

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100535; File No. 4-818)

July 15, 2024

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d-2; Notice of Filing and Order Approving and Declaring Effective an Amended Plan for the Allocation of Regulatory Responsibilities Between the Financial Industry Regulatory Authority, Inc. and Nasdaq PHLX LLC

Notice is hereby given that the Securities and Exchange Commission (“Commission”) has issued an Order, pursuant to Section 17(d) of the Securities Exchange Act of 1934 (“Act”),¹ approving and declaring effective an amendment to the plan for allocating regulatory responsibility (“Plan”) filed on July 1, 2024, pursuant to Rule 17d-2 of the Act,² the Financial Industry Regulatory Authority, Inc. (“FINRA”) and Nasdaq PHLX LLC (“PHLX”) (collectively, “Participating Organizations” or “parties”). This Agreement amends and restates the agreement entered into between FINRA and PHLX approved by the SEC on January 2, 2024, entitled “Agreement between Financial Industry Regulatory Authority, Inc. and Nasdaq PHLX LLC pursuant to Rule 17d-2 under the Securities Exchange Act of 1934,” and any subsequent amendments thereafter.

I. Introduction

Section 19(g)(1) of the Act,³ among other things, requires every self-regulatory organization (“SRO”) registered as either a national securities exchange or national securities association to examine for, and enforce compliance by, its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO’s own rules, unless the SRO is relieved of this responsibility pursuant to

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

³ 15 U.S.C. 78s(g)(1).

Section 17(d)⁴ or Section 19(g)(2)⁵ of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (“common members”). Such regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act⁶ was intended, in part, to eliminate unnecessary multiple examinations and regulatory duplication.⁷ With respect to a common member, Section 17(d)(1) authorizes the Commission, by rule or order, to relieve an SRO of the responsibility to receive regulatory reports, to examine for and enforce compliance with applicable statutes, rules, and regulations, or to perform other specified regulatory functions.

To implement Section 17(d)(1), the Commission adopted two rules: Rule 17d-1 and Rule 17d-2 under the Act.⁸ Rule 17d-1 authorizes the Commission to name a single SRO as the designated examining authority (“DEA”) to examine common members for compliance with the financial responsibility requirements imposed by the Act, or by Commission or SRO rules.⁹ When an SRO has been named as a common member’s DEA, all other SROs to which the common member belongs are relieved of the

⁴ 15 U.S.C. 78q(d).

⁵ 15 U.S.C. 78s(g)(2).

⁶ 15 U.S.C. 78q(d)(1).

⁷ See Securities Act Amendments of 1975, Report of the Senate Committee on Banking, Housing, and Urban Affairs to Accompany S. 249, S. Rep. No. 94-75, 94th Cong., 1st Session 32 (1975).

⁸ 17 CFR 240.17d-1 and 17 CFR 240.17d-2, respectively.

⁹ See Securities Exchange Act Release No. 12352 (April 20, 1976), 41 FR 18808 (May 7, 1976).

responsibility to examine the firm for compliance with the applicable financial responsibility rules. On its face, Rule 17d-1 deals only with an SRO's obligations to enforce member compliance with financial responsibility requirements. Rule 17d-1 does not relieve an SRO from its obligation to examine a common member for compliance with its own rules and provisions of the federal securities laws governing matters other than financial responsibility, including sales practices and trading activities and practices.

To address regulatory duplication in these and other areas, the Commission adopted Rule 17d-2 under the Act.¹⁰ Rule 17d-2 permits SROs to propose joint plans for the allocation of regulatory responsibilities with respect to their common members. Under paragraph (c) of Rule 17d-2, the Commission may declare such a plan effective if, after providing for appropriate notice and opportunity for comment, it determines that the plan is necessary or appropriate in the public interest and for the protection of investors, to foster cooperation and coordination among the SROs, to remove impediments to, and foster the development of, a national market system and a national clearance and settlement system, and is in conformity with the factors set forth in Section 17(d) of the Act. Commission approval of a plan filed pursuant to Rule 17d-2 relieves an SRO of those regulatory responsibilities allocated by the plan to another SRO.

¹⁰ See Securities Exchange Act Release No. 12935 (October 28, 1976), 41 FR 49091 (November 8, 1976).

II. The Plan

On January 2, 2024, the Commission declared effective the Plan entered into between FINRA and PHLX for allocating regulatory responsibility pursuant to Rule 17d-2.¹¹ The Plan is intended to reduce regulatory duplication for firms that are common members of FINRA and PHLX by allocating regulatory responsibility with respect to certain applicable laws, rules, and regulations that are common among them. Included in the Plan is an exhibit that lists every PHLX rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to PHLX members that are also members of FINRA and the associated persons therewith (“Certification”).

III. Proposed Amendment to the Plan

On July 1, 2024, the parties submitted a proposed amendment to the Plan (“Amended Plan”). The primary purpose of the Amended Plan is to update the list of Common Rules and to add surveillance and investigation coverage for certain Common Rules specified in Exhibit 1 to the Amended Plan. The text of the proposed Amended Plan is as follows (additions are underlined; deletions are [bracketed]):

* * * * *

**AGREEMENT BETWEEN
FINANCIAL INDUSTRY REGULATORY AUTHORITY, INC. AND
NASDAQ PHLX LLC PURSUANT TO
RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934**

This Agreement, by and between Financial Industry Regulatory Authority, Inc. (“FINRA”) and Nasdaq PHLX LLC (“PHLX”), is made this [15th] 27th day of [November, 2023] June, 2024 (the “Agreement”), pursuant to Section 17(d) of the

¹¹ See Securities Exchange Act Release No. 99260 (January 2, 2024), 89 FR 981 (January 8, 2024).

Securities Exchange Act of 1934 (the “Exchange Act”) and Rule 17d-2 thereunder, which permits agreements between self-regulatory organizations to allocate regulatory responsibility to eliminate regulatory duplication. FINRA and PHLX may be referred to individually as a “party” and together as the “parties.”

This Agreement amends and restates the agreement entered into between FINRA and PHLX approved by the SEC on January 2, 2024, entitled “Agreement between Financial Industry Regulatory Authority, Inc. and Nasdaq PHLX LLC pursuant to Rule 17d-2 under the Securities Exchange Act of 1934,” and any subsequent amendments thereafter.

WHEREAS, FINRA and PHLX desire to reduce duplication in the examination, surveillance and investigation of their Dual Members (as defined herein) and in the filing and processing of certain registration and membership records; and

WHEREAS, FINRA and PHLX desire to execute an agreement covering such subjects pursuant to the provisions of Rule 17d-2 under the Exchange Act and to file such agreement with the U.S. Securities and Exchange Commission (the “SEC” or “Commission”) for its approval.

NOW, THEREFORE, in consideration of the mutual covenants contained hereinafter, FINRA and PHLX hereby agree as follows:

1. Definitions. Unless otherwise defined in this Agreement or the context otherwise requires, the terms used in this Agreement shall have the same meaning as they have under the Exchange Act and the rules and regulations thereunder. As used in this Agreement, the following terms shall have the following meanings:

(a) “PHLX Rules” or “FINRA Rules” shall mean the rules of PHLX or FINRA, respectively, as the rules of an exchange or association are defined in Exchange Act Section 3(a)(27).

(b) “Common Rules” shall mean the PHLX Rules that are substantially similar to the applicable FINRA Rules and certain provisions of the Exchange Act and SEC rules set forth on Exhibit 1 in that examination, surveillance or investigation for compliance with such provisions and rules would not require FINRA to develop one or more new examination, surveillance or investigation standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Dual Member’s activity, conduct, or output in relation to such provision or rule; provided, however, Common Rules shall not include the application of the SEC, PHLX or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., Chicago Stock Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., MEMX LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., Investors’ Exchange LLC and Long-Term Stock Exchange, Inc. approved by the Commission on September 23, 2020, as may be amended from time to time. Common Rules shall not include any provisions regarding: (i) notice, reporting or any other filings made directly to or from PHLX; (ii) incorporation by reference of other PHLX Rules that are not Common Rules; (iii)

exercise of discretion in a manner that differs from FINRA’s exercise of discretion including, but not limited to exercise of exemptive authority by PHLX; (iv) prior written approval of PHLX; and (v) payment of fees or fines to PHLX.

(c) “Dual Members” shall mean those PHLX members that are also members of FINRA and the associated persons therewith.

(d) “Effective Date” shall [have the meaning set forth in paragraph 13] be the date this Agreement is approved by the Commission.

(e) “Enforcement Responsibilities” shall mean the conduct of appropriate proceedings, in accordance with the FINRA Code of Procedure (the Rule 9000 Series) and other applicable FINRA procedural rules, to determine whether violations of Common Rules have occurred, and if such violations are deemed to have occurred, the imposition of appropriate sanctions as specified under the FINRA Code of Procedure and FINRA’s sanction guidelines.

(f) “Regulatory Responsibilities” shall mean the examination, surveillance and investigation responsibilities and Enforcement Responsibilities relating to compliance by the Dual Members with the Common Rules and the provisions of the Exchange Act and the rules and regulations thereunder, and other applicable laws, rules and regulations, each as set forth on Exhibit 1 attached hereto. [The term “Regulatory Responsibilities” shall also include the surveillance, investigation and Enforcement Responsibilities relating to compliance by Dual Members with Rule 14e-4 of the Exchange Act (“Rule 14e-4”), with a focus on the standardized call option provision of Rule 14e-4(a)(1)(ii)(D).]

2. Regulatory Responsibilities. FINRA shall assume Regulatory Responsibilities for Dual Members. Attached as Exhibit 1 to this Agreement and made part hereof, PHLX furnished FINRA with a current list of Common Rules and certified to FINRA that such rules are substantially similar to the corresponding FINRA Rules (the “Certification”). FINRA hereby agrees that the rules listed in the Certification are Common Rules as defined in this Agreement. Each year following the Effective Date of this Agreement, or more frequently if required by changes in either the PHLX Rules or FINRA Rules, PHLX shall submit an updated list of Common Rules to FINRA for review which shall add PHLX Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete PHLX Rules included in the current list of Common Rules that no longer qualify as Common Rules as defined in this Agreement; and confirm that the remaining rules on the current list of Common Rules continue to be PHLX Rules that qualify as Common Rules as defined in this Agreement. Within 30 days of receipt of such updated list, FINRA shall confirm in writing whether the rules listed in any updated list are Common Rules as defined in this Agreement. Notwithstanding anything herein to the contrary, it is explicitly understood that the term “Regulatory Responsibilities” does not include, and PHLX shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) the following (collectively, the “Retained Responsibilities”):

3.

(a) [S]urveillance, examination, investigation and enforcement with respect to trading activities or practices involving PHLX’s own marketplaces;

- (b) registration pursuant to its applicable rules of associated persons (i.e., registration rules that are not Common Rules);
- (c) discharge of its duties and obligations as a Designated Examining Authority pursuant to Rule 17d-1 under the Exchange Act; and
- (d) any PHLX Rules that are not Common Rules, except for PHLX Rules for any PHLX member that operates as a facility (as defined in Section 3(a)(2) of the Exchange Act), acts as an outbound router for PHLX and is a member of FINRA (“Router Member”) as provided in paragraph 5. As of the date of this Agreement, Nasdaq Execution Services, LLC is the only Router Member.

4. No Charge. There shall be no charge to PHLX by FINRA for performing the Regulatory Responsibilities under this Agreement except as hereinafter provided. FINRA shall provide PHLX with ninety (90) days advance written notice in the event FINRA decides to impose any charges to PHLX for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, PHLX shall have the right at the time of the imposition of such charge to terminate this Agreement; provided, however, that FINRA’s Regulatory Responsibilities under this Agreement shall continue until the Commission approves the termination of this Agreement.

5. [Reassignment of Regulatory Responsibilities] Applicability of Certain Laws, Rules, Regulations or Orders. Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission. To the extent such [action] statute, rule or order is inconsistent with this Agreement,

[such action] the statute, rule or order shall supersede the provision(s) hereof to the extent necessary for them to be properly effectuated and the provision(s) hereof in that respect shall be null and void.

6. Notification of Violations.

(a) In the event that FINRA becomes aware of apparent violations of any PHLX Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify PHLX of those apparent violations for such response as PHLX deems appropriate. With respect to apparent violations of any PHLX Rules by any Router Member, FINRA shall not make referrals to PHLX pursuant to this paragraph 5. Such apparent violations shall be processed by, and enforcement proceedings in respect thereto will be conducted by, FINRA as provided in this Agreement.

(b) In the event that PHLX becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, PHLX shall notify FINRA of those apparent violations and such matters shall be handled by FINRA [as provided] consistent with the provisions in this Agreement. [Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.]

(c) Apparent violations of Common Rules shall be processed by, and enforcement proceedings in respect thereto shall be conducted by FINRA as provided hereinbefore; provided, however, that in the event a Dual Member is the

subject of an investigation relating to a transaction on PHLX, PHLX may in its discretion assume concurrent jurisdiction and responsibility.

(d) Each party agrees to make available promptly all files, records and witnesses necessary to assist the other in its investigation or proceedings.

7. Continued Assistance.

(a) FINRA shall make available to PHLX all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the Dual Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish PHLX any information it obtains about Dual Members which reflects adversely on their financial condition. PHLX shall make available to FINRA any information coming to its attention that reflects adversely on the financial condition of Dual Members or indicates possible violations of applicable laws, rules or regulations by such firms.

(b) The parties agree that documents or information shared shall be held in confidence, and used only for the purposes of carrying out their respective regulatory obligations. Neither party shall assert regulatory or other privileges as against the other with respect to documents or information that is required to be shared pursuant to this Agreement.

(c) The sharing of documents or information between the parties pursuant to this Agreement shall not be deemed a waiver as against third parties of regulatory or other privileges relating to the discovery of documents or information.

7. Dual Member Applications.

(a) Dual Members subject to this Agreement shall be required to submit, and FINRA shall be responsible for processing and acting upon all applications submitted on behalf of partners, officers, registered personnel and any other person required to be approved by the PHLX Rules and FINRA Rules or associated with Dual Members thereof. Upon request, FINRA shall advise PHLX of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the PHLX Rules and FINRA Rules.

(b) Dual Members shall be required to send to FINRA all letters, termination notices or other material respecting the individuals listed in paragraph 7(a).

(c) When as a result of processing such submissions FINRA becomes aware of a statutory disqualification as defined in the Exchange Act with respect to a Dual Member, FINRA shall determine pursuant to Sections 15A(g) and/or Section 6(c) of the Exchange Act the acceptability or continued applicability of the person to whom such disqualification applies and keep PHLX advised of its actions in this regard for such subsequent proceedings as PHLX may initiate.

(d) Notwithstanding the foregoing, FINRA shall not review the membership application, reports, filings, fingerprint cards, notices, or other writings filed to determine if such documentation submitted by a broker or dealer, or an associated person therewith or other persons required to register or qualify by examination meets the PHLX requirements for general membership or for specified categories of membership or participation in PHLX, such as PSX Market Maker, Equities ECN, Order Entry Firm, or any similar type of PHLX

membership or participation that is created after this Agreement is executed. FINRA shall not review applications or other documentation filed to request a change in the rights or status described in this paragraph 7(d), including termination or limitation on activities, of a member or a participant of PHLX, or a person associated with, or requesting association with, a member or participant of PHLX.

8. **Branch Office Information.** FINRA shall also be responsible for processing and, if required, acting upon all requests for the opening, address changes, and terminations of branch offices by Dual Members and any other applications required of Dual Members with respect to the Common Rules as they may be amended from time to time. Upon request, FINRA shall advise PHLX of the opening, address change and termination of branch and main offices of Dual Members and the names of such branch office managers.

9. **Customer Complaints.** PHLX shall forward to FINRA copies of all customer complaints involving Dual Members received by PHLX relating to FINRA's Regulatory Responsibilities under this Agreement. It shall be FINRA's responsibility to review and take appropriate action in respect to such complaints.

10. **Advertising.** FINRA shall assume responsibility to review the advertising of Dual Members subject to the Agreement, provided that such material is filed with FINRA in accordance with FINRA's filing procedures and is accompanied with any applicable filing fees set forth in FINRA Rules.

11. **No Restrictions on Regulatory Action.** Notwithstanding anything else herein and to the contrary, except for paragraph 5(a), [N]nothing contained in this

Agreement shall restrict or in any way encumber the right of either FINRA or PHLX [party] to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against Dual Members of the Common Rules, as either [party] FINRA or PHLX, in its sole discretion, shall deem appropriate or necessary.

12. **Termination.** This Agreement may be terminated by PHLX or FINRA at any time upon the approval of the Commission after one (1) year's written notice to the other party, except as provided in paragraph 3.

[13. **Effective Date.** This Agreement shall be effective upon approval of the Commission.]

13[4]. **Arbitration.** In the event of a dispute between the parties as to the operation of this Agreement, PHLX and FINRA hereby agree that any such dispute shall be settled by arbitration in Washington, D.C. in accordance with the rules of the American Arbitration Association then in effect, or such other procedures as the parties may mutually agree upon. Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. Each party acknowledges that the timely and complete performance of its obligations pursuant to this Agreement is critical to the business and operations of the other party. In the event of a dispute between the parties, the parties shall continue to perform their respective obligations under this Agreement in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with its provisions. Nothing in this paragraph 13[4] shall interfere with a party's right to terminate this Agreement as set forth herein.

14[5]. **Amendment.** This Agreement may be amended in writing duly approved by each party. All such amendments must be filed with and approved by the Commission before they become effective.

15[6]. **Limitation of Liability.** Neither FINRA nor PHLX nor any of their respective directors, governors, officers or employees shall be liable to the other party to this Agreement for any liability, loss or damage resulting from or claimed to have resulted from any delays, inaccuracies, errors or omissions with respect to the provision of Regulatory Responsibilities as provided hereby or for the failure to provide any such responsibility, except with respect to such liability, loss or damages as shall have been suffered by one or the other of FINRA or PHLX and caused by the willful misconduct of the other party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by FINRA or PHLX with respect to any of the responsibilities to be performed by each of them hereunder.

16[7]. **Relief from Responsibility.** Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA and PHLX join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve PHLX of any and all responsibilities with respect to matters allocated to FINRA pursuant to this Agreement; provided, however, that this Agreement shall not be effective until the Effective Date.

17[8]. **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or

enforceability of any of the terms or provisions of this Agreement in any other jurisdiction.

18[9]. **Separate Agreement.** This Agreement is wholly separate from any other 17d-2 agreement where FINRA and PHLX are parties, including but not limited to, (1) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among Cboe BZX Exchange, Inc., BOX Exchange, LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., Miami International Securities Exchange, LLC, NYSE American LLC, NYSE Arca, Inc., The Nasdaq Stock Market, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, Nasdaq GEMX, LLC, Cboe EDGX Exchange, Inc., Nasdaq MRX, LLC, MIAX PEARL, LLC, MIAX Emerald, LLC, and MEMX LLC approved by the Commission on October 18, 2022 concerning options related sales-practice matters [involving the allocation of regulatory responsibilities with respect to common members for compliance with common rules relating to the conduct by broker-dealers of accounts for listed options, index warrants, currency index warrants and currency warrants or] and (2) the multiparty Agreement made pursuant to Rule 17d-2 of the Exchange Act among NYSE American LLC, Cboe BZX Exchange, Inc., the Cboe EDGX Exchange, Inc., Cboe C2 Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Financial Industry Regulatory Authority, Inc., NYSE Arca, Inc., The Nasdaq Stock Market LLC, BOX Exchange LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, Miami International Securities Exchange, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, MIAX PEARL, LLC, MIAX Emerald, LLC, and MEMX LLC approved by the Commission on November 23, 2022 involving options-related market surveillance matters and such agreements as may be amended from time to time.

19[20]. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

EXHIBIT 1

PHLX CERTIFICATION OF COMMON RULES

PHLX hereby certifies that the requirements contained in the rules listed below for PHLX are identical to, or substantially similar to, the comparable FINRA Rules, Exchange Act provisions or SEA[C] Rules identified ("Common Rules").

Common Rules shall not include provisions regarding (i) notice, reporting or any other filings made directly to or from PHLX, (ii) incorporations by reference to other PHLX Rules that are not Common Rules, (iii) exercise of discretion in a manner that differs from FINRA’s exercise of discretion including, but not limited to exercise of exemptive authority, by PHLX, (iv) prior written approval of PHLX, and (v) payment of fees or fines to PHLX.

PHLX RULE	FINRA <u>Rule(s)</u>, <u>Exchange Act Provision(s)</u>, or <u>SEA[C]</u> <u>Rule(s)</u>[<u>ULE</u>]
General 2, Section 11 Contact Information Requirements [#]	4517. Member Filing and Contact Information Requirements
General 3, Rule 1002(b) Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction [#]	FINRA By-Laws Article III, Sec. 1; FINRA By-Laws Article III, Sec. 3(a) and (b)
General 3, Rule 1002(d). Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction [#]	3110(a)(3) Supervision and SM .01 and .02. Supervision* and FINRA By-Laws Article IV, Sec. 8
General 3, Rule 1012(c)(1). Duty to Ensure the Accuracy, Completeness, and Current Nature of Membership Information Filed with the Exchange [#]	1122. Filing of Misleading Information as to Membership or Registration; FINRA By-Laws Article IV, Sec. 1(c)
General 4, Section 1, 1210. Registration Requirements [#]	1210. Registration Requirements; FINRA By-Laws, Article V, Sec. 1; FINRA By-Laws, Article V, Sec. 2; FINRA By-Laws, Article V, Sec. 3

General 4, Section 1, 1220. Registration Categories ^{1#}	1220. Registration Categories
General 4, Section 1, Rule 1230(1)-(2)(D) and Supplementary Material .01. Associated Persons Exempt from Registration [#]	1230. Associated Persons Exempt from Registration
General 4, Section 1, 1240. Continuing Education Requirements ^{2#}	1240. Continuing Education
General 4, Section 1, 1250. Electronic Filing Requirements for Uniform Forms [#]	1010. Electronic Filing Requirements for Uniform Forms
General 9, Section 1(b). Manipulative Operations and General 9, Section 2(b)(i) Customers' Securities and Excessive Trading of Members	2020. Use of Manipulative, Deceptive or Other Fraudulent Devices*; 6140 Other Trading Practices; 5350 Stop Orders; 6130 Transactions Related to Initial Public Offerings
General 9, Section 1(c)(1). Standards of Commercial Honor and Principles of Trade	2010. Standards of Commercial Honor and Principles of Trade*
General 9, Section 1(a). Prohibition Against Trading Ahead of Customer Orders	5320. Prohibition Against Trading Ahead of Customer Orders
General 9, Section 1(c)(2). Anti-Intimidation/Coordination	5240. Anti-Intimidation/Coordination
General 9, Section 1(c)(3). Conduct Inconsistent with Just and Equitable Principles of Trade	5290. Order Entry and Execution Practices
General 9, Section 2(a). Customers' Securities and Excessive Trading of Members	2150(a). Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts
General 9, Section 11. Best Execution and Interpositioning	5310. Best Execution and Interpositioning
General 9, Section 19. Discretionary Accounts	3260. Discretionary Accounts
General 9, Section 20. Supervision	3110. Supervision

¹ FINRA shall only have Regulatory Responsibilities regarding General 4, Section 1, 1220 to the extent that PHLX recognizes the same categories of limited principal and representative registration.

² FINRA Rule 1240.01 allows for other persons to make their election to participate in the continuing education program under Rule 1240(c) either (1) between January 31, 2022, and March 15, 2022; or (2) between March 15, 2023, and December 31, 2023. In contrast, Supplementary Material .02 of Nasdaq PHLX General 4, Section 1, 1240 allows for other persons to make their election to participate in the continuing education program under PHLX General 4, Section 1, 1240(c) either (1) by March 15, 2022, or (2) between July 6, 2023, and December 31, 2023. Therefore, FINRA shall not have Regulatory Responsibilities regarding

elections made by other persons under General 4, Section 1, 1240(c) between March 15, 2023, and July 5, 2023.

General 9, Section 30. Books and Records	4511. General Requirements
General 9, Section 35. Nonregistered Foreign Finders	Rule 2040(c). Payments to Unregistered Persons
General 9, Section 39. Fidelity Bonds	4360. Fidelity Bonds
General 9, Section 58. Advertisements, Market Letters, Research Reports and Sales Literature	2210. Communications with the Public
Options 6E, Section 1(a). Maintenance, Retention and Furnishing of Books, Records and Other Information [#]	4511(a). General Requirements
Options 10, Section 7(g) and (h). [#] Supervision of Accounts	3120. Supervisory Control System 3130. Annual Certification of Compliance and Supervisory Processes
Options 10, Section 10. Confirmations to Customers	2232. Customer Confirmations
Options 10, Section 17. Profit Sharing	2150(c). Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts
<u>General 9, Section 11. Best Execution and Interpositioning</u>	<u>5310. Best Execution and Interpositioning**</u>
<u>General 9, Section 1(a) Prohibition Against Trading Ahead of Customer Orders</u>	<u>5320. Prohibition Against Trading Ahead of Customer Orders**</u>
<u>Equity 2, Section 5(d) Locked and Crossed Markets</u>	<u>6240. Prohibition from Locking or Crossing Quotations in NMS Stocks**</u>

[In addition, the following provisions shall be part of this 17d-2 Agreement:]

The following provisions are covered by the Agreement between the Parties:

- SEC '34 Act Section 28(e) – Effect on Existing Law
- [SEC '34 Act] SEA Rule 10b-10 – Confirmation of Transactions
- SEA Rule 200 of Regulation SHO – Definition of Short Sales and Marking Requirements**
- SEA Rule 201 of Regulation SHO – Circuit Breaker**
- [SEC '34 Act] SEA Rule 203 of Regulation SHO – Borrowing and Delivery Requirements
- SEA Rule 204 of Regulation SHO – Close-Out Requirements**
- SEA Rule 101 of Regulation M – Activities by Distribution Participants**
- SEA Rule 102 of Regulation M – Activities by Issuers and Selling Security Holders During a Distribution**
- SEA Rule 103 of Regulation M – Nasdaq Passive Market Making**
- SEA Rule 104 of Regulation M – Stabilizing and Other Activities in Connection with an Offering**

- SEA Rule 105 of Regulation M – Short Selling in Connection With a Public Offering**
- SEA Rule 604 of Regulation NMS – Display of Customer Limit Orders**
- [SEC '34 Act] SEA Rule 606 of Regulation NMS – Disclosure of Order Routing Information[^]
- [SEC '34 Act Rule 607 of Regulation NMS Customer Account Statements]
- SEA Rule 610(d) of Regulation NMS – Locking or Crossing Quotations**
- SEA Rule 611 of Regulation NMS – Order Protection Rule[^]
- SEA Rule 10b-5 – Employment of Manipulative and Deceptive Devices*
- SEA Rule 17a-3 / 17a-4 – Records to Be Made by Certain Exchange Members, Brokers and Dealers / Records to Be Preserved by Certain Exchange Members, Brokers and Dealers*
- SEA Rule 14e-4 – Prohibited Transactions in Connection with Partial Tender Offers^[^]
- SEA Rule 14e-4(a)(1)(ii)(D) – Prohibited Transactions in Connection with Partial Tender Offers (with a focus on the standardized call option provision)**

[[^] FINRA shall perform surveillance, investigation, and Enforcement Responsibilities for SEA Rule 14e-4(a)(1)(ii)(D).]

** In addition to performing examinations and Enforcement Responsibilities as provided in this Agreement for the double star rules, FINRA shall also perform the surveillance and investigation responsibilities for the double star rules. These rules may be cited by FINRA in both the context of this Agreement and the Regulatory Services Agreement between FINRA and PHLX.

* FINRA shall not have any Regulatory Responsibilities for these rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., NYSE Chicago, Inc., Cboe EDGA Exchange Inc., Cboe EDGX Exchange Inc., Financial Industry Regulatory Authority, Inc., MEMX, LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, The Nasdaq Stock Market LLC, NYSE National, Inc., New York Stock Exchange, LLC, NYSE American LLC, NYSE Arca Inc., Investors' Exchange LLC, and the Long-Term Stock Exchange, Inc. as approved by the SEC on September 23, 2020, as may be amended from time to time.

[^] FINRA shall perform the surveillance and investigation responsibilities for these rules. The examination responsibility for these rules is covered by a separate 17d-2 Agreement by and among Cboe BZX Exchange, Inc., Cboe BYX Exchange, Inc., BOX Exchange LLC, Cboe Exchange, Inc., Cboe C2 Exchange, Inc., NYSE Chicago, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., MEMX LLC, Nasdaq ISE, LLC, Nasdaq GEMX, LLC, Nasdaq MRX, LLC, Investors Exchange LLC, Miami International Securities Exchange, LLC, MIAX PEARL, LLC, MIAX Emerald, LLC, The Nasdaq Stock Market LLC, Nasdaq BX, Inc., Nasdaq PHLX LLC, NYSE National, Inc., New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc. and Long-Term Stock Exchange, Inc. as approved by the SEC on June 10, 2020 concerning covered Regulation NMS and Consolidated Audit Trail Rules, as may be amended from time to time.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-818 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 4-818. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed plan that are filed with the Commission, and all written communications relating to the proposed plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the plan also will be available for inspection and copying at the principal offices of FINRA and PHLX. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from

publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File No. 4-818 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

V. Discussion

The Commission finds that the proposed Amended Plan is consistent with the factors set forth in Section 17(d) of the Act¹² and Rule 17d-2(c) thereunder¹³ in that the proposed Amended Plan is necessary or appropriate in the public interest and for the protection of investors, fosters cooperation and coordination among SROs, and removes impediments to and fosters the development of the national market system. In particular, the Commission believes that the proposed Amended Plan should reduce unnecessary regulatory duplication by allocating to FINRA certain examination and enforcement responsibilities for Common Members that would otherwise be performed by both FINRA and PHLX. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because PHLX and FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

The Commission notes that, under the Amended Plan, PHLX and FINRA have allocated regulatory responsibility for those PHLX rules, set forth in the Certification, that are substantially similar to the applicable FINRA rules in that examination for compliance with such provisions and rules would not require FINRA to develop one or more new examination standards, modules, procedures, or criteria in order to analyze the application of the rule, or a Common Member's activity, conduct, or output in relation to such rule. In addition, under the Amended Plan, FINRA would assume regulatory responsibility for certain provisions of the

¹² 15 U.S.C. 78q(d).

¹³ 17 CFR 240.17d-2(c).

federal securities laws and the rules and regulations thereunder that are set forth in the Certification. The Common Rules covered by the Amended Plan are specifically listed in the Certification, as may be amended by the Parties from time to time.

According to the Amended Plan, PHLX will review the Certification at least annually, or more frequently if required by changes in either the rules of PHLX or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add PHLX rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete PHLX rules included in the then-current list of Common Rules that no longer qualify as common rules; and confirm that the remaining rules on the list of Common Rules continue to be PHLX rules that qualify as common rules.¹⁴ FINRA will then confirm in writing whether the rules listed in any updated list are Common Rules as defined in the Amended Plan. The Commission believes that these provisions are designed to provide for continuing communication between the Parties to ensure the continued accuracy of the scope of the proposed allocation of regulatory responsibility.

The Commission is hereby declaring effective an Amended Plan that, among other things, allocates regulatory responsibility to FINRA for the oversight and enforcement of all PHLX rules that are substantially similar to the rules of FINRA for Common Members of PHLX and FINRA. Therefore, modifications to the Certification need not be filed with the Commission as an amendment to the Amended Plan, provided that the Parties are only adding to, deleting from, or confirming changes to PHLX rules in the Certification in conformance with the definition of Common Rules provided in the Amended Plan. However, should the Parties decide to add a PHLX rule to the Certification that is not substantially similar to a FINRA rule; delete a

¹⁴ See paragraph 2 of the Amended Plan.

PHLX rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a PHLX rule that is no longer substantially similar to a FINRA rule, then such a change would constitute an amendment to the Amended Plan, which must be filed with the Commission pursuant to Rule 17d-2 under the Act.¹⁵

Under paragraph (c) of Rule 17d-2, the Commission may, after appropriate notice and comment, declare a plan, or any part of a plan, effective. In this instance, the Commission believes that appropriate notice and comment can take place after the proposed amendment is effective. The primary purpose of the amendment is to update the list of Common Rules and to add surveillance and investigation coverage for certain Common Rules specified in Exhibit 1 to the Amended Plan. By declaring it effective today, the Amended Plan can become effective and be implemented without undue delay. The Commission notes that the prior version of this plan immediately prior to this proposed amendment was published for comment and the Commission did not receive any comments thereon.¹⁶ Furthermore, the Commission does not believe that the amendment to the plan raises any new regulatory issues that the Commission has not previously considered.

¹⁵ The addition to or deletion from the Certification of any federal securities laws, rules, and regulations for which FINRA would bear responsibility under the Amended Plan for examining, and enforcing compliance by, Common Members, also would constitute an amendment to the Amended Plan.

¹⁶ See supra note 11 (citing to Securities Exchange Act Release No. 99260).

VI. Conclusion

This order gives effect to the Amended Plan filed with the Commission in File No. 4-818. The Parties shall notify all members affected by the Amended Plan of their rights and obligations under the Amended Plan.

IT IS THEREFORE ORDERED, pursuant to Section 17(d) of the Act, that the Amended Plan in File No. 4-818, between the FINRA and PHLX, filed pursuant to Rule 17d-2 under the Act, hereby is approved and declared effective.

IT IS FURTHER ORDERED that PHLX is relieved of those responsibilities allocated to FINRA under the Amended Plan in File No. 4-818.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁷

J. Matthew DeLesDernier,

Deputy Secretary.

¹⁷ 17 CFR 200.30-3(a)(34).