

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-95738)

September 12, 2022

Order Granting Application by NYSE Chicago, Inc., for an Exemption, Pursuant to Section 36(a) of the Exchange Act, from the Rule Filing Requirements of Section 19(b) of the Exchange Act with Respect to Certain Rules Incorporated by Reference

NYSE Chicago, Inc. (“Exchange” or “NYSE Chicago”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) an application¹ for an exemption under Section 36(a) of the Securities Exchange Act of 1934 (“Exchange Act”)² and Rule 0-12 thereunder³ from the rule filing requirements of Section 19(b) of the Exchange Act⁴ with respect to the rules of the Exchange governing its members’ communications with the public. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act, or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

NYSE Chicago has requested that the Commission grant the Exchange an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for a change to NYSE

¹ See letter from David De Gregorio, Associate General Counsel, New York Stock Exchange, to Vanessa Countryman, Secretary, SEC, dated June 7, 2022 (“Exemptive Request”).

² 15 U.S.C. 78mm.

³ 17 CFR 240.0-12 (Commission procedures for filing applications for orders for exemptive relief under Section 36 of the Exchange Act).

⁴ 15 U.S.C. 78s(b).

Chicago Rule 11.2210 governing its members' communications with the public that are effected solely by virtue of a change to Rule 2210 (Communications with the Public) of the Financial Industry Regulatory Authority, Inc. ("FINRA"), which is incorporated by reference into NYSE Chicago Rule 11.2210. Specifically, the Exchange requests that it be permitted to incorporate by reference a change made to FINRA Rule 2210 without the need for the Exchange to separately file a similar proposed rule change pursuant to Section 19(b) of the Exchange Act. The Exchange states that this exemption is appropriate because it would result in NYSE Chicago Rule 11.2210 being consistent with the relevant incorporated FINRA rule at all times, thus helping ensure identical regulation of joint members of NYSE Chicago and FINRA with respect to the rule, which is regulatory in nature, and not a trading rule.⁵ The Exchange further states that without such an exemption, joint members of NYSE Chicago and FINRA could be subject to two different standards regarding their communications with the public and that, by helping ensure consistency between NYSE Chicago and FINRA rules of same purpose, the exemption would facilitate FINRA's provision of regulatory services to the Exchange.⁶

As a condition of the requested exemption, the Exchange has agreed to provide written notice to its members whenever FINRA proposes a change to FINRA Rule 2210 that is

⁵ See Exemptive Request at 2. A self-regulatory organization ("SRO") wishing to incorporate rules of another SRO by reference may submit a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, if, among other things, the rules to be incorporated are categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration). See also Exchange Act Release No. 49260 (Feb. 17, 2004), 69 FR 8500 (Feb. 24, 2004).

⁶ See Exemptive Request at 2.

incorporated by reference into NYSE Chicago Rule 11.2210.⁷ Such notice would alert the Exchange’s members to the FINRA proposed rule change and give them an opportunity to comment on it.⁸ The Exchange would similarly inform members in writing when the Commission approves any such proposed rule change.⁹

The Commission has issued exemptions similar to the Exchange’s request.¹⁰ In granting one such exemption in 2022, the Commission repeated an earlier Commission statement that it would consider similar future exemption requests from other SROs, provided that:

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission’s release

⁷ See Exemptive Request at 2-3. The Exchange will provide such notice via a posting on the same website location where the Exchange posts its own rule filings pursuant to and within the timeframe required by Rule 19b-4(1) under the Exchange Act. The website posting will include a link to the location on FINRA’s website where the applicable proposed rule change is posted. Id. at n.6.

⁸ See Exemptive Request at 3.

⁹ Id. at 3

¹⁰ See, e.g., Exchange Act Release No. 94707 (Apr. 12, 2022), 87 FR 22962 (Apr. 18, 2022) (order granting The Nasdaq Stock Market LLC and five affiliated national securities exchanges an exemption under Section 36(a) of the Exchange Act from the rule filing requirements of Section 19(b) of the Exchange Act with respect to certain of its rules incorporating by reference rules of FINRA) (“Nasdaq Order”); Exchange Act Release No. 83040 (Apr. 12, 2018), 83 FR 17198 (Apr. 18, 2018) (order granting MIAX PEARL, LLC, an exemption under Section 36(a) of the Exchange Act from the rule filing requirements of Section 19(b) of the Exchange Act with respect to certain of its rules incorporating by reference rules of the Miami International Securities Exchange, LLC); and Exchange Act Release No. 61534 (Feb. 18, 2010), 75 FR 8760 (Feb. 25, 2010) (order granting BATS Exchange, Inc., an exemption under Section 36(a) of the Exchange Act from the rule filing requirements of Section 19(b) of the Exchange Act with respect to certain of its rules incorporating by reference rules of the Chicago Board Options Exchange, Incorporated, FINRA, and the New York Stock Exchange, LLC).

governing procedures for requesting exemptive orders pursuant to Rule 0-12 under the Exchange Act;

- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and
- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.¹¹

The Exchange has satisfied each of these conditions. Moreover, granting the Exchange an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of Commission and Exchange resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO. The Commission therefore finds it appropriate in the public interest, and consistent with the protection of investors, to exempt the Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described rule the Exchange has incorporated by reference.

Accordingly, it is ordered, pursuant to Section 36 of the Exchange Act,¹² that the Exchange is exempt from the rule filing requirements of Section 19(b) of the Exchange Act with respect to a change to NYSE Chicago Rule 11.2210 resulting solely from a change made to FINRA Rule 2210 without the need for the Exchange to separately file, pursuant to Section 19(b) of the Exchange Act, a proposed rule change similar to the one filed by FINRA, provided that the Exchange promptly provides written notice to its members whenever a change is proposed to

¹¹ See Nasdaq Order at 22962 (footnotes omitted).

¹² 15 U.S.C. 78mm.

FINRA Rule 2210, and provided that the Exchange informs its members in writing when the Commission approves any such proposed rule change.

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

J. Matthew DeLesDernier,
Deputy Secretary.

¹³ 17 CFR 200.30-3(a)(76).