



## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-105495; File No. SR-CboeEDGX-2026-028]

### **Self-Regulatory Organizations; Cboe EDGX 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**

May 14, 2026.

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 May 4, 2026, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

Cboe EDGX Exchange, Inc. (“EDGX” 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.

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.

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

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

## 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>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. (“C2”)<sup>5</sup> (collectively, and hereinafter, referred to as the “Affiliated Exchanges”).<sup>6</sup> In doing so, the

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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.

<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”

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 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

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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).

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 (“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

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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.”

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 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-

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

<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.

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>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;

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

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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.”

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 EDGX 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

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

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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).

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 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

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

<sup>16</sup> Id.

<sup>17</sup> Id.

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

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

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

Exchange's Rules governs the EDGX arbitration process. Rule 9.5 states that failing to honor a EDGX 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 EDGX arbitration 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>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 EDGX Member. Months later, the Member terminates its membership on the Exchange. Weeks after the membership termination, the customer properly files an arbitration claim with EDGX.<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

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

<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.

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 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. 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

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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."

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 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

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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).

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

<sup>28</sup> Id.

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 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,

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<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.

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

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

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.

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,

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

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 to appear and testify, respond in

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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. . . ."

writing to interrogatories, and furnish documentary materials and other information requested by the Exchange including in connection with a 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, 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

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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.

<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."

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 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.

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<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."

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

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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.

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>

## **(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

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<sup>50</sup> Id.

<sup>51</sup> Id.

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 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 the whether a violation occurred within

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

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

<sup>54</sup> Id.

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> 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.

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

<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.”

## **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 “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

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<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 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.

hearing and a statement of the matters to be considered therein.<sup>68</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>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 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

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

<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.

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>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 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

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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)

<sup>79</sup> Id.

<sup>80</sup> Id.

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.

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

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

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

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 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 EDGX 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

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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.

<sup>86</sup> Id.

<sup>87</sup> Id.

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 EDGX 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 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

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

<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

above, within 20 business days after issuance of the decision.<sup>94</sup> Such review shall 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 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

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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).

<sup>95</sup> Id.

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

<sup>97</sup> Id.

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> 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

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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.

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

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>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

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

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

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> 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 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.

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

<sup>106</sup> Id.

## **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 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

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

<sup>108</sup> See 15 U.S.C. § 78s.

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,

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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).

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:**

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 clarify 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

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<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.

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.

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 clarify that reporting of uncontested violations to the Commission not exceeding \$2,500 shall be reported on a periodic basis. Currently, Rule 8.15(a) does not contain a limitation on the fine that may be imposed under the Rule and does not specify the character of rule violations that constitute minor violations within the meaning of Rule 8.15. The Exchange proposes to limit the 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 not exceeding \$2,500 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 clarify that it shall report

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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).

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

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* 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*

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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).

<sup>121</sup> Id.

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

<sup>123</sup> Id.

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>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 at 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 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

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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).

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

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 EDGX 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.

## 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>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 prevent 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

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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.

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 EDGX 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

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

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 rule 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 EDGX 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 EDGX 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: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>135</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>136</sup>

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

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

<sup>136</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>137</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

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

##### Electronic Comments:

- Use the Commission's internet comment form (<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-CboeEDGX-2026-028 on the subject line.

##### Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-CboeEDGX-2026-028. 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.

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<sup>137</sup> 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to file number SR-CboeEDGX-2026-028 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>138</sup>

**J. Matthew DeLesDernier,**

*Deputy Secretary.*

[FR Doc. 2026-09967 Filed: 5/18/2026 8:45 am; Publication Date: 5/19/2026]

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<sup>138</sup> 17 CFR 200.30-3(a)(12).