule 8.4**

Current Rule 8.4 states that when it appears to the CRO from the staff's report pursuant to Rule 8.2(b) that no probable cause exists for finding a violation occurred or if the CRO otherwise determines that no further action is warranted, the CRO issues a written

statement setting out its reasons for that finding.<sup>54</sup> When the CRO determines probable cause exists for finding a violation occurred and further proceedings are warranted, the CRO directs staff to prepare a statement of charges against the Respondent specifying the acts for which the Respondent is charged and setting forth the specific violations.<sup>55</sup> A copy of the statement of charges shall be served upon the Respondent in accordance with Rule 8.12.<sup>56</sup>

## **(2) Proposed Changes to Rule 8.4**

The Exchange proposes to amend Rule 8.4. Charges, to delete the current text of Rule 8.4(a) and replace it entirely with the text of the Affiliated Exchanges' Rule 13.4(a), amend Rule 8.4(b) to provide that a Complainant shall be notified if further proceedings are warranted, and add Rule 8.4(c) specifying the terms of a Respondent's access to requested documents.

First, the Exchange proposes to delete the current text of Rule 8.4(a) and replace it entirely with the text of the Affiliated Exchanges' Rule 13.4(a). Current Rule 8.4(a) describes the steps the CRO must take in the case he or she determines that no probable cause exists for finding a violation occurred or that no further proceedings are warranted. In both cases, current Rule 8.4(a) directs the CRO to issue a written statement setting forth the reasons for his or her finding. Rule 8.4(a) does not specify which materials the CRO must base his or her finding on and requires the CRO, rather than the Regulatory staff, to take the specified action. The Exchange proposes to amend Rule 8.4(a) to adopt the language of the Affiliated Exchange's Rule 13.4(a) in its entirety. As a result, Rule 8.4(a) will continue to describe the steps the CRO must take if he or she determines that no probable cause exists

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<sup>54</sup> See Rule 8.4(a).

<sup>55</sup> See Rule 8.4(b).

<sup>56</sup> Id.

for finding a violation occurred or that no further proceedings are warranted. The amended Rule 8.4(a) will also specify that the CRO should base his or her finding on the report of the Regulatory staff, that the determination should be based on whether a violation occurred within the disciplinary jurisdiction of the Exchange, and direct the Regulatory staff, rather than the CRO, to prepare and issue a written statement setting forth the reasons for the CRO's findings. The resulting Rule 8.4(a) will reflect the exact language of the Affiliated Exchanges' Rule 13.4(a).

Second, the Exchange proposes to amend Rule 8.4(b) to specify that the CRO's finding should be based on the report of the Regulatory staff and that the Regulatory staff prepares and issues the statement of charges. Similar to current Rule 8.4(a), current Rule 8.4(b) does not specify that the CRO's finding should be based on a report from the Regulatory staff or that the Regulatory staff, rather than the CRO, should prepare and issue statements of charges. The Exchange proposes to amend Rule 8.4(b) to add these specifications. Additionally, the Exchange proposes to amend Rule 8.4(b) to specify that the term "Respondent" refers to the person or organization alleged to have committed a violation, and that the Complainant, if any, shall be notified if further proceedings are warranted. Current Rule 8.4(b) does not specifically define the term "Respondent" or whether Complainants will be contacted if further proceedings are warranted. The Exchange proposes to add to Rule 8.4(b) that the term "Respondent" refers to "the person or organization alleged to have committed a violation." The Exchange also proposes to add that if further proceedings are warranted, the Complainant shall be notified. The resulting Rule 8.4(b) will reflect the exact language of Rules 13.4(b) of the Affiliated Exchanges.

Finally, the Exchange proposes to add subparagraph (c) to Rule 8.4 to specify the terms of the Respondent's access to requested documents. Currently, neither Rule 8.4, nor any provision in Chapter 8 of the Exchange's Rulebook, provides the terms of Respondent's access to documents relating to their investigation. The Exchange proposes to adopt Rule 8.4(c) to specify that Respondents who have made a request for documents shall have access to all documents concerning their case within 25 days after a statement of charges has been properly served upon the Respondent. If a Respondent requests such documentation, the Regulatory staff may protect the identity of the Complainant. The Exchange seeks to add clarity to the process by which Respondents may obtain all relevant documentation and ensure that procedures for obtaining such information are transparently communicated to all Members of the Exchange. The resulting Rule 8.4(c) will reflect the language of Rules 13.4(c) of the Affiliated Exchanges, with differences only to account for the Exchange Rules referenced therein.

### **Exchange Rule 8.5, Answer**

#### **(1) Current Rule 8.5:**

Currently, Rule 8.5, Answer, states that a Respondent has 15 days after service of the statement of charges to file a written answer to the statement of charges ("Answer").<sup>57</sup> The Answer must specifically admit or deny any allegation contained in the statement of charges and may be accompanied by supporting documentation.<sup>58</sup>

#### **(2) Proposed Changes to Rule 8.5:**

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<sup>57</sup> See Rule 8.5.

<sup>58</sup> Id.

The Exchange proposes to amend Rule 8.5, Answer, to extend the time for a Subject to submit an answer from 15 to 25 days and add a 25-day tolling period while a request for access to the relevant investigative file is pending. Similar to Rule 8.2, discussed above, Rule 8.5 currently allows Respondents 15 days after service of the charges to file an answer, whereas the Affiliated Exchanges allow for 25 days.<sup>59</sup> Additionally, current Rule 8.5 does not include a tolling provision for Respondents when they are awaiting access to the relevant investigative file, whereas the Affiliated Exchanges include a tolling provision.<sup>60</sup> To ensure consistency between the Exchange and its Affiliated Exchanges, the Exchange proposes to amend Rule 8.5 to extend the time that a Respondent has to file an answer from 15 to 25 days and add a 25-day tolling period while a request for access to the relevant investigative file is pending. The resulting Rule 8.5 will reflect the language of Rule 13.5 of the Affiliated Exchanges with differences only to account for the Exchange Rules referenced therein.

### **Exchange Rule 8.6, Hearings**

#### **(1) Current Rule 8.6:**

Current Rule 8.6, Hearings, states that subject to Rule 8.7<sup>61</sup> regarding summary proceedings, hearings on charges are held before a panel of three hearing officers (the

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<sup>59</sup> See Affiliated Exchanges' Rule 13.5. "The Respondent shall have 25 business days after service of the charges to file a written answer thereto."

<sup>60</sup> See Affiliated Exchanges' Rule 13.5. "The 25-day period to submit a written answer shall toll while any request for access to the investigative file pursuant to Rule 13.4(c) is pending."

<sup>61</sup> See Rule 8.7. "Notwithstanding the provisions of Rule 8.6 of this Chapter, the CRO may make a determination without a hearing and may impose a penalty as to violations which the Respondent has admitted or charges which the Respondent has failed to answer or which otherwise are not in dispute. Notice of such summary determination, specifying the violations and penalty, shall be served upon the Respondent, who shall have ten (10) business days from the date of service to notify the CRO that he desires a hearing upon all or a portion of any charges not previously admitted or upon the penalty. Failure to so notify the CRO shall constitute an admission of the violations and acceptance of the penalty as determined by the CRO and a waiver of all rights of review. If the Respondent requests a hearing, the matters which are the subject of the hearing shall be handled in accordance with the hearing and review procedures of this Chapter."

“Hearing Panel”) appointed by the Chief Executive Officer.<sup>62</sup> Each Hearing Panel shall be comprised of the following: (i) a professional hearing officer, who shall serve as Chairman; (ii) a hearing officer who is an Industry member;<sup>63</sup> and (iii) a hearing officer who is a Member Representative.<sup>64,65</sup> Exchange counsel may assist the Hearing Panel in preparing its written recommendations or judgments.<sup>66</sup> Within 15 days of the appointment of the Hearing Panel, the Respondent may move, in writing, to disqualify any Hearing Officer sitting on such Hearing Panel based upon bias or conflict of interest.<sup>67</sup> The Exchange may file a brief in opposition to the Respondent’s motion within 15 days of service thereof.<sup>68</sup> The Hearing Panel shall rule upon such motion no later than 30 days from filing by the Respondent.<sup>69</sup>

Participants shall be given at least 15 business days’ notice of the time and place of the hearing and a statement of the matters to be considered therein.<sup>70</sup> Not less than 8 days in advance of the hearing date, the parties must furnish copies of all documentary evidence they wish to present at the hearing, and the parties shall furnish a list of all documents submitted for the record not less than four business days in advance of the hearing.<sup>71</sup> These

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<sup>62</sup> See Rule 8.6(a)(2).

<sup>63</sup> See Rule 8.6(a)(1)(A). An “Industry member” is generally defined as a person having significant involvement with a broker or dealer, a person who provides professional services to a broker or dealer, or a person who has an employment relationship or consults for or provides professional services to the Exchange or any affiliate thereof.

<sup>64</sup> See Rule 8.6(a)(1)(B). The term “Member Representative” means a member of any hearing panel who is an office, director, employee or agent of an Exchange Member.

<sup>65</sup> See Rule 8.6(a)(2).

<sup>66</sup> See Rule 8.6(b).

<sup>67</sup> Id.

<sup>68</sup> Id.

<sup>69</sup> Id.

<sup>70</sup> See Rule 8.6(c).

<sup>71</sup> Id.

documents shall be made available to the parties for inspection and copying.<sup>72</sup> The Hearing Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct at the hearing.<sup>73</sup> The charges shall be presented by a representative of the Exchange or the designated SRO who, along with the Respondent, may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the Hearing Panel and opposing parties.<sup>74</sup> The Responded is entitled to be represented by counsel who may participate fully in the hearing.<sup>75</sup> A transcript of the hearing shall be made and shall become part of the record.<sup>76</sup>

**(2) Proposed Changes to Rule 8.6:**

The Exchange proposes to remove current text of Rule 8.6, Hearings, and replace it entirely with the language of Rule 13.6 of the Affiliated Exchanges, which describes the process of conducting hearings for the Affiliated Exchanges. Proposed changes to Rule 8.6 include amending Rule 8.6(a) to change the composition of the panel overseeing hearings from three hearing officers appointed by the CEO to three to five members of the BCC selected by the Chairperson of the BCC; reorganizing the contents of the Rule to reflect the format of Rule 13.6 of the Affiliated Exchanges, and adding subparagraphs (d) and (e) to Rule 8.6.

The Exchange proposes to amend Rule 8.6(a) to remove the current rule text and replace it entirely with the text of Rule 13.6(a) of the Affiliated Exchanges. Current Rule

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<sup>72</sup> Id.

<sup>73</sup> See Rule 8.6(d).

<sup>74</sup> Id.

<sup>75</sup> Id.

<sup>76</sup> Id.

8.6(a) defines the terms “Industry Member” and “Member Representative member,” and then specifies the composition of Hearing Panels that conduct hearings pursuant to the Rule as three hearing officers appointed by the CRO. The amended Rule 8.6(a) will define the term “Hearing Panel” as the selected members of the BCC that shall exercise the authority of the BCC with respect to matters pertaining to the hearing. The proposed rule change will transform the composition of the Hearing Panel from a panel of three hearing officers appointed by the Chief Executive Officer to three to five members of the BCC selected by the Chairperson of the BCC. Proposed Rule 8.6(a) will also provide that the Exchange and the Respondent shall be the parties to the hearing and where a Member organization is a party, it shall be represented at the hearing by one of its Principals or nominees.

Additionally, the rule will provide that Hearing Panel members shall remain impartial and function independently from Exchange staff.

Current Rule 8.6(b) imposes the requirement that members of the Hearing Panel must remain impartial and provides the procedures for which a Respondent may move to disqualify a member of the Hearing Panel based on bias or a conflict of interest. The Exchange proposes to remove subparagraph (b) of Rule 8.6 and replace it with a provision describing hearing procedures, discussed in detail *infra*. The Exchange proposes to amend subparagraph (1) of Rule 8.6(a) to set forth the requirement that members of the Hearing Panel remain impartial throughout the proceeding and the procedures for, if at any point in time, a member of the Hearing Panel determines they have a conflict of interest. These provisions were previously contained in subparagraph (b) of Rule 8.6. If a conflict of interest arises, the Hearing Panel member shall notify the Chairperson of the BCC who shall notify all Parties that the Hearing Panel member withdraws from the hearing and then

appoint a replacement. Finally, subparagraph (2) of proposed Rule 8.6(a) will provide for an avenue by which a Respondent may motion for the disqualification of a Hearing Panel member based on bias or a conflict of interest within 15 days of the appointment of the Hearing Panel member. This provision was also previously contained in subparagraph (b) of Rule 8.6. Similar to the requirements of current Rule 8.6(b), motions for disqualification of a Hearing Panel member will be required to be in writing and must state the facts and circumstances giving rise to the alleged bias or conflict. Then, the Exchange will have 15 days to file a brief in opposition to the Respondent's motion. The resulting Rule 8.6(a) will reflect the requirements and format set forth in Affiliated Exchanges' Rule 13.6(a) and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Next, the Exchange proposes to amend current Rule 8.6(b) to remove the existing text and replace it entirely with the text of Rule 13.6(b) of the Affiliated Exchanges. Current Rule 8.6(b) imposes the requirement that members of the Hearing Panel must remain impartial and provides the procedures for which a Respondent may move to disqualify a member of the Hearing Panel based on bias or a conflict of interest. As discussed above, the Exchange proposes to move the requirement of impartiality of Hearing Panel members and the procedures for addressing a Hearing Panel member's conflict of interest to subparagraph (a) of Rule 8.6. The Exchange proposes to replace current Rule 8.6(b) with a provision specifying prehearing procedures, which are currently found in Rule 8.6(c). As discussed in greater detail *infra*, the Exchange proposes to remove the text of current Rule 8.6(c) and renumber current Rule 8.6(d) as Rule 8.6(c).

The Exchange proposes to amend Rule 8.6(b) to specify the terms of notice before a hearing, location of a hearing, pre-hearing furnishing of documents, and pre-hearing conference requirements. First, the amended Rule 8.6(b) will specify that notice shall be served upon all Parties to a hearing at least 15 days before the hearing specifying the time and location of the hearing which is typically held in Chicago, but may be held outside of Chicago to accommodate hearing participants. Similar to current Rule 8.6(c), proposed Rule 8.6(b) will require 15 business days' notice of a hearing to all parties and require that all evidence each party intends to furnish to the Hearing Panel shall be furnished within 10 business days prior to the hearing. Next, proposed Rule 8.6(b) will specify that each party to a hearing must furnish all documentary evidence it intends to present at the hearing to the Hearing Panel and all other parties to the hearing within 10 days prior to the scheduled hearing. Proposed Rule 8.6(b) will also provide that where time and the nature of a proceeding permit, the parties shall meet in a prehearing conference to clarify and simplify issues and otherwise expediate the hearing process. The Rule will specify that at such pre-hearing conference the parties shall attempt to reach an agreement regarding the authenticity of documents and facts not in dispute, and that either party may request that the Hearing Panel or Chairperson thereof decide any unresolved prehearing issue. Finally, proposed Rule 8.6(b) will set forth the situations in which interlocutory Board review of a decision by the Hearing Panel is permitted. Generally, proposed Rule 8.6(b) will prohibit any interlocutory review by the Board unless the Hearing Panel agrees to review after determining that the issue is a controlling issue of rule or policy and that immediate Board review would materially advance the ultimate resolution of the case. The resulting Rule 8.6(b) will reflect the language and organization of Rule 13.6(b) of the Affiliated Exchanges.

Next, the Exchange proposes to remove the existing text of Rule 8.6(c) as this text has been incorporated into proposed Rule 8.6(b). The Exchange also proposes to renumber current Rule 8.6(d) concerning the conduct of hearing as Rule 8.6(c) and proposes additional non-substantive changes to reflect the language of the Affiliated Exchanges' Rule 13.6(c). Proposed Rule 8.6(c) will impose the same requirements upon the Hearing Panel at a hearing as current Rule 8.6(d) does and add the opportunity for intervening parties to present evidence at a hearing be represented by counsel. The resulting Rule 8.6(c) will reflect the exact language of Rule 13.6(c) of the Affiliated Exchanges.

Next, the Exchange proposes to adopt Rule 13.6(d) of the Affiliated Exchanges regarding documents and witnesses as Exchange Rule 8.6(d). Proposed Rule 8.6(d) will provide the process by which the Hearing Panel may compel the production of evidence from the Exchange, a Member, or associated person. Proposed Rule 8.6(d) will allow a Respondent to submit a written request to the Hearing Panel asking the Hearing Panel to enter an order compelling the production of non-privileged documents by the Exchange, a Member, or associated person. Before entering an order under proposed Rule 8.6(d), the Hearing Panel will be required to hear any objections raised and weigh the probative value of the requested evidence against considerations including undue delay, waste of time, confusion, and unfair prejudice. As a result of compelled production under proposed Rule 8.6(d), the Hearing Panel may require the Respondent to pay the costs of producing the requested evidence and no Member or associated person may refuse to furnish relevant evidence requested or ordered by the Hearing Panel. The resulting Rule 8.6(d) will reflect the language and procedures outlined in Rule 13.6(f) of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for

details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Finally, the Exchange proposes to adopt the Affiliated Exchanges' Rule 13.6 Interpretations and Policies .01 – .03 regarding parties intervening in a hearing as Rule 8.6(e). Proposed Rule 8.6(e) will set forth the process by which a third party may intervene as a party to a hearing. Under proposed Rule 8.6(e), a party may only intervene in a hearing if (1) the party satisfactorily demonstrates to the Hearing Panel that the party has an interest in the subject of the hearing and that disposition of the matter before the Hearing Panel may impair or impede the party's ability to protect that interest; or (2) the Hearing Panel, in its discretion, permits a party to intervene when the party's claim or defense and the main action have questions of fact or law in common. Proposed Rule 8.6(e) will require any party seeking to intervene in a hearing to file a notice requesting to intervene with the Hearing Panel stating the grounds for intervention. The Exchange proposes to add subparagraphs (1) and (2) to proposed Rule 8.6(d) including specifying that the Hearing Panel has discretion to take into consideration whether intervention will unduly delay a hearing and that the CRO shall have authority to direct that a hearing to be scheduled at any time after the period to answer, specified in Rule 8.5, discussed above, has elapsed. The resulting Rule 8.6(f) will reflect the exact language of Affiliated Exchanges' Rule 13.6 Interpretations and Policies .01 – .03 with the only difference between the Rules being the Rules referenced therein.

The Exchanges proposes the aforementioned changes to Rule 8.6, Hearings, with the broader purpose of harmonizing the Rules of the Exchange with the Rules of the Affiliated Exchanges. The changes to Rule 8.6 propose to adopt new roles for the Exchange's Business Conduct Committee similar to the functions of the relevant BCC of the Affiliated

Exchanges. The Exchange believes that harmonizing the composition of the disciplinary rules between the Exchange and the Affiliated Exchanges benefits Members because those parties who maintain status as both a Member of the Exchange and a Trading Permit Holder on the Affiliated Exchanges will be subject to substantially similar disciplinary rules and not perceive one set of disciplinary rules to be more lenient or harsh depending on the Exchange's core business.

### **Rule 8.8, Offers of Settlement**

#### **(1) Current Rule 8.8:**

Current Rule 8.8, Offers of Settlement, states that a Respondent may submit an offer of settlement ("offer") to the CRO at any time during the course of any proceeding.<sup>77</sup> If the CRO accepts the offer, it issues a decision consistent with the terms of the offer.<sup>78</sup> If the CRO rejects the offer, it notifies the Respondent and the matter proceeds as if the offer had not been made.<sup>79</sup> In addition, the Respondent is notified if staff will not recommend acceptance of an offer, and the Respondent may then appear before the CRO to make an oral statement in support of the offer.<sup>80</sup> If the CRO rejects an offer that the staff supports, the Respondent may also appear before the CRO to make an oral statement concerning why the CRO should consider changing its decision.<sup>81</sup> A Respondent must make a request for such an appearance within 5 days of being notified that the offer was rejected or that the staff will not recommend acceptance.<sup>82</sup> Unless otherwise ordered by the CRO, a Respondent shall be

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<sup>77</sup> See Rule 8.8(a).

<sup>78</sup> Id.

<sup>79</sup> Id.

<sup>80</sup> See Rule 8.8(b).

<sup>81</sup> Id.

<sup>82</sup> Id.

entitled to submit a maximum of two written offers of settlement in connection with the statement of charges issued pursuant to Rule 8.4(b).<sup>83</sup>

**(2) Proposed Changes to Rule 8.8:**

The Exchange proposes to amend Rule 8.8, Offers of Settlement, to remove the provision that the staff may also appear before the CRO to make an oral statement if the Respondent elects to make an oral statement before the CRO. Additionally, the Exchange proposes to amend Rule 8.8 to provide that a Respondent may submit an offer during the course of any proceeding under Chapter 8 of the Exchange Rules. Currently, Rule 8.8(b) allows a Respondent to appear before the CRO to make an oral statement in support of an offer. If the CRO rejects the offer, the Respondent may appear in front of the CRO to make an oral statement in support of their offer and the Exchange staff may appear to make an oral statement in support of its position.<sup>84</sup> The Exchange proposes to remove the language in Rule 8.8(b) stating that the staff may also make an oral statement in support of its position. Rule 13.8 of the Affiliated Exchanges contains a similar provision to Exchange Rule 8.8(b), but does not contain a provision allowing the staff to also appear in front of the CRO. The Exchange proposes to remove this provision of Rule 8.8(b) to ensure consistency across the Rules of the Exchange and the Affiliated Exchanges.

The Exchange also proposes to add subparagraph (d) to Rule 8.8 regarding presentment of offers of settlement. The Exchange proposes to add language taken from Affiliated Exchanges' Rule 13.8 Interpretations and Policies .02 which clarifies when a Respondent may propose a written offer and that the Hearing Panel shall grant parties leave

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<sup>83</sup> See Rule 8.8(c).

<sup>84</sup> See Rule 8.8(a).

from a hearing if an offer of settlement is submitted subsequent to a hearing. The Exchange proposes to adopt similar language to Affiliated Exchanges' Rule 13.8 Interpretations and Policies .02. The resulting Rule 8.8(d) will ensure the granting of leave from hearings when an offer is submitted subsequent to a hearing and clarify that a Respondent may submit a written offer at any time during a proceeding under Chapter 8 of the Exchange Rules, subject to Rule 8.8(c).<sup>85</sup>

### **Rule 8.9, Decision**

#### **(1) Current Rule 8.9:**

Currently, Rule 8.9, Decision, states that following a hearing, the Hearing Panel issues a decision, in writing, determining whether the Respondent has committed a violation.<sup>86</sup> The decision shall include a statement of findings and conclusions upon all material issues presented on the record.<sup>87</sup> Where a penalty is imposed, the decision shall include a statement specifying the acts or practices in which the Respondent has been found to have engaged and setting forth the specific provisions of authority of which the acts are deemed to be in violation.<sup>88</sup> The Respondent shall promptly be sent a copy of the decision.<sup>89</sup>

#### **(2) Proposed Changes to Rule 8.9:**

The Exchange proposes to amend Rule 8.9, Decision, to add that a decision shall also include a statement of the penalties imposed and reasons for the penalties, that the

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<sup>85</sup> See Rule 8.8(c). "Unless the CRO shall otherwise order, a Respondent shall be entitled to submit to the CRO a maximum of two written offers of settlement in connection with the statement of charges issued to that Respondent pursuant to Rule 8.4(b)."

<sup>86</sup> See Rule 8.9.

<sup>87</sup> Id.

<sup>88</sup> Id.

<sup>89</sup> Id.

regulatory division shall also receive a copy of the statements, and that the Exchange shall post the complete decision on the appropriate BYX website once the decision is considered final. Current Rule 8.9 sets out the required contents of a decision where a penalty is imposed but does not include that the decision must include a statement of the sanctions and the reasons for their imposition. The Exchange proposes to add to Rule 8.9 that where a penalty is imposed, the decision of the Hearing Panel shall also include a statement of the penalties imposed and the reasons therefor. Additionally, current Rule 8.9 states that a Respondent shall receive a copy of a decision but does not provide that the regulatory division of the Exchange shall receive a copy as well. The Exchange proposes to amend Rule 8.9 to include that the regulatory division shall also receive a copy of the decision. Finally, the Exchange proposes to add to Rule 8.9 that after review of a decision is complete and considered final, the Exchange shall post the complete decision on the appropriate BYX website. The Rules of the Affiliated Exchanges include a similar provision<sup>90</sup> that is currently not contained in the Rules of the Exchange. The Exchange proposes this addition to ensure consistency across the Rules of the Exchange and Affiliated Exchanges and to ensure that Members and Trading Permit Holders of each do not perceive the Rules of one exchange as stricter than the other. The resulting Rule 8.9 will closely reflect Rule 13.9 of the Affiliated Exchanges, with the only difference being the Exchange Rules referenced therein.

### **Rule 8.10, Review**

#### **(1) Current Rule 8.10:**

Current Rule 8.10, Review, states that a Respondent has 10 days after service of a decision to petition for review of the decision by submitting a petition, in writing, and

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<sup>90</sup> See Affiliated Exchange Rule 13.9.

specifying the findings and conclusions to which exceptions are taken together with reasons for such exceptions.<sup>91</sup> The review shall be conducted by the Appeals Committee of the Board (the “Committee”).<sup>92</sup> The review shall be based solely upon the record and the written exceptions filed by the parties unless the Committee decides to open the record for introduction of evidence or to hear arguments.<sup>93</sup> The Committee’s decision shall be in writing and shall be final.<sup>94</sup>

The Board may order review of a decision made pursuant to Rule 8.7<sup>95</sup> or 8.9, discussed above, within 20 business days after issuance of the decision.<sup>96</sup> Such review shall be conducted in accordance with the Committee review procedure described above.<sup>97</sup> Within 30 days of a decision made to not initiate charges pursuant to Rule 8.4(a), described above, the Board may order review of such decision upon application made by the Chief Executive Officer (“CEO”).<sup>98</sup> Such review shall be conducted in accordance with the Committee review procedure described above.<sup>99</sup>

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<sup>91</sup> See Rule 8.10(a).

<sup>92</sup> See Rule 8.10(b).

<sup>93</sup> Id.

<sup>94</sup> Id.

<sup>95</sup> See Rule 8.7. “Notwithstanding the provisions of Rule 8.6 of this Chapter, the CRO may make a determination without a hearing and may impose a penalty as to violations which the Respondent has admitted or charges which the Respondent has failed to answer or which otherwise are not in dispute. Notice of such summary determination, specifying the violations and penalty, shall be served upon the Respondent, who shall have ten (10) business days from the date of service to notify the CRO that he desires a hearing upon all or a portion of any charges not previously admitted or upon the penalty. Failure to so notify the CRO shall constitute an admission of the violations and acceptance of the penalty as determined by the CRO and a waiver of all rights of review. If the Respondent requests a hearing, the matters which are the subject of the hearing shall be handled in accordance with the hearing and review procedures of this Chapter.”

<sup>96</sup> See Rule 8.10(c).

<sup>97</sup> Id.

<sup>98</sup> See Rule 8.10(d).

<sup>99</sup> Id.

**(2) Proposed Changes to Rule 8.10:**

The Exchange proposes amend Rule 8.10(a) to reflect the content and format of Rule 13.10 of the Affiliated Exchanges. In doing so, the Exchange proposes to extend the time for a Respondent to petition for review of a decision from 10 days to 15 days, to specify the process of petitioning for review of a decision, and to clarify that other parties to a hearing may also submit a petition for review and a response to petitions for review. The Exchange also proposes to amend Rule 8.10(b) to allow the Board or a committee of the Board, excluding any Board member who participated in the review, to ratify a review, and to clarify that new issues may be raised by the parties involved in the review, but all parties must be given notice and opportunity to address them. Additionally, the Exchange proposes to amend Rule 8.10(b) to further clarify that the Board may affirm, reverse or modify the decision, and that the decision must be served upon the Respondent and the regulatory division of the Exchange. Next, the Exchange proposes to amend Rule 8.10(c) to extend the time allotted for the Board to review a decision from 20 days to 30 days. Finally, the Exchange proposes to remove subparagraph (d) of Rule 8.10 entirely to eliminate the CEO's role from the disciplinary issues of the Exchange all together.

The Exchange proposes to amend Rule 8.10(a) to allow both the Respondent and the regulatory division the opportunity to petition for review of a decision, extend the period of time allotted to both parties to file such a review from 10 days to 15 days, and specify the process by which the parties may petition for review. Current Rule 8.10(a) allows only the Respondent to petition for review of a decision within 10 days of service of notice of a decision and fails to specify the process for filing a petition for review. The Exchange proposes to extend this time to 15 days, include the regulatory division of the Exchange as a

party who may petition for review, and specify that a petitioning party must file a copy of the written petition with the Secretary of the Exchange (“Secretary”) shared with all other parties to the hearing. In response to a petition for review all other parties to the hearing shall have 15 days to respond to the petition by serving a written response upon the Secretary and all other parties to the hearing. The resulting Rule 8.10(a) will clarify the processes for submitting petitions for review for all parties to a hearing and closely reflect the language of Rule 13.10(a) of the Affiliated Exchanges. The resulting Rule 8.10(a) will differ from Rule 13.10(a) of the Affiliated Exchanges only where necessary to conform to the Exchange’s existing Rule text and to account for details or descriptions included in the Exchange’s Rules but not in the applicable Rules of the Affiliated Exchanges.

The Exchange proposes to amend Rule 8.10(b) to reflect the language of the Rule 13.10(b) of the Affiliated Exchanges. Current Rule 8.10(b) provides that the review of a decision shall be conducted by the Appeals Committee of the Board and based solely on the record and written exceptions filed by the parties. The Exchange proposes to allow the Board or any subcommittee thereof, excluding any Director who took part in the Hearing Panel, to review a decision. The Exchange proposes to allow the reviewing Committee to open the record to introduce additional evidence if it chooses, in which case parties to the hearing shall be given notice and opportunity to address any additional issues. Finally, the Exchange proposes to clarify that the decision of the Board shall be made in writing and served upon the Respondent and the Regulatory Division. The resulting Rule 8.10(b) will closely reflect Rule 13.10(b) of the Affiliated Exchanges with differences to account for the Exchange’s existing Rule text and details and descriptions included in the Exchange’s Rules but not in the applicable Rules of the Affiliated Exchanges.

The Exchange proposes to amend Rule 8.10(c) to extend the time the Board which the Board can review an order of a decision from 20 days to 30 days and to specify that the 30 period begins at the time service of the decision upon the Respondent and the Regulatory Division. Current Rule 8.10(c) allows the Board to review an order of a decision made pursuant to Rule 8.7 or Rule 8.9, described above, within 20 business days after issuance of the decision. The Exchange proposes to extend the time allotted to the Board to review an order of a decision to 30 days. The resulting Rule 8.10(c) will closely reflect Rule 13.10(c) of the Affiliated Exchanges with differences only to account for the Exchange Rules referenced therein.

Finally, the Exchange proposes to remove current subparagraph (d) from Rule 8.10, which allows the CEO to apply for, and the Board to order for, the review of decisions made pursuant to Rule 8.4(a), discussed above. The Exchange proposes to eliminate subparagraph (d) of Rule 8.10 with the broader purpose of removing the CEO from disciplinary matters within the Exchange. As discussed above, the Exchange seeks to align its Rules with those of the Affiliated Exchanges, which do not include the CEO as a stakeholder in disciplinary actions taken by the Affiliated Exchanges. The resulting Rule 8.10 will closely reflect the language and processes prescribed by Rule 13.10 of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

### **Rule 8.11, Judgment and Sanction**

#### **(1) Current Rule 8.11:**

Current Rule 8.11, Judgment and Sanction, provides that the CRO, Hearing Panel, or committee of the Board appropriately discipline Members and associated persons for violations by expulsion, suspension, limitation of activities, fine, censure, suspension of association with a Member, suspension or revocation of membership, or any other fitting sanction.<sup>100</sup> Under this Rule, the CRO, Hearing Panel, or a committee of the Board, as applicable, considers several factors when determining sanctions including, but not limited to, deterrence, remediation, precedent and the appropriateness of disgorgement and/or restitution.<sup>101</sup> Penalties imposed under this Rule shall not become effective until the review process is completed or the decision otherwise becomes final.<sup>102</sup> The CRO, Hearing Panel, or committee of the Board, as applicable, may impose such conditions and restrictions on the activities of the Respondent pending effectiveness of a decision imposing a penalty on the Respondent as necessary for the protection of investors, creditors, and the Exchange.<sup>103</sup> The current Rule 8.11 also states that Exchange staff shall make all necessary findings under the Exchange Act and comply with all other applicable laws and regulations.<sup>104</sup>

**(2) Proposed Changes to Rule 8.11:**

The Exchange proposes to amend Rule 8.11, Judgment and Sanctions, to remove a committee of the Board as an applicable body that may determine penalties and impose discipline upon Members and associated persons. Current Rule 8.11(a) lists the CRO, Hearing Panel, and a committee of the Board as persons who may impose appropriate

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<sup>100</sup> See Rule 8.11(a).

<sup>101</sup> See Rule 8.11(c).

<sup>102</sup> See Rule 8.11(b).

<sup>103</sup> Id.

<sup>104</sup> See Rule 8.11, *Interpretations and Policies .01* to Rule 8.11.

disciplinary actions for violations by expulsion, suspension, limitation of activities, fine, censure, suspension of association with a Member, suspension or revocation of membership, or any other fitting sanction. Current Rule 8.11(b) also includes a committee of the Board as an applicable body that may impose conditions or restrictions upon Members or associated persons for the protection of investors, creditors, and the Exchange pending the effectiveness of a decision imposing a penalty. Similarly, Rule 8.11(c) sets forth the appropriate considerations of the CRO, Hearing Panel, and committee of the Board in determining the imposition of sanctions. The Exchange proposes to remove a committee of the Board as a party that may determine and impose sanctions as described in the Rule. The resulting Rule 8.11 will contain the process for imposing disciplinary actions, but with a committee of the Board removed as a party that may take the actions described in Rule 8.11. The resulting Rule 8.11 will closely reflect Rule 13.11 of the Affiliated Exchanges with differences only to account for the Exchange Rules referenced therein.

The Exchange also proposes to remove Interpretations and Policies .01 to Rule 8.11. Interpretations and Policies .01 to Rule 8.11 currently states that Exchange staff shall make all necessary findings under the Exchange Act and comply with all other applicable laws and regulations. The Exchange proposes to remove this portion of Rule 8.11 because it is duplicative of the duties already imposed on the Exchange by the Exchange Act and other laws and regulations. Additionally, the corresponding Rule 13.11 of the Affiliated Exchanges does not contain a similar provision. Accordingly, the Exchange proposes to remove the duplicative language of Interpretations and Policies .01 to Rule 8.11 to align the Rules of the Exchange with those of the Affiliate Exchanges.

### **Rule 8.12, Miscellaneous Provisions**

**(1) Current Rule 8.12:**

Current Rule 8.12, Miscellaneous Provisions, states that service may be effected by personally delivering any charges, notices or other documents upon the Respondent, by leaving such charges, notices or other documents at his place of business, or by registered and certified mail addressed to the Respondent at his last known place of business.<sup>105</sup> The Exchange may grant an extension of time limits for the submission of answers, petitions or other materials if the authority to whom such materials are to be submitted grants permission for the extension.<sup>106</sup>

The Exchange's staff, CRO, Board, or designated SRO shall have the right (1) to require any Member to report orally or in writing with regard to any matter involved in any such investigation or hearing, and (2) to investigate the books, records and accounts of any such Member with relation to any matter involved in any such investigation or hearing.<sup>107</sup> Members shall comply with requests to make any report as required by Rule 8.12(c) and shall comply with any inspection of books, records and accounts as may be validly called for under Rule 8.12(c).<sup>108</sup>

**(2) Proposed Changes to Rule 8.12:**

The Exchange proposes to amend Rule 8.12, Miscellaneous Provisions, to clarify that the address the Respondent may be served at is the last known place of business as it appears on the books and records of the Exchange, and to provide an additional three days to the prescribed period a Respondent has to respond in the case of service by certified mail.

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<sup>105</sup> See Rule 8.12(a).

<sup>106</sup> See Rule 8.12(b).

<sup>107</sup> See Rule 8.12(c).

<sup>108</sup> Id.

Additionally, the Exchange proposes to clarify all references to Respondent within Rule 8.12. Current Rule 8.12(a) describes where a Respondent may be served, including by mail to his last known place of business. However, the current Rule does not provide the source of the address that may be used in the case of service by certified mail and does not allow for additional time to respond to service in the case of service by certified mail. The Exchange proposes to amend Rule 8.12(a) to clarify that service by mail shall be addressed to the Respondent at the Respondent's last known place of business as it appears on the books and records of the Exchange. The Exchange also proposes to add a provision to Rule 8.12(a) to allow the Respondent three additional days to respond to service delivered by certified mail. Finally, the Exchange proposes to add non-substantive changes to Rule 8.12(a) to clearly use the term "Respondent" instead of "his" when referring to the Respondent in the Rule text. The resulting Rule 8.12(a) will clearly state the address to be used in the case of service by certified mail. The resulting Rule 8.12 will closely reflect the language and processes prescribed by Rule 13.12 of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

#### **8.14, Agency Review**

##### **(1) Current Rule 8.14:**

Current Rule 8.14, Agency Review, states that actions taken by the Exchange pursuant to Chapter 8 shall be subject to the review and action of any appropriate regulatory agency under the Act.<sup>109</sup>

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<sup>109</sup> See Rule 8.14.

**(2) Proposed Changes to Rule 8.14:**

The Exchange proposes to remove current Rule 8.14, Agency Review, in its entirety and replace it with the text of Rule 13.14 of the Affiliated Exchanges. Current Rule 8.14 states that actions taken by the Exchange shall be subject to review by the appropriate regulatory agency under the Act. The Exchange believes this provision is duplicative of rules and restrictions already imposed on disciplinary actions under the Exchange Act.<sup>110</sup> Thus, the Exchange proposes to remove the text of current Rule 8.14 because it is duplicative.

In place of current Rule 8.14, the Exchange proposes adopt language regarding reporting to the CRD using similar language to that of Rule 13.14 of the Affiliated Exchanges. Subparagraph (a) of proposed Rule 8.14, Reporting to the Central Registration Depository, will require the Exchange to report any issuance of a statement of charges concerning formal Exchange disciplinary proceedings pursuant to Rule 8.4(b), described above, and all significant changes in the status of pending proceedings to the CRD.

The Exchange also proposes to add clarifying descriptions of the terms used in Rule 8.14(a) to subparagraph (b) of proposed Rule 8.14. Proposed subparagraph (b)(1) of proposed Rule 8.14 will clarify that formal Exchange disciplinary proceedings are considered pending from the time the statement of charges is issued pursuant to Exchange Rule 8.4(b), as described above, until the proceeding becomes final. Subparagraph (b)(2) of proposed Rule 8.14 will clarify that an Exchange disciplinary proceeding shall be considered formal if it is initiated by the Exchange pursuant to Exchange Rule 8.1 through 8.13. Finally, subparagraph (b)(3) of proposed Rule 8.14 will

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<sup>110</sup> See 15 U.S.C. § 78s.

list examples of significant changes that shall be reported to the CRD including the scheduling of a disciplinary hearing, the issuance of a decision by the CRO or Hearing Panel, the filing of an appeal to the Board, and the issuance of a decision by the Board. The resulting Rule 8.14 will reflect the language of Rule 13.14 of the Affiliated Exchanges with the only differences between the rules being the references to the Exchange specific rules within them. The Exchange proposes the aforementioned changes to Rule 8.14 with the purpose of clarifying which instances the Exchange reports disciplinary proceedings to the CRD and aligning the Rules of the Exchange with those of the Affiliated Exchanges.

**Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules**

**(1) Current Rule 8.15:**

Current Rule 8.15, Imposition of Fines for Minor Rule Violations, states that in lieu of commencing disciplinary proceedings, the Exchange may impose fines on Members and associated persons for specified Rule violations that the Exchange has deemed minor in nature.<sup>111</sup> In any action taken by the Exchange pursuant to Rule 8.15, the person against whom a fine is imposed shall be served, as provided in Rule 8.12 discussed above, with a written statement setting forth the details of each violation, the associated fine for each violation, the date by which the determination becomes final, and the fine due and payable to the Exchange.<sup>112</sup> The person against whom a fine is imposed shall not have less than 15 business days after the date of service to contest the Exchange's determination.<sup>113</sup> Payment of the fine shall be deemed to be a waiver by such person of the right to a disciplinary proceeding under Rule 8.1 – 8.13, discussed above, and any review of the matter by the

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<sup>111</sup> See Rule 8.15(a).

<sup>112</sup> See Rule 8.15(b).

<sup>113</sup> Id.

appeals committee or by the Board.<sup>114</sup> If the person against whom a fine is imposed contests the Exchange's determination through a written response meeting the requirements of an Answer, described in Rule 8.5 above, the matter shall become a disciplinary proceeding subject to the provisions of Rules 8.1 – 8.13, described above.<sup>115</sup> The Exchange periodically announces a listing of Exchange Rules as to which fines may be imposed and the specific dollar amount that may be imposed or the minimum and maximum dollar amounts that may be imposed with respect to such violations.<sup>116</sup> The Exchange is not required to impose a fine pursuant to Rule 8.15 with respect to a violation of any Rule included in such listing.<sup>117</sup>

**(2) Proposed Changes to Rule 8.15:**

The Exchange proposes to amend Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, to reflect the content and layout of Rule 13.15 of the Affiliated Exchanges, which provides the guidelines for imposing fines for minor rule violations on the Affiliated Exchanges. The Exchange proposes to amend Rule 8.15(a) to limit fines imposed under the Rule to \$5,000, specify the actions constituting minor rule violations, describe the Exchange's treatment of separate and similar offenses for purposes of the Rule, and provide that reporting of uncontested violations to the Commission not exceeding \$2,500 shall be reported on a periodic basis. The Exchange proposes to amend Rule 8.15(b) to extend the time that a determination becomes final or a determination must be contested under the Rule from no less than 15 days to no less than 30 days after service of the written statement and to specify that failure to contest, submission, and/or acceptance of a fine by a

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<sup>114</sup> See Rule 8.15(c).

<sup>115</sup> See Rule 8.15(d).

<sup>116</sup> See Rule 8.15(e). See also Rule 8.15, *Interpretations and Polices* .01 (List of Exchange Rule Violations and Recommended Fine Schedule Pursuant to Rule 8.15).

<sup>117</sup> Id.

member does not constitute admission. The Exchange proposes to remove current rule 8.15(c) in its entirety and replace it with revised Rule 8.15(c). The Exchange proposes revised Rule 8.15(c) with subparagraphs (1) – (4), which will describe the process of contesting a fine. Finally, the Exchange proposes to amend current Rule 8.15(e) to become revised Rule 8.15(d) and make conforming non-substantive changes, authorize the Exchange to impose fines for first or second offenses when warranted under the circumstances as set forth in the Rule’s *Interpretations and Policies*,<sup>118</sup> and clarify the Exchange’s authority to take formal disciplinary action under Rule 8.2 et seq., rather than Rule 8.15 when warranted by the egregiousness of the violation.

The Exchange proposes to amend Rule 8.15(a) to limit fines imposed under the Rule from \$2,500 to \$5,000, specify the actions constituting minor rule violations, describe the Exchange’s treatment of separate and similar offenses for purposes of the Rule, and provide that reporting of uncontested violations to the Commission not exceeding \$2,500 shall be reported on a periodic basis. Currently, Rule 8.15(a) contains a limitation on the fine that may be imposed under the Rule of \$2,500 and does not specify the character of rule violations that constitute minor violations within the meaning of Rule 8.15. The Exchange proposes to amend the limit of fines that may be imposed under the Rule to \$5,000. Additionally, the Exchange proposes to specify, within Rule 8.15(a), that minor rule violations within the meaning of the Rule are contained in *Interpretations and Policies* .01 to Rule 8.15 and Rule 25.3, Penalty for Minor Rule Violations.<sup>119</sup> Currently, Rule 8.15(a) also does not contain a provision, such as the one contained in Rule 13.15(a) of the

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<sup>118</sup> See *Interpretations and Policies* .01 to Rule 8.15 (List of Exchange Rule Violations and Recommended Fine Schedule Pursuant to Rule 8.15).

<sup>119</sup> See Rule 25.3 (Penalty for Minor Rule Violations).

Affiliated Exchanges, allowing the Exchange to aggregate particular violations based on a comprehensive automated surveillance program. The Exchange proposes to amend Rule 8.15 to contain a similar provision providing that the Exchange may aggregate individual violations and treat these violations as a single offense, provided that the aggregation is based on a comprehensive automated surveillance program. Finally, current Rule 8.15(a) provides that uncontested violations shall not be publicly reported, except as may be required by Rule 19d-1 under the Act or as may be required by any other regulatory authority. Currently, the Exchange does not publicly report uncontested violations not exceeding \$2,500, but does notify the Commission on a periodic basis of all fines imposed pursuant to Rule 8.15. The Exchange proposes to amend Rule 8.15(a) to provide that it shall report uncontested fines not exceeding \$2,500 to the Commission on a periodic basis.

Next, the Exchange proposes to amend Rule 8.15(b) to extend the time that a determination becomes final or a determination must be contested under the Rule from no less than 15 days to no less than 30 days after service of the written statement and to specify that failure to contest, submission, and/or acceptance of a fine by a Member does not constitute admission. Currently, Rule 8.15 states that the date that a determination becomes final or a determination must be contested shall be no less than 15 days. The Exchange proposes to amend Rule 8.15(b) to set the date a determination becomes final or a determination must be contested to not less than 30 days, which is the time provided in Rule 13.15(b) of the Rules of the Affiliated Exchanges. Additionally, current Rule 8.15(b) fails to specify the meaning of a Member's failure to contest a fine or a Member's submission of and/or the Exchange's acceptance of an offer of settlement. The Exchange proposes to

amend Rule 8.15(b) to specify that such actions do not constitute admission of the violation the fine is issued for.

Additionally, the Exchange proposes to remove the current text of Rule 8.15(c) and Rule 8.15(d) in their entirety. Current Rule 8.15(c) states that payment of a fine by a person whom a fine is imposed against pursuant to Rule 8.15 constitutes waiver of the person's right to disciplinary proceedings under Rule 8.1 through 8.13, discussed above and any review of the matter thereof. Current Rule 8.15(d) states that if the person against whom a fine is imposed contests the Exchange's determination through a written response meeting the requirements of an Answer, described in Rule 8.5 above, the matter shall become a disciplinary proceeding subject to the provisions of Rules 8.1 through 8.13. The Exchange proposes to remove the text of Rule 8.15(c) and Rule 8.15(d) in their entirety because the corresponding Rule 13.15 of the Affiliated Exchanges does not contain a similar provision.

Next, the Exchange proposes to add revised Rule 8.15(c) with language taken from the text of Rule 13.15(c) of the Affiliated Exchanges, including subparagraphs (1) – (4), which describe the process of contesting a fine. The resulting subparagraph (1) of revised Rule 8.15(c) will provide that any person against whom a fine is imposed may contest the fine by filing a written Answer, as described in Rule 8.5, with the Secretary of the Exchange. Then the Rule will provide that the Answer will become subject to review by a Hearing Panel and hearings, if requested, will be conducted in accordance with Rule 8.6, discussed above. Next, the resulting subparagraph (2) of revised Rule 8.15(c) will provide that if the Hearing Panel determines that the conduct for which the fine was imposed is a violation of the Rules of the Exchange, then the Hearing Panel may impose applicable disciplinary sanctions and impose a forum fee of \$100, if no hearing is conducted, or \$300,

if a hearing is conducted. Additionally, the Rule will provide that the Hearing Panel has discretion to waive the forum fee if it determines that a rule violation occurred but the disciplinary sanction imposed for such rule violation(s) is a fine less than the total fine initially imposed by the Exchange. The resulting subparagraph (3) of revised Rule 8.15(c) will provide that the party that commenced the action, the person charged, or the Board may require a review by the Board of a determination by a Hearing Panel as described in Rule 8.10, discussed above, and that the party who commenced the action shall have the same rights as a Respondent under Rule 8.10. Finally, resulting subparagraph (4) of revised Rule 8.15(c) shall provide that if a fine is upheld after contestation, the party responsible for paying the fine must pay the fine, all interest accrued, and any forum fee imposed immediately. The proposed amendment to current Rule 8.15(c) will result in the text of the Rule reflecting that of the corresponding Rule 13.15(c) of the Affiliated Exchanges.

Finally, the Exchange proposes to re-number current subparagraph (e) as revised subparagraph (d) and amend revised Rule 8.15(d) to make conforming non-substantive changes, clarify that the Exchange may impose fines for first or second offenses when warranted under the circumstances as set forth in the Rule's *Interpretations and Policies*, and clarify that the Exchange may take formal disciplinary action under Rule 8.2 et seq., rather than Rule 8.15, when warranted by the egregiousness of the violation. With the Exchange's proposal to remove the current text found in Rule 8.15(c) and proposed re-numbering of Rule 8.15(d) to Rule 8.15(c), the Exchange also proposes to re-number current subparagraph (e) as subparagraph (d). Current Rule 8.15(e) requires the Exchange to periodically announce Exchange Rules under which fines may be imposed and the specific dollar amount that may be imposed thereunder. The Exchange proposes to amend the

language of current Rule 8.15(e) (proposed Rule 8.15(d)) to reflect the language of Rule 13.15(f) of the Affiliated Exchanges. As a result, revised Rule 8.15(d) will allow the Exchange to impose fines for first or second offenses when warranted under the circumstances as set forth in the Rule's *Interpretations and Policies* and authorize the Exchange to take formal disciplinary action under Rule 8.2 et seq., rather than Rule 8.15, when warranted by the egregiousness of the violation. The resulting Rule 8.15(d) will also clarify that the Exchange shall issue regulatory circulars to its Members and Member organizations containing a list of Exchange Rules and Bylaws for which the Exchange may impose fines as provided in Rule 8.15. The Exchanges proposes all of the changes to Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, with the broader purpose of clarifying the process by which the Exchange may impose fines for minor violations and harmonizing the Rules of the Exchange with the Rules of the Affiliated Exchanges. The Exchange notes that the proposed changes include language taken solely from the Rules of the Affiliated Exchanges and do not substantively alter the Exchange's Rules regarding minor rule violations. As such, the proposed changes do not pose any novel legal or regulatory issues for the Commission's consideration.

**Rule 8.16, *Ex Parte* Communications)**

**(1) Current Rule 8.16:**

Current Rule 8.16, *Ex Parte* Communications, states that the Exchange has in place rules prohibiting ex parte communications relevant to the merits of a proceeding between Respondents and Exchange staff members and any Hearing Officer, any member of the Board, or a member of a committee of the Board who is participating in a decision with respect to that proceeding (an "Adjudicator") unless all parties are on notice and have an

opportunity to participate in the communication.<sup>120</sup> If an *ex parte* communication occurs in violation of Rule 8.16, an Adjudicator shall place in the record: (1) all such written communications; (2) memoranda stating the substance of all such oral communications; and (3) all written responses and memoranda stating the substance of all oral responses to all such communications.<sup>121</sup> Further, the Board or a committee thereof may take whatever action it deems appropriate if a prohibited *ex parte* communication has occurred.<sup>122</sup> Participants to a proceeding may respond to any allegations relating to a prohibited *ex parte* communication placed in the record.<sup>123</sup> The prohibitions of Rule 8.16 apply beginning with the initiation of an investigation pursuant to Rule 8.2(a) (described above), unless the person responsible for the communication knows that an investigation shall be initiated.<sup>124</sup> In such instances, the prohibition on *ex parte* communication shall apply beginning at the time such person knows the investigation shall be initiated.<sup>125</sup>

## **(2) Proposed Changes to Rule 8.16:**

The Exchange proposes to amend Rule 8.16, *Ex Parte* Communications, to clarify that the provisions of the Rule apply to all Members and associated persons, amend the definition of Adjudicator under the Rule, add subparagraph (e) to define *ex parte* communication, and add subparagraphs (f) and (g) which provide guidance regarding what may not be considered a violation of Rule 8.16. Current Rule 8.16(a) provides that no Respondent or Exchange staff member may make an *ex parte* communication in violation of

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<sup>120</sup> See Rule 8.16 (a)(1) and Rule 8.16(a)(2).

<sup>121</sup> See Rule 8.16(b).

<sup>122</sup> See Rule 8.16(c).

<sup>123</sup> Id.

<sup>124</sup> See Rule 8.16(d).

<sup>125</sup> Id.

the Rule. Additionally, the Rule currently includes in the definition of “Adjudicator” any Officer or member of the Board or a committee of the Board who is participating in the decision in a proceeding.

The Exchange proposes to amend Rule 8.16(a) to clarify that the prohibition against *ex parte* communications under the Rule applies to all members and associated persons and Exchange staff members. The Exchange also proposes to amend the definition of Adjudicator provided in subparagraph (a) to include any member of the Hearing Panel, Business Conduct Committee, Board or committee of the Board who is participating in a decision. The proposed definition will eliminate Officers and add the Hearing Panel and Business Conduct Committee members to the definition of Adjudicator as it is used in Rule 8.16.

Next, the Exchange proposes to add subparagraphs (e), (f), and (g) to Rule 8.16 closely resembling the language of subparagraphs (e), (f), and (g) of Rule 13.16 of the Affiliated Exchanges. Proposed Rule 8.16(e) will include a definition of “*ex parte* communication” including that the term means an oral or written communication made without notice to all parties, unless a copy has been delivered to all interested parties or it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present. Proposed Rule 8.16(f) will clarify that *ex parte* communications solely regarding procedural matters are not a violation of the Rule. Proposed Rule 8.16(g) will add an exception to the Rule if a person refuses an attempted *ex parte* communication once it becomes apparent that communication concerns the merits of the proceeding at issue. Proposed rule 8.16(g) will also specify that for the exception contained therein to apply, the person refusing the attempted communication must notify the Regulatory staff of the

attempted communication and how the person responded. The resulting Rule 8.16 will and conform the definition of Adjudicator as it is used in Rule 8.16 with the language of proposed Rule 8.6, discussed above. Additionally, the resulting Rule 8.16 will closely resemble Rule 13.16 of the Affiliated Exchanges and differ only where necessary to conform to the Exchange's existing Rule text and to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

### **Rule 8.18, Release of Disciplinary Complaints, Decisions and Other**

#### **Information**

##### **(1) Current Rule 8.18:**

Current Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information, states that the Exchange shall release a copy to the public of, subject to the Exchange's discretion, any disciplinary complaint,<sup>126</sup> disciplinary decision,<sup>127</sup> or any client suspension order issued by the Exchange.<sup>128</sup> Any release to the public of a disciplinary complaint must indicate that the complaint represents the initiation of a formal proceeding by the Exchange and does not represent a final decision at to any of the allegations contained in the complaint.<sup>129</sup> Copies of any disciplinary decision provided to the public prior to the expiration of the time period for appeal or review, or while such appeal or

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<sup>126</sup> See Rule 8.18 (e)(1). A disciplinary complaint shall mean any statement of charges issued pursuant to Rule 8.4 or any notice served pursuant to Rule 8.17.

<sup>127</sup> See Rule 8.18(e)(2). A disciplinary decision shall mean any decision issued pursuant to Chapter 8, including, decisions issued by a Hearing Panel or the Appeals Committee, accepted offers of settlement, and suspension order pursuant to Rule 8.17; provided, however, minor rule violation plan letter issued pursuant to Rules 8.15 and 25.3 are not subject to this Rule.

<sup>128</sup> See Rule 8.18(a)(1) and Rule 8.18(a)(2).

<sup>129</sup> See Rule 8.18(b)(1).

review is pending, shall indicate that the findings and sanctions imposed therein are subject to review and modification by the Exchange or the Commission.<sup>130</sup> The Exchange reserves the right to redact information that contains confidential customer information and, in extraordinary circumstances, may decline to release a copy of or information related to a disciplinary complaint or a disciplinary decision.<sup>131</sup> The Exchange shall provide notice to the public in the event that a disciplinary decision is appealed to the Commission and whether the effectiveness of such decision has been stayed pending the outcome of the proceedings before the Commission.<sup>132</sup>

**(2) Proposed Changes to Rule 8.18:**

The Exchange proposes to eliminate current Rule 8.18, Release of Disciplinary Complaints, Decisions and Other Information, in its entirety. Current Rule 8.18 sets out the procedures for releasing to the public disciplinary complaints and disciplinary decisions issued by the Exchange. The Exchange proposes to eliminate Rule 8.18 because the Rules of the Affiliated Exchanges do not contain a similar provision and proposed amendments to the Exchange's rulebook, including the proposed amendment to Rule 8.9, discussed above, include provisions for the release of complete decisions on the appropriate BYX website. Thus, the specifications included in current Rule 8.18 are no longer necessary.

The Exchange proposes all amendments discussed about with the broader purpose of aligning the Rules of the Exchange with the Rules of the Affiliated Exchanges. The Exchange believes that harmonizing the Rules of the Exchange with the Rules of the Affiliated Exchanges benefits Members because those parties who maintain status as both

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<sup>130</sup> See Rule 8.18(b)(2).

<sup>131</sup> See Rule 8.18(c).

<sup>132</sup> See Rule 8.18(d).

a Member of the Exchange and a Trading Permit Holder on the Affiliated Exchanges will be subject to substantially similar disciplinary rules and not perceive one set of disciplinary rules to be more lenient or harsh depending on the Exchange's core business.

## 2. Statutory Basis

The Exchange believes the proposed rule changes are consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>133</sup> Specifically, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5)<sup>134</sup> requirements that the rules of an exchange be designed to present fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule changes are consistent with the Section 6(b)(5)<sup>135</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Exchange believes that the proposed rule changes further the objectives of Section 6(b)(7) of the Act,<sup>136</sup> in that they provides fair procedures for the disciplining of Members and associated persons, the denial of Member status to any person, the barring

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<sup>133</sup> 15 U.S.C. 78f(b).

<sup>134</sup> 15 U.S.C. 78f(b)(5).

<sup>135</sup> Id.

<sup>136</sup> 15 U.S.C. 78f(b)(7).

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.

In particular, the Exchange believes the proposed rule changes will contribute to the protection of investor and public by having rules related to all disciplinary matters consistent among Cboe BYX Exchange and the Affiliated Exchanges, Cboe Exchange and Cboe C2 Exchange, as well as by bolstering participants' collective understanding of the Exchange's Rules and the Rules of the Affiliated Exchanges. All proposed rule changes are intended to provide clarification and alignment with the Rules of the Affiliated Exchanges. Further, the proposed changes are derived from the Rules of the Affiliated Exchanges, which have been previously reviewed by the Commission.

In particular, the Exchange proposes to amend Rule 8.6, Hearings, to adopt new roles for the Exchange's Business Conduct Committee to compose the Hearing Panel to hear and decide applicable matters under Chapter 8 of the Exchange's Rules. The Exchange proposes to adopt new roles for the Exchange's Business Conduct Committee, which will perform a substantially similar function to the current panel overseeing disciplinary hearings. A Hearing Panel consisting of impartial members will continue to be available to Members and associated persons. Thus, the Exchange believes the proposed changes to Rule 8.6 regarding hearings will not impose any additional burden upon Members or associated persons and will ensure continued fairness in the Exchange's disciplinary procedures. The Exchange believes the proposed changes to Rule 8.6, Hearings, ensures the hearing process for disciplinary matters within the jurisdiction of the Exchange is clearly articulated and easily understandable for all

Members and associated persons. The proposed changes to Rule 8.6 will align the structure of Chapter 8 with that of the corresponding Rulebooks of the Affiliate Exchanges, thus promoting consistency amongst the Exchange and its Affiliate Exchanges. The introduction of the proposed subparagraphs does not present any new or novel issues for the Commission to consider, as the proposed text is identical to text already approved by the Commission, however the Exchange notes that the proposed rule may differ slightly where necessary to conform to existing Exchange rule text.

The proposed rule changes to Rule 8.1, Disciplinary Jurisdiction, Rule 8.2, Complaint and Investigation, Rule 8.3, Expediated Proceeding, Rule 8.4, Charges, Rule 8.5, Answer, Rule 8.8, Offers of Settlement, Rule 8.9, Decision, Rule 8.10, Petition, Rule 8.11, Judgment and Sanction, Rule 8.12, Miscellaneous Provisions, and Rule 8.16, *Ex Parte* Communications provide both clarification and alignment with the Rules of the Affiliated Exchanges. These proposed rule changes amend the language of the Exchange Rules using language taken from the Rules of the Affiliated Exchanges and does not raise any novel rule text that the Commission has not already reviewed. The additional proposal of adding Rule 8.2(m) defining the BCC and detailing its composition adds clarity to the Rules of the Exchange by adding a concrete definition of a term used in both the Rules of the Exchange and its Affiliated Exchanges. Each of these rules changes results in rules no more stringent for Members and associated persons than are currently in place. Therefore, the Exchange believes the proposed changes will not significantly alter the disciplinary standards imposed on Members and associated persons nor impose any significant additional burden. As such, the Exchange believes the proposed changes will continue to ensure the Exchange's disciplinary procedures remain fair to all

Members and associated persons. Additionally, the Exchange believes the proposed changes will result in greater uniformity and less burdensome regulatory compliance for Members and associated persons. Greater uniformity in disciplinary rules across the Exchange and the Affiliated Exchanges will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system.

The proposed amendments to Rule 8.1, Disciplinary Jurisdiction seek to clarify that former Members or associated persons continue to be subject to the Exchange's jurisdiction with respect to their failure to honor an arbitration award. As discussed above, the proposed amendments to Rule 8.1 ensure that a failure to honor a BYX arbitration award by a former Member, or former person associated with a Member remains within the disciplinary jurisdiction of the Exchange. Thus, the proposed change to Rule 8.1 ensures the credibility of the Exchange's arbitration forum thereby protecting investors and the public interest. The Exchange also believes the proposed changes to Rule 8.1 will ensure fairness in the disciplinary procedures of the Exchange by ensuring that failures to pay arbitration awards by former Members and associated persons will remain under the disciplinary jurisdiction of the Exchange. Additionally, the proposed changes to Rule 8.1 will result in aligning the Rules of the Exchange with those of the Affiliated Exchanges, providing greater uniformity in disciplinary rules across the Exchange and the Affiliated Exchanges.

The proposed changes to Rule 8.2, Complaint and Investigation, clarify the contents of the Rule and extend the time a Subject or Respondent has to respond to an inquiry from the Exchange. The proposed addition of subparagraphs (i) – (k) regarding

Identification, Furnishing Materials Upon Request, and the definition of the term “Regulatory Staff” to Rule 8.2 will offer clarity to Members and associated persons regarding the procedures and complaint process and terms used throughout the Rule. Additionally, the proposed changes to Rule 8.2 will align the structure of Chapter 8 with that of the corresponding Rulebooks of the Affiliate Exchanges, thus promoting consistency amongst the Exchange and its Affiliate Exchanges. The introduction of the proposed subparagraphs does not present any new or novel issues for the Commission to consider, as the proposed text is identical to text already approved by the Commission, however the Exchange notes that the proposed rule may differ slightly where necessary to conform to existing Exchange rule text. None of the proposed changes to Rule 8.2 shortens the amount of time allotted to a Subject or Respondent to respond to an inquiry from the Exchange, but rather extends the amount of time that a Subject or Respondent has to respond to an inquiry from the Exchange. As such, the Exchange believes the proposed changes to Rule 8.2 ensure that the Exchange’s disciplinary procedures remain fair to all Members and associated persons. Additionally, the Exchange believes that each of these proposed rule changes protects investors and the public by providing additional information regarding the disciplinary processes of the Exchange and by providing additional time for Subjects and Respondents to respond to an inquiry from the Exchange.

The proposed changes to Rule 8.3, Expedited Proceeding, Rule 8.4, Charges, Rule 8.5, Answer, Rule 8.8, Offers of Settlement, Rule 8.9, Decision, Rule 8.10, Review, Rule 8.11, Judgment and Sanction, Rule 8.12, Miscellaneous Provisions, and Rule 8.16, *Ex Parte* Communications are proposed in order to define terms used throughout the Rules

and make other non-substantive conforming provisions with the purpose of clarifying the language of the Rules and aligning the contents of the Rules with Rules of the Affiliated Exchanges. The Exchange notes that none of these proposed rule changes shortens the amount of time allotted to a Subject or Respondent to respond to an inquiry from the Exchange, but rather extends the amount of time that a Subject or Respondent has to respond to an inquiry from the Exchange. The Exchange believes the proposed changes will not significantly alter the disciplinary procedures of the Exchange nor impose any significant additional burden thereby protecting investors and the public interest and ensuring fairness in the disciplinary procedures of the Exchange. Further, the proposed changes to these Rules are necessary to align the Answer, Decision, and Review sections of Chapter 8 with the proposed changes to Rule 8.6.

Additionally, the Exchange believes the proposed deletion of rule text in Rule 8.14, Agency Review, and Rule 8.18, Release of Disciplinary Complaints, Decisions, and Other Information, contribute to the protection of investors and the public interest by both aligning the Rules of the Exchange with the Rules of the Affiliate Exchanges and by removing duplicative language from the Rules of the Exchange. The Exchange proposes to remove the entire text of both current Rule 8.14, regarding the right to agency review of Exchange disciplinary actions, and Rule 8.18, regarding the release of final disciplinary actions, because each of these rules are duplicative of the rights of Members under other Exchange Rules and the Exchange Act itself. The Exchange believes the proposed changes will continue to ensure fairness in the Exchange's disciplinary procedures because they do not remove or alter any of the rights of Members of associated persons. The Exchange believes that removing the text of each of these rules

will provide clarity to investors regarding the disciplinary processes of the Exchange by eliminating duplicative, and potentially confusing, text from the Rules of the Exchange.

Further, the Exchange believes that revising current Rule 8.14, Agency Review, and replacing the existing text (which is proposed to be deleted) with rule text regarding reporting to the CRD that is substantially similar to Rule 13.4 of the Affiliated Exchanges, contributes to the protection of investors and the public interest by providing investors, the public, and Members with notice of the information the Exchange reports to the CRD regarding disciplinary matters. Together, these changes benefit investors and the public interest by providing additional clarity in the Exchange's rulebook and aligning the Exchange's Rules with that of its Affiliate Exchanges. The proposed addition of rule text regarding reporting to the CRD in proposed Rule 8.14 will also align the structure of Chapter 8 with that of the corresponding rulebooks of the Affiliate Exchanges, thus promoting consistency amongst the Exchange and its Affiliate Exchanges. Additionally, the introduction of the proposed rule text in Rule 8.14 following the deletion of existing rule text does not present any new or novel issues for the Commission to consider, as the proposed text is identical to text already reviewed by the Commission, however the Exchange notes that the proposed rule may differ slightly where necessary to conform to existing Exchange rule text.

Further, the Exchange believes the proposed changes to Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, contribute to the protection of investors and the public interest by both aligning the Rules and procedures of the Exchange with the Rules and procedures of the Affiliate Exchanges and by clearly setting forth the process and requirements of the imposition of fines for minor rule violations. The Exchange is not

proposing to amend any of the rates associated with the imposition of fines for minor rule violations, but rather seeks to clarify only how and when a fine may be imposed. Further, the Exchange seeks to provide additional detail about how a Member may contest a fine imposed by the Exchange. These proposed changes do not impose additional regulatory burdens on Members but instead provide greater clarity and reduce confusion by aligning the process of imposing a fine for a minor rule violation across the Exchange and its Affiliated Exchanges. By clarifying rules and reducing confusion, the Exchange believes the proposed changes to Rule 8.15 collectively ensure fairness in the disciplinary procedures of the Exchange. The proposed amendments to Rule 8.15 are based solely on existing Rule 13.15 of the Affiliated Exchanges. However, the language of the Exchange Rules and the Rules of the Affiliated Exchanges may differ slightly where necessary to conform to existing Exchange rule text or to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges.

Additionally, the Exchange believes the proposed changes to align the language of the Rules of the Exchange with those of the Affiliated Exchanges promote consistency and improve understanding of the Rules across BYX Exchange and its Affiliated Exchanges. The proposed rule changes to Chapter 8 are based on the existing Rules of the Affiliated Exchanges. However, the language of the Exchange Rules and the Rules of the Affiliated Exchanges may differ slightly where necessary to conform to existing Exchange rule text or to account for details or descriptions included in the Exchange's Rules but not in the applicable Rules of the Affiliated Exchanges. The Exchange believes aligning the Rules of the Exchange with the Rules of the Affiliated Exchanges will result in greater uniformity and less burdensome regulatory compliance for the Exchange and

its Members. As such, the Exchange believes maintaining uniformity will foster cooperation and coordination with persons engaged in facilitating trading on the Exchange and its Affiliated Exchanges and will remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the proposed rule changes apply equally to all Members, persons associated with a Member, and former Members in that each of these parties are subject to the proposed disciplinary rules, thereby ensuring fairness in the disciplinary procedures of the Exchange. As such, the Exchange believes the proposed rule changes also promote the just and equitable principles of trade and are not unfairly discriminatory.

The Exchange also believes that the proposed amendments will collectively contribute to the protection of investors and the public interest by making the Exchange's Rules easier to understand, standing alone and collectively with the rules of its Affiliated Exchanges. In addition, the proposed rule changes include other non-substantive changes throughout the rules that will protect investors and benefit market participants, as these changes simplify or clarify rules, delete duplicative rule provisions, conform paragraph numbering and lettering throughout the rules, use plain English, and conform language to the corresponding rules of its Affiliated Exchanges where feasible. By simplifying and clarifying rules, the Exchange believes the proposed changes also collectively ensure fairness in the disciplinary procedures of the Exchange.

Finally, the Exchange believes the proposed rule change is consistent with Section 6(b)(1) of the Act, which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's Members and associated persons with the Act, the rules and regulations

thereunder, and the Rules of the Exchange. As stated, the proposed rule changes conform the Exchange's disciplinary procedures and Rules to the disciplinary procedures and Rules of its Affiliated Exchanges. Thus, the Exchange believes these proposed changes create uniformity, which allows for the Exchange to organize consistently with the Affiliated Exchanges and to more easily apply its disciplinary rules to Members of the Exchange and Trading Permit Holders on the Affiliated Exchanges.

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

The Exchange does not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule changes do not create an unnecessary or inappropriate intra-market burden on competition because the proposed changes will apply uniformly to all Members of the Exchange. Thus, the Exchange believes this proposed rule changes will reduce the burden on Exchange participants by providing consistent and clear Rules among the Exchange and the Affiliated Exchanges. Further, the proposed changes are not designed to address any competitive issues. Indeed, the proposed rule changes do not create an unnecessary or inappropriate inter-market burden on competition because the proposed rule changes are intended to harmonize the Exchange Rules with that of the Affiliated Exchanges.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

Because the foregoing proposed rule change does not:

A. significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>137</sup> and Rule 19b-4(f)(6)<sup>138</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### **IV. Solicitation of Comments**

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

##### Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CboeBYX-2026-021 on the subject line.

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<sup>137</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>138</sup> 17 CFR 240.19b-4(f)(6).

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-CboeBYX-2026-021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the filing will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-CboeBYX-2026-021 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>139</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

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<sup>139</sup> 17 CFR 200.30-3(a)(12).

## EXHIBIT 5

(additions are underlined; deletions are [bracketed])

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**Rules of Cboe BYX Exchange, Inc.**

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## Rule 8.1. Disciplinary Jurisdiction

(a) No Change.

(b) Any Member or person associated with a Member shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such person's membership or association with a Member with respect to matters that occurred prior to such termination or with respect to the failure to honor an arbitration award pursuant to Chapter IX of the Exchange Rules; provided that written notice of the commencement of an inquiry into such matters is given by the Exchange to such former Member or former associated person within one year of receipt by the Exchange of the latest written notice of the termination of such person's status as a Member or person associated with a Member. The foregoing notice requirement does not apply to a person who at any time after a termination again subjects himself or herself to the disciplinary jurisdiction of the Exchange by becoming a Member or a person associated with a Member.

(c) No Change.

(d) The notice requirement in paragraph (b) of this Rule shall not apply in instances where the Exchange seeks to act under this Chapter VIII with respect to a former Member or person associated with a Member for the failure to honor an arbitration award pursuant to Chapter IX of the Rules.[The Exchange may contract with another self-regulatory organization to perform some or all of the Exchange's disciplinary functions. In that event, the Exchange shall specify to what extent the Rules in this Chapter VIII shall govern Exchange disciplinary actions and to what extent the rules of the other self-regulatory organization shall govern such actions. Notwithstanding the fact that the Exchange may contract with another self-regulatory organization to perform some or all of the Exchange's disciplinary functions, the Exchange shall retain ultimate legal responsibility for and control of such functions.]

## Rule 8.2. Complaint and Investigation

(a) Initiation of Investigation

The Regulatory staff, and any successor thereto, shall investigate or examine possible violations[The Exchange, or the designated self-regulatory organization, when appropriate, shall investigate possible violations] within the disciplinary jurisdiction of the Exchange whenever the Regulatory staff determines there is a reasonable basis for it to do so. The Regulatory staff shall also investigate or examine any complaint it receives alleging possible violations within the

disciplinary jurisdiction of the Exchange, provided such complaint specifies in reasonable detail the facts constituting the violation. Complaints, written or oral, may be submitted by any person or entity, including the Board, Exchange employees, and Members (the “Complainant”). [which are brought to its attention in any manner, or upon order of the Board, the CRO or other Exchange officials designated by the CRO, or upon receipt of a complaint alleging such violation.]

(b) Report

Regulatory staff shall have the sole discretion to determine whether to request that the Chief Regulatory Officer (“CRO”) authorize the issuance of a statement of charges pursuant to Rule 8.4. In every instance where an investigation has been instituted as a result of a complaint, and in every other instance where an investigation results in the Regulatory staff finding that there are reasonable grounds to believe that a violation has been committed and a formal regulatory action (i.e., a Statement of Charges) is warranted, the Regulatory staff shall submit a written report of its investigation to the CRO. In those instances where an investigation results in the Regulatory staff finding that there are reasonable grounds to believe that a violation has been committed but non-formal regulatory action (i.e., a Letter of Information, a Letter of Caution or a Staff Interview) is warranted in lieu of the issuance of a statement of charges, the Regulatory staff may in its sole discretion determine to impose such non-formal regulatory action without the submission of a written report of its investigation to the CRO. In the event the Regulatory staff finds that there are not reasonable grounds to believe that a violation has been committed, the Regulatory staff may in its sole discretion determine to close the investigation (i.e., File Without Action) without the submission of a written report of its investigation to the CRO.[In every instance where an investigation has been instituted as a result of a complaint, and in every other instance in which an investigation results in a finding that there are reasonable grounds to believe that a violation has been committed, a written report of the investigation shall be submitted to the CRO by the Exchange’s staff or, when appropriate, by the designated self-regulatory organization.]

(c) Requirement to Furnish Information and Right to Counsel

Each Member and person associated with a Member shall be obligated upon request by the Exchange to appear and testify, and to respond in writing to interrogatories and furnish documentary materials and other information requested by the Exchange in connection with (i) an investigation initiated pursuant to paragraph (a) of this Rule, [or ](ii) a hearing or appeal conducted pursuant to this Chapter or preparation by the Exchange in anticipation of such a hearing or appeal, or (iii) an Exchange inquiry resulting from an agreement entered into by the Exchange pursuant to Rule 8.2(f), Rule 8.2(g), or Rule 13.7. No Member or person associated with a Member shall impede or delay an Exchange investigation or proceeding conducted pursuant to this Chapter nor refuse to comply with a request made by the Exchange pursuant to this paragraph. A Member or person associated with a Member is entitled to be represented by counsel during any such Exchange investigation, proceeding or inquiry.

(d) Notice, Statement and Access

Prior to submitting its report, the staff shall notify the person(s) who is the subject of the report (hereinafter “Subject”) of the general nature of the allegations and of the specific provisions of the Act, rules and regulations promulgated thereunder, or provisions of the Certificate of

Incorporation, By-Laws or Rules of the Exchange or any interpretation thereof or any resolution of the Board regulating the conduct of business on the Exchange, that appear to have been violated. Except when the CRO determines that expeditious action is required, a Subject shall have 2[1]5 days from the date of the notification described above to submit a written statement to the CRO concerning why no disciplinary action should be taken. To assist a Subject in preparing such a written statement, the Subject[he or she] shall have access to any documents and other materials in the investigative file of the Exchange that were furnished by the Subject or the Subject's[him or her or his or her] agents. The 25-day period to submit a written statement shall toll while any request for access to the investigative file pursuant to this section is pending.

(e) – (g) No Change.

(h) Videotaped Responses

In lieu of, or in addition to, submitting a written statement concerning why no disciplinary action should be taken as permitted by paragraph (d) of this Rule, the Subject may submit a statement in the form of a videotaped response. Except when the CRO determines that expeditious action is required, the Subject shall have 2[1]5 days from the date of the notification described in paragraph (d) to submit the videotaped response. Videotaped responses shall not exceed 12 minutes and must be accompanied by a written transcript of the response.[The Exchange will establish standards concerning the length and format of such videotaped responses.]

(i) Identification

To assist the Regulatory staff in investigating possible violations within the Exchange's disciplinary jurisdiction, Complainants should sign written complaints or identify themselves when making oral complaints pursuant to paragraph (a) of this Rule, and also identify the specific statutes, Bylaws, rules, interpretations or resolutions that allegedly were violated.

(j) Furnishing Materials Upon Request

In addition to the existing obligation under Exchange rules regarding the production of books and records, each Member or Member organization shall furnish upon request, in the manner and standard electronic format prescribed by the Exchange, data concerning orders, transactions, and positions, including related hedges and offsets, in relation to a regulatory review conducted by the Regulatory staff.

(k) Regulatory Staff

References to "Regulatory staff" in Chapter 8 mean the Exchange's employees in the regulatory division, and, as applicable, may also mean employees of FINRA who are performing regulatory services to the Exchange in accordance with the regulatory services agreement entered into between the Exchange and FINRA.

(m) Business Conduct Committee

The Business Conduct Committee ("BCC") is a committee of Board with decision-making authority concerning possible violations within the disciplinary jurisdiction of the Exchange. The

BCC is comprised of one or more Member or person associated with a Member, one or more public representatives, and may also include other individuals affiliated with the securities, futures or derivatives industry, all as appointed by the Exchange's Nominating and Governance Committee with the approval of the Exchange's Board of Directors.

### Rule 8.3. Expedited Proceeding

Upon receipt of the notification required by Rule 8.2(d), a Subject may seek to dispose of the matter through a letter of consent signed by the Subject. If a Subject desires to attempt to dispose of the matter through a letter of consent, the Subject must submit to the staff within 2[1]5 days from the date of the notification required by Rule 8.2(d) a written notice electing to proceed in an expedited manner pursuant to this Rule 8.3. The Subject must then endeavor to reach agreement with the Regulatory[Exchange's] staff upon a letter of consent which is acceptable to the Regulatory staff and which sets forth a stipulation of facts and findings concerning the Subject's conduct, the violation(s) committed by the Subject and the sanction(s) therefor. The matter can only be disposed of through a letter of consent if the Regulatory staff and the Subject are able to agree upon terms of a letter of consent which are acceptable to the staff and the letter of consent is signed by the Subject. At any point in the negotiations regarding a letter of consent, either the Regulatory staff may deliver to the Subject or the Subject may deliver to the staff a written declaration of an end to the negotiations. On delivery of such a declaration the S[s]ubject will then have 2[1]5 days to submit a written statement pursuant to Rule 8.2(d) and thereafter the Regulatory staff may bring the matter to the CRO for appropriate action. If the letter of consent is accepted by the CRO, the Exchange shall[may] adopt the letter of consent as its decision and shall take no further action against the Subject respecting the matters that are the subject of the letter of consent. If the letter of consent is rejected by the CRO, the matter shall proceed as though the letter of consent had not been submitted. Upon rejection, the Subject will then have 2[1]5 days to submit a written statement pursuant to Rule 8.2(d). The CRO's decision to accept or reject a letter of consent shall be final, and a Subject may not seek review thereof.

### Rule 8.4. Charges

#### (a) Determination Not to Initiate Charges

In those cases where notice has been provided pursuant to Rule 8.2(d) and whenever it shall appear to the CRO from the report of the Regulatory staff that no probable cause exists for finding a violation within the disciplinary jurisdiction of the Exchange, or if the CRO otherwise determines that no further action is warranted, the CRO shall direct the Regulatory staff to prepare and issue a written statement to that effect setting forth the CRO's reasons for such finding, which shall be sent to the Subject and the Complainant, if any. [Whenever it shall appear to the CRO from the investigation report that no probable cause exists for finding a violation within the disciplinary jurisdiction of the Exchange, or whenever the CRO otherwise determines that no further proceedings are warranted, he or she shall issue a written statement to that effect setting forth the reasons for such finding.]

#### (b) Initiation of Charges

Whenever it shall appear to the CRO from the report of the Regulatory staff that there is probable cause for finding a violation within the disciplinary jurisdiction of the Exchange and that further proceedings are warranted, the CRO shall direct the Regulatory staff to prepare and issue[ance of] a statement of charges against the person or organization alleged to have committed a violation (the “Respondent”)[Respondent] specifying the acts in which the Respondent is charged to have engaged and setting forth the specific provisions of the Act, rules and regulations promulgated thereunder, By-Laws, Exchange Rules, interpretations or resolutions of which such acts are in violation. A copy of the charges shall be served upon the Respondent in accordance with Rule 8.12. The Complainant, if any, shall be notified if further proceedings are warranted.

(c) Access to Documents

Provided that a Respondent has made a written request for access to documents within 25 days after a statement of charges has been served upon the Respondent in accordance with Rule 8.12, the Respondent shall have access to all documents concerning the case that are in the investigative file of the Exchange except for Regulatory staff investigation and examination reports and materials prepared by the Regulatory staff in connection with such reports or in anticipation of a disciplinary hearing. In providing such documents, the Regulatory staff may protect the identity of a Complainant.

Rule 8.5. Answer

The Respondent shall have 2[1]5 business days after service of the charges to file a written answer thereto. The answer shall specifically admit or deny each allegation contained in the charges, and the Respondent shall be deemed to have admitted any allegation not specifically denied. The answer may also contain any defense which the Respondent wishes to submit and may be accompanied by documents in support of his answer or defense. In the event the Respondent fails to file an answer within the time provided, the charges shall be considered to be admitted. The 25-day period to submit a written answer shall toll while any request for access to the investigative file pursuant to Rule 8.4(c) is pending.

Rule 8.6. Hearings

(a) Participants[Selection of Hearing Panel]

Subject to Rule 8.7 of this Chapter concerning summary proceedings, a hearing on the charges shall be held before a panel of either three or five members of the Business Conduct Committee selected by the Chairperson of the BCC. The selected members of the BCC shall exercise the authority of the BCC in respect of matters pertaining to the hearing and for purposes of this Chapter shall be referred to as the “Hearing Panel.” The Exchange and the Respondent shall be the parties to the hearing. Where a Member organization is a party, it shall be represented by one of the Member organization’s Principal or nominees at the hearing. BCC Counsel may assist the Hearing Panel in preparing its written recommendations or judgments.

(1) Impartiality of Hearing Panel Members. When any member of the Hearing Panel considers a disciplinary matter they are expected to function impartially and independently of the staff members who prepared and prosecuted the charges. If at any time a member of the Hearing Panel determines that they have a conflict of interest or bias

or circumstances otherwise exist where their fairness might reasonably be questioned, the applicable member of the Hearing Panel shall notify the Chairperson of the BCC who shall issue and serve on the parties a notice stating that the Hearing Panel member has withdrawn from the matter. In the event that a member of a Hearing Panel withdraws, is incapacitated, or otherwise is unable to continue service after being appointed, the Chairperson of the BCC shall appoint a replacement to serve on the Hearing Panel. [Definitions. For purposes of this paragraph (a), the terms set forth below shall have the following meanings:]

[(A) The term “Industry member” means a member of any hearing panel who (i) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (iii) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the member or 20 percent or more of the gross revenues received by the member’s firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director’s, officer’s, or employee’s professional capacity and constitute 20 percent or more of the professional revenues received by the member or 20 percent or more of the gross revenues received by the member’s firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to the Exchange or any affiliate thereof or has had any such relationship or provided any such services at any time within the prior three years.

(B) The term “Member Representative member” means a member of any hearing panel who is an officer, director, employee or agent of an Exchange Member.]

(2) Motions for Disqualification. Within 15 days of the appointment of the Hearing Panel, the Respondent may move for disqualification of any member of the Hearing Panel sitting on such Panel based upon bias or conflict of interest. Such motions shall be made in writing and state with specificity the facts and circumstances giving rise to the alleged bias or conflict of interest. The motion papers shall be filed with the Chairperson of the BCC. The Exchange may file a brief in opposition to the Respondent’s motion within 15 days of service thereof. [Subject to Rule 8.7. concerning summary proceedings, a hearing on the charges shall be held before a panel of three (3) hearing officers (the “Hearing Panel”) appointed by the Chief Executive Officer. Each Hearing Panel shall be comprised as follows: (i) a professional hearing officer, who shall serve as Chairman of the Hearing Panel, (ii) a hearing officer who is an Industry member, as such term is defined in Rule 8.6, and (iii) a hearing officer who is a Member Representative member, as such term is defined

in Rule 8.6 (each a “Hearing Officer”). Prospective Hearing Officers shall be required to disclose to the Exchange their employment history for the past 10 years, any past or current material business or other financial relationships with the Exchange or any members of the Exchange, and any other information deemed relevant by the Exchange. Such disclosures relating to the particular Hearing Officers selected by the Chief Executive Officer shall be provided to the Respondent upon request after the selection of the Hearing Panel. In selecting Hearing Officers for a particular matter, the Chief Executive Officer should give reasonable consideration to the prospective Hearing Officers’ professional competence and reputation, experience in the securities industry, familiarity with the subject matter involved, the absence of bias and any actual or perceived conflict of interest, and any other relevant factors.]

(3) Rulings on Motions for Disqualification. The Hearing Panel, excluding the applicable member of the Hearing Panel at issue, shall rule upon such motion no later than 30 days from filing by the Respondent. Prior adverse rulings against the Respondent or Respondent’s attorney in other matters shall not, in and of themselves, constitute grounds for disqualification. If the Hearing Panel believes the Respondent has provided satisfactory evidence in support of the motion to disqualify, the applicable member of the Hearing Panel shall remove themselves and request the Chairperson of the BCC to reassign the hearing to another member of the BCC. If the Hearing Panel determines that the Respondent’s grounds for disqualification are insufficient, it shall deny the Respondent’s motion for disqualification by setting forth the reasons for the denial in writing and the Hearing Panel will precede with the hearing. The ruling by the Hearing Panel on such motions shall not be subject to interlocutory review.

(b) Prehearing Procedures[Impartiality of Hearing Officers]

Parties shall be given at least 15 business days’ notice of the time and place of the hearing. Hearings are typically held in Chicago, but, the Hearing Panel may decide to hold a hearing outside of Chicago to accommodate the parties, witnesses, Exchange staff, or the Hearing Panel members. Not less than ten (10) business days in advance of the scheduled hearing date, each party shall furnish to the Hearing Panel and to the other parties copies of all documentary evidence such party intends to present at the hearing and a list containing the names of all witnesses the party intends to present at a hearing. Where time and the nature of the proceeding permit, the parties shall meet in a pre-hearing conference for the purpose of clarifying and simplifying issues and otherwise expediting the proceeding. At such pre-hearing conference, the parties shall attempt to reach agreement respecting authenticity of documents, facts not in dispute, and any other items which will serve to expedite the hearing of the matter. At the request of any party, the Hearing Panel or Hearing Panel Chairperson shall hear and decide all pre-hearing issues not resolved among the parties. Interlocutory Board review of any decision made by the Hearing Panel prior to completion of the hearing is generally prohibited. Such interlocutory review shall be permitted only if the Hearing Panel agrees to such review after determining that the issue is a controlling issue of rule or policy and that immediate Board review would materially advance the ultimate resolution of the case. [When any Hearing Officer considers a disciplinary matter he or she is expected to function impartially and independently of the staff members who prepared and prosecuted the charges. Exchange counsel may assist the Hearing Panel in preparing its written recommendations or judgments. Within 15 days of the appointment of the Hearing Panel, the Respondent may move

for disqualification of any Hearing Officer sitting on such Panel based upon bias or conflict of interest. Such motions shall be made in writing and state with specificity the facts and circumstances giving rise to the alleged bias or conflict of interest. The motion papers shall be filed with the Hearing Panel and the Secretary of the Exchange. The Exchange may file a brief in opposition to the Respondent's motion within 15 days of service thereof. The Hearing Panel shall rule upon such motion no later than 30 days from filing by the Respondent. Prior adverse rulings against the Respondent or Respondent's attorney in other matters shall not, in and of themselves, constitute grounds for disqualification. If the Hearing Panel believes the Respondent has provided satisfactory evidence in support of the motion to disqualify, the applicable Hearing Officer shall remove himself or herself and request the Chief Executive Officer to reassign the hearing to another Hearing Officer such that the Hearing Panel still meets the compositional requirements described in Rule 8.6(a). If the Hearing Panel determines that the Respondent's grounds for disqualification are insufficient, it shall deny the Respondent's motion for disqualification by setting forth the reasons for the denial in writing and the Hearing Panel will precede with the hearing. The ruling by the Hearing Panel on such motions shall not be subject to interlocutory review.]

[(c) Notice and List of Documents

Participants shall be given at least 15 business days' notice of the time and place of the hearing and a statement of the matters to be considered therein. All documentary evidence intended to be presented in the hearing by the Respondent, the Exchange, or the designated self-regulatory authority must be received by the Hearing Panel at least eight (8) days in advance of the hearing or it may not be presented in the hearing. The parties shall furnish each other with a list of all documents submitted for the record not less than four (4) business days in advance of the hearing, and the documents themselves shall be made available to the parties for inspection and copying.]

(c[d]) Conduct of Hearing

The Hearing Panel shall determine all questions concerning the admissibility of evidence and shall otherwise regulate the conduct of the hearing. Formal rules of evidence shall not apply. The charges shall be presented by a representative of the Exchange or the designated self-regulatory authority who, along with the Respondent and any other party, may present evidence and produce witnesses who shall testify under oath and are subject to being questioned by the Hearing Panel and the other[opposing] parties. The Respondent and intervening parties are [is] entitled to be represented by counsel who may participate fully in the hearing. A transcript of the hearing shall be made and shall become part of the record.

(d) Documents and Witnesses

The Hearing Panel may request the production of documentary evidence and witnesses. If the Exchange, a Member, or a person associated with a Member will not voluntarily produce non-privileged documents or hearing witnesses the Respondent has requested, the Respondent may submit a written request to the Hearing Panel asking the Hearing Panel to enter an order compelling the production of non-privileged documents by the Exchange, the Member, or associated person or compelling the testimony of the Member, associated person, or a person within the Exchange's control. Before entering such order, the Hearing Panel must hear any objections raised by

Exchange staff to the issuance of such an order. When deciding whether to issue the requested order, the Hearing Panel shall weigh the probative value of the documents or testimony against considerations such as undue delay, waste of time, confusion, unfair prejudice or needless presentation of cumulative evidence. As a condition to issuing such an order, the Hearing Panel may require the Respondent to pay the costs of complying with the requested order including a witness's travel expenses. No Member or person associated with a Member shall refuse to furnish relevant testimony, documentary materials or other information requested or ordered by the Hearing Panel.

(e) Intervention

Any person not otherwise a party may intervene as a party to the hearing upon demonstrating to the satisfaction of the Hearing Panel that that person has an interest in the subject of the hearing and that the disposition of the matter, may, as a practical matter, impair or impede that person's ability to protect that interest. Also, the Hearing Panel may in its discretion permit a person to intervene as a party to the hearing when the person's claim or defense and the main action have questions of law or fact in common. Any person wishing to intervene as a party to a hearing shall file with the Hearing Panel a notice requesting the right to intervene, stating the grounds therefor, and setting forth the claim or defense for which intervention is sought.

(1) The Hearing Panel, in exercising its discretion concerning intervention shall take into consideration whether the intervention will unduly delay or prejudice that adjudication of the rights of the original parties.

(2) Subject to Rule 8.7, the CRO shall have the authority to direct that a hearing be scheduled at any time, after the period to answer pursuant to Rule 8.5 has elapsed.

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Rule 8.8. Offers of Settlement

- (a) No Change.
- (b) Submission of Statement

A Respondent may submit with an offer of settlement a written statement in support of the offer. In addition, if the staff will not recommend acceptance of an offer of settlement before the CRO, a Respondent shall be notified and may appear before the CRO to make an oral statement in support of his/her offer. Finally, if the CRO rejects an offer that the staff supports, a Respondent may appear before the CRO to make an oral statement concerning why he/she believes the CRO should change his or her decision and accept Respondent's offer[, and if Respondent makes such appearance, the staff may also appear before the CRO to make an oral statement in support of its position]. A Respondent must make a request for such an appearance within 5 days of being notified that the offer was rejected or that the staff will not recommend acceptance.

- (c) No Change.
- (d) Presentment of Offers of Settlement

Subject to paragraph (c) of this Rule, a Respondent may propose a written offer of settlement during the course of any proceeding under this Chapter. If the Respondent wants to submit an offer of settlement subsequent to a hearing being scheduled pursuant to Rule 8.6, the Hearing Panel shall grant the parties leave from the hearing for the offer of settlement to be presented to the CRO for consideration under paragraph (a) of this rule.

#### Rule 8.9. Decision

Following a hearing conducted pursuant to Rule 8.6 of this Chapter, the Hearing Panel shall prepare a decision in writing, based solely on the record, determining whether the Respondent has committed a violation and imposing the penalty, if any, therefor. The decision shall include a statement of findings and conclusions, with the reasons therefor, upon all material issues presented on the record. Where a penalty is imposed, the decision shall include a statement specifying the acts or practices in which the Respondent has been found to have engaged and setting forth the specific provisions of the Act, rules and regulations promulgated thereunder, By-Laws, Exchange Rules, interpretations or resolutions of which the acts are deemed to be in violation, and a statement of the penalties imposed and the reasons therefor. The Respondent and regulatory division shall promptly be sent a copy of the decision. After Board review pursuant to Rule 8.10, or the time for such review has expired, the decision will be considered final, and the Exchange shall post the complete decision on the appropriate BZX website.

#### Rule 8.10. Review

##### (a) Petition

Both t[T]he Respondent and the regulatory division shall have 15[ten (10)] days after service of notice of a decision made pursuant to Rule 8.9 of this Chapter to petition for review of the decision by filing a copy of the petition with the Secretary of the Exchange (“Secretary”) and with all other parties to the hearing[thereof]. Such petition shall be in writing and shall specify the findings and conclusions to which exceptions are taken together with reasons for such exceptions. Any objections to a decision not specified by written exception shall be considered to have been abandoned.

(1) Written Submissions. Within 15 days after a petition for review has been filed with the Secretary of the Exchange pursuant to paragraph (a) of this Rule, the other parties to the hearing may each submit to the Secretary a written response to the petition. A copy of the response must be served upon the petitioner. The petitioner has 15 days from the service of the response to file a reply with the Secretary and the other parties to the hearing.

##### (b) Conduct of Review

The review shall be conducted by the Board or a committee of the Board composed of at least three Directors whose decision must be ratified by the Board. Any Director who participated in a matter before the Hearing Panel or other Committee may not participate in any review of that matter by the Board. Unless the Board shall decide to open the record for the introduction of evidence or to hear argument, such review shall be based solely upon the record and the written exceptions filed by the parties. New issues may be raised by the Board; the parties to the hearing shall be given notice of and an opportunity to address any such new issues. The Board may affirm,

reverse or modify, in whole or in part, the decision of the Hearing Panel. Such modification may include an increase or decrease of the penalty. The decision of the Board shall be in writing, shall be promptly served on the Respondent and the regulatory division,[Appeals Committee of the Board. Unless the Appeals Committee shall decide to open the record for introduction of evidence or to hear argument, such review shall be based solely upon the record and the written exceptions filed by the parties. The Appeals Committee's decision shall be in writing] and shall be final.

(c) Review on Motion of Board

The Board may on its own initiative order review of a decision made pursuant to Rule 8.7 or 8.9 of this Chapter within 3[2]0 business days after notice of the decision has been served on the Respondent and the regulatory division[issuance of the decision]. Such review shall be conducted in accordance with the procedure set forth in paragraph (b) of this Rule.

[(d) Review of Decision Not to Initiate Charges

Upon application made by the Chief Executive Officer within 30 days of a decision made pursuant to Rule 8.4(a) of this Chapter, the Board may order review of such decision. Such review shall be conducted in accordance with the procedures set forth in paragraph (b), as applicable.]

Rule 8.11. Judgement and Sanction

(a) *Sanctions.* Members and persons associated with Members shall (subject to any rule or order of the Securities and Exchange Commission) be appropriately disciplined by the CRO[,] or Hearing Panel[ or committee of the Board], as applicable, for violations under these Rules by expulsion, suspension, limitation of activities, functions and operations, fine, censure, being suspended or barred from being associated with a Member, suspension or revocation of membership, or any other fitting sanction.

(b) *Effective Date of Judgment.* Penalties imposed under this Chapter shall not become effective until the review process is completed or the decision otherwise becomes final. Pending effectiveness of a decision imposing a penalty on the Respondent, the CRO, or Hearing Panel[ or committee of the Board], as applicable, may impose such conditions and restrictions on the activities of the Respondent as he, she or it considers reasonably necessary for the protection of investors, creditors and the Exchange.

(c) *Principal Considerations In Determining Sanctions.* To promote consistency and uniformity in the imposition of penalties, the following Principal Considerations in Determining Sanctions should be considered in connection with the imposition of sanctions in all cases in determining appropriate remedial sanctions through the resolution of disciplinary matters through offers of settlement or after formal disciplinary hearings.

(1) Disciplinary sanctions are remedial in nature. The CRO[,] or Hearing Panel[ or committee of the Board], as applicable, should design sanctions to prevent and deter future misconduct by wrongdoers, to discourage others from engaging in similar misconduct, and to improve overall business standards of Exchange Members. Pursuant to Rule 8.11, the CRO[,] or Hearing Panel[ or committee of the Board], as applicable, may impose sanctions

including expulsion, suspension, limitation of activities, fine, censure, suspension or revocation of one or more Members, or any other fitting sanction.

(2) An important objective of the disciplinary process is to deter future misconduct by imposing progressively escalating sanctions on recidivists. The CRO[, ] or Hearing Panel[ or committee of the Board], as applicable, should consider a party's relevant disciplinary history in determining sanctions.

(3) The CRO[, ] or Hearing Panel[ or committee of the Board], as applicable, should consider prior similar disciplinary decisions (relevant precedent) in determining an appropriate sanction and may consider relevant precedent from other self-regulatory organizations.

(4) The CRO[, ] or Hearing Panel[ or committee of the Board], as applicable, should tailor sanctions to address the misconduct at issue. The CRO[, ] or Hearing Panel[ or committee of the Board], as applicable, should impose sanctions tailored to the misconduct at issue. For example, the CRO[, ] or Hearing Panel[ or committee of the Board], as applicable, may require a Member to, among other things: retain a qualified independent consultant to improve future compliance with regulatory requirements; disclose disciplinary history to new and/or existing clients; implement heightened supervision of certain employees; or requalify by examination in any or all registered capacities.

(5) Aggregation of violations may be appropriate in certain instances for purposes of determining sanctions. The CRO[, ] or Hearing Panel[ or committee of the Board], as applicable, may aggregate individual violations of particular rules and treat such violations as a single offense for purposes of determining sanctions. Aggregation may be appropriate when the Exchange utilizes a comprehensive surveillance program in the detection of potential rules violations. Aggregation may also be appropriate where the Exchange has reviewed activity over an extensive time period during the course of an investigation of matters disclosed either through a routine examination of the Member or as the result of a complaint. Similarly, where no exceptional circumstances are present, the Exchange may impose a fine based upon a determination that there exists a pattern or practice of violative conduct. The Exchange also may aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations resulted from a single systemic problem or cause that has been corrected.

(6) The CRO[, ] or Hearing Panel[ or committee of the Board], as applicable, should evaluate appropriateness of disgorgement and/or restitution. The CRO[, ] or Hearing Panel[ or committee of the Board], as applicable, should evaluate the appropriateness of disgorgement and/or restitution in those cases where the amount of harm is quantifiable and the harmed party is identifiable.

(7) The CRO[, ] or Hearing Panel[ or committee of the Board], as applicable, should consider contributions or settlements by a respondent or any related Member to the harmed party as it relates to the conduct that is the subject of the disciplinary matter.

(8) The CRO[,] or Hearing Panel[ or committee of the Board], as applicable, may consider a party's inability to pay in connection with the imposition of monetary sanctions.

*[Interpretations and Policies*

.01 Exchange staff shall make all necessary filings concerning formal and informal disciplinary actions required under the Act and the rules and regulations promulgated thereunder, and shall take all other actions necessary to comply with any other applicable law or regulation.]

Rule 8.12. Miscellaneous Provisions

(a) Service of Notice

Any charges, notices or other documents may be served upon the Respondent either personally or by leaving the same at the Respondent's[his] place of business or by deposit in the United States post office, postage prepaid, by registered or certified mail addressed to the Respondent at the Respondent's[his] last known place of business as it appears on the books and records of the Exchange. If service is made by registered or certified mail, three days shall be added to the prescribed period for response.

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Rule 8.14. Reporting to the Central Registration Depository[Agency Review]

(a) The Exchange shall report to the Central Registration Depository ("CRD") the following information concerning formal Exchange disciplinary proceedings: (i) the issuance of a statement of charges pursuant to Exchange Rule 8.4(b) and (ii) all significant changes in the status of such proceedings while such proceedings are pending.[Actions taken by the Exchange under this Chapter shall be subject to the review and action of any appropriate regulatory agency under the Act.]

(b) For the purposes of this Rule:

(1) A formal Exchange disciplinary proceeding shall be considered to be pending from the time that a statement of charges is issued in such proceeding pursuant to Exchange Rule 8.4(b) until the outcome of the proceeding becomes final.

(2) An Exchange disciplinary proceeding shall be considered to be a formal disciplinary proceeding if it is initiated by the Exchange pursuant to Exchange Rule 8.1 through 8.13.

(3) Significant changes in the status of a formal Exchange disciplinary proceeding shall include, but not be limited to, the scheduling of a disciplinary hearing, the issuance of a decision by the CRO or Hearing Panel, as applicable, the filing of an appeal to the Board of Directors of the Exchange, and the issuance of a decision by the Board of Directors of the Exchange.

Rule 8.15. Imposition of Fines for Minor Violation(s) of Rules

(a) In lieu of commencing a disciplinary proceeding as described in Rules 8.1 through 8.13, the Exchange may, subject to the requirements set forth in this Rule, impose a fine, not to exceed \$[2,500]5,000, on any Member, associated person of a Member, or registered or non-registered employee of a Member, with respect to any rule violation listed in *Interpretations and Policies* .01 to Rule 8.15 and Rule 25.3. For purposes of imposing fines pursuant to *Interpretations and Policies* to Rule 8.15 and Rule 25.3(d), the Exchange may aggregate individual violations of particular rules and treat such violations as a single offense, provided that such aggregation is based upon a comprehensive automated surveillance program. [for any violation of a Rule of the Exchange, which violation the Exchange shall have determined is minor in nature. ]In other instances, t[T]he Exchange may, if no exceptional circumstances are present, impose a fine based upon a determination that there exists a pattern or practice of violative conduct. The Exchange also may aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations resulted from a single systemic problem or cause that has been corrected. Any fine imposed pursuant to this Rule that (1) does not exceed \$2,500 and (2) is not contested, shall be reported by the Exchange to the Securities and Exchange Commission (“SEC”) on a periodic, rather than a current, basis, [and is not contested shall not be publicly reported]except as may be required by Rule 19d-1 under the Act or as may be required by any other regulatory authority.

(b) In any action taken by the Exchange pursuant to this Rule, any[the] person against whom a fine is imposed shall be served (as provided in Rule 8.12) with a written statement, prepared by the Exchange[signed by an authorized officer of the Exchange], setting forth: (i) the Rule or Rules alleged to have been violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each such violation; and (iv) the date by which such determination becomes final and such fine becomes due and payable to the Exchange, or such determination must be contested as provided[ in paragraph (d)] below, which date shall be not less than thirty (30) days after the date of service of such written statement. The issuance of a fine, a Member’s failure to contest the fine, or a Member’s submission and/or the Exchange’s acceptance of an offer of settlement in accordance with the provisions of Rule 8.15 do not constitute an admission.[such date to be not less than 15 business days after the date of service of the written statement.]

[(c) If the person against whom a fine is imposed pursuant to this Rule pays the fine, such payment shall be deemed to be a waiver by such person of such person’s right to a disciplinary proceeding under Rules 8.1 through 8.13 and any review of the matter by the Appeals Committee or by the Board.]

[(d)](c) Contestation of Fines.[Any person against whom a fine is imposed pursuant to this Rule may contest the Exchange’s determination by filing with the Exchange not later than the date by which such determination must be contested, a written response meeting the requirements of an Answer as provided in Rule 8.5 at which point the matter shall become a disciplinary proceeding subject to the provisions of Rules 8.1 through 8.13. In any such disciplinary proceeding, if the Hearing Panel determines that the person charged is guilty of the rule violation(s) charged, the Hearing Panel shall (i) be free to impose any one or more disciplinary sanctions and (ii) determine whether the rule violation(s) is minor in nature. The person charged and the Board of the Exchange may require a review by the Board of any determination by the Hearing Panel by proceeding in the manner described in Rule 8.10.]

(1) Any person against whom a fine is imposed pursuant to Rule 25.3 may contest the Exchange's determination by filing with the Office of the Secretary of the Exchange, on or before the date specified pursuant to subsection (b)(iv) of this Rule, a written answer as provided in Exchange Rule 8.5, at which point the matter shall become subject to review by a Hearing Panel. The filing must include a request for a hearing, if a hearing is desired. Hearings will be conducted in accordance with the provisions of Exchange Rule 8.6. If a hearing is not requested, the review will be based on written submissions and will be conducted in a manner to be determined by a Hearing Panel.

(2) If after a hearing or review based on written submissions pursuant to subsection (c)(1) of this Rule the Hearing Panel determines that the conduct serving as the basis for the action under review is in violation of the rule charged, the Hearing Panel (1) may impose any one or more of the disciplinary sanctions authorized by the Exchange's Bylaws and Rules and (2) shall impose a forum fee against the person charged in the amount of one hundred dollars (\$100) if the determination was reached without a hearing, or in the amount of three hundred dollars (\$300) if a hearing was conducted. However, notwithstanding the foregoing, in the event that the Hearing Panel determines that the person charged has been found to have committed one or more rule violations and the sole disciplinary sanction imposed by the Hearing Panel for such rule violation(s) is a fine which is less than the total fine initially imposed by the Exchange pursuant to this Rule, the Hearing Panel shall have the discretion to waive the imposition of a forum fee.

(3) The committee or department of the Exchange that commenced the action under this Rule, the person charged, and the Board of Directors of the Exchange may require a review by the Board of any determination by a Hearing Panel under this Rule by proceeding in the manner described in Exchange Rule 8.10. For the purposes of such an appeal by the committee or department of the Exchange that commenced the action under this Rule, such committee or department of the Exchange shall have the same rights a Respondent under Exchange Rule 8.10.

(4) In the event that a fine imposed pursuant to this Rule is subsequently upheld by a Hearing Panel or, if applicable, on appeal, such fine, plus all interest that has accrued thereon since the date specified pursuant to subsection (b)(iv) of this Rule, and any forum fee imposed hereunder, shall be immediately due and payable.

[(e)](d) The Exchange shall issue regulatory circulars to the [prepare and announce to its]Members and Member organizations from time to time [a ]listing[ of] the Exchange Bylaws and rule provisions [Rules] as to which the Exchange may impose fines as provided in this Rule. Such list[ing] shall also indicate the specific dollar amount that may be imposed as a fine hereunder with respect to any violation of any such Rule. The fines authorized below for violations of a first or second offense may be imposed in the case of a first or second offense if warranted under the circumstances.[ or may indicate the minimum and maximum dollar amounts that may be imposed by the Exchange with respect to any such violation.] Nothing in this Rule shall require the Exchange to impose a fine pursuant to this Rule with respect to the violation of any Rule included in any such listing. In addition, the Exchange may, whenever it determines that any violation is intentional, egregious, or otherwise not minor in nature, proceed under the Exchange's formal disciplinary rules as set forth in Exchange Rule 8.2 et seq., rather than under this Rule.

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Rule 8.16. *Ex Parte* Communications

(a) Unless on notice and opportunity for all parties to participate:

(1) No Member, person associated with a Member[Respondent] or Exchange staff member shall make or knowingly cause to be made an ex parte communication relevant to the merits of a proceeding with[to] any member of the Hearing Panel, Business Conduct Committee, Board or [Officer, any member of the Board of Directors or a member of a ]committee of the Board who is participating in a decision with respect to that proceeding (an “Adjudicator”); and

(2) No Adjudicator shall make or knowingly cause to be made [to a Respondent or Exchange staff member ]an ex parte communication with any Member, person associated with a Member or Exchange staff member relevant to the merits of that proceeding.

(b) - (d) No Change.

(e) “Ex parte communication” means an oral or written communication made without notice to all parties, that is, Regulatory staff and Subjects of investigations or Respondents in proceedings. A written communication is ex parte unless a copy has been previously or simultaneously delivered to all interested parties. An oral communication is ex parte unless it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present.

(f) No violation of Rule 8.16(e) shall be deemed to occur if the ex parte communication deals solely with procedural matters rather than the merits of the investigation or proceeding.

(g) No person shall be deemed to violate this Rule if they refuse an attempted communication concerning the merits of an investigation or proceeding as soon as it becomes apparent that the communication concerns the merits. In order for this paragraph (g) to apply, the person refusing the attempted communication must promptly notify the Regulatory staff about the attempted communication and how the person responded to it. The Regulatory staff shall memorialize this information in the regulatory record of the investigation or disciplinary proceeding.

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Rule 8.18. Reserved[Release of Disciplinary Complaints, Decisions and Other Information

(a) General Standards

(1) The Exchange shall release to the public a copy of, and at the Exchange’s discretion information with respect to, any disciplinary complaint or disciplinary decision issued by the Exchange, as defined in paragraph (e) of this Rule. The Exchange shall, in

response to a request, release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by the Exchange, as defined in paragraph (e) of this Rule.

(2) The Exchange shall release to the public a copy of, and at the Exchange's discretion information with respect to, any client suspension order issued by the Exchange pursuant to Rule 8.17.

(b) Release Specifications

(1) Copies of, and information with respect to, any disciplinary complaint released to the public pursuant to paragraph (a) of this Rule shall indicate that a disciplinary complaint represents the initiation of a formal proceeding by the Exchange in which findings as to the allegations in the complaint have not been made and does not represent a decision as to any of the allegations contained in the complaint.

(2) Copies of, and information with respect to, any disciplinary decision released to the public pursuant to paragraph (a) of this Rule prior to the expiration of the time period provided for an appeal or call for review as permitted under Exchange Rules or the Act, or while such an appeal or call for review is pending, shall indicate that the findings and sanctions imposed therein are subject to review and modification by the Exchange or the SEC.

(c) Discretion to Redact Certain Information or Waive Publication

(1) Notwithstanding paragraph (a) of this Rule, the Exchange reserves the right to redact, on a case-by-case basis, information that contains confidential customer information, including customer identities, or information that raises significant identity theft, personal safety, or privacy concerns that are not outweighed by investor protection concerns.

(2) Notwithstanding paragraph (a) of this Rule, the Exchange may determine, in its discretion, to waive the requirement to release a copy of, or information with respect to, any disciplinary complaint or disciplinary decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice.

(d) Notice of Appeals of Exchange Decisions to the Commission

The Exchange shall provide notice to the public if a disciplinary decision of the Exchange is appealed to the Commission and the notice shall state whether the effectiveness of the decision has been stayed pending the outcome of proceedings before the Commission.

(e) Definitions

(1) For the purpose of this Rule, the term “disciplinary complaint” shall mean any statement of charges issued pursuant to Rule 8.4 or any notice served pursuant to Rule 8.17.

(2) For the purpose of this Rule, the term “disciplinary decision” shall mean any decision issued pursuant to the Chapter VIII, including, decisions issued by a Hearing Panel or the Appeals Committee, accepted offers of settlement, and suspension orders pursuant to Rule 8.17; provided, however, minor rule violation plan letters issued pursuant to Rules 8.15 and 25.3 are not subject to this Rule.]

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