

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 24	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2020 - * 31	Amendment No. (req. for Amendments *)
----------------	--	----------------------------	---------------------------------------

Filing by NYSE National, Inc.
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
---	---

Description

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

Proposal to harmonize Rules 10.9261 and 10.9830 with recent changes by the Financial Industry Regulatory Authority, Inc.

Contact Information

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

First Name * David Last Name * De Gregorio

Title * Senior Counsel, NYSE Group Inc.

E-mail * David.DeGregorio@theice.com

Telephone * (212) 656-4166 Fax (212) 656-8101

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 09/29/2020 Associate General Counsel

By Clare Saperstein

Clare Saperstein,

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

Add Remove View

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

Exhibit 1 - Notice of Proposed Rule Change *

Add Remove View

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

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

Add Remove View

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

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

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

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

Exhibit 4 - Marked Copies

Add Remove View

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

Exhibit 5 - Proposed Rule Text

Add Remove View

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

Partial Amendment

Add Remove View

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

1. Text of the Proposed Rule Change

- (a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² NYSE National, Inc. (“NYSE National” or the “Exchange”) proposes to harmonize Rules 10.9261 and 10.9830 with recent changes by the Financial Industry Regulatory Authority, Inc. (“FINRA”) that temporarily grants the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing novel coronavirus (“COVID-19”) pandemic. As proposed, these temporary amendments would be in effect through December 31, 2020.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1, and the text of the proposed rule change is attached as Exhibit 5.

- (b) The Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.
- (c) Not applicable.

2. Procedures of the Self-Regulatory Organization

Senior management has approved the proposed rule change pursuant to authority delegated to it by the Board of the Exchange. No further action is required under the Exchange’s governing documents. Therefore, the Exchange’s internal procedures with respect to the proposed rule change are complete.

The person on the Exchange staff prepared to respond to questions and comments on the proposed rule change is:

David De Gregorio
Senior Counsel
NYSE Group, Inc.
(212) 656-4166

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

(a) Purpose

The Exchange proposes to harmonize Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) with recent changes by FINRA to its Rules 9261 and 9830 that temporarily grants to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID-19 pandemic. As proposed, these temporary amendments would be in effect through December 31, 2020.³

Background

In 2018, NYSE National adopted disciplinary rules that are, with certain exceptions, substantially the same as the disciplinary rules of its affiliate NYSE American LLC, which are in turn substantially similar to the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.⁴

In adopting disciplinary rules modeled on FINRA's rules, NYSE National adopted the hearing and evidentiary processes set forth in Rule 10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 10.9261 and Rule 10.9830 are substantially the same as the FINRA rules with certain modifications.⁵

In view of the ongoing spread of COVID-19 and its effect on FINRA's adjudicatory functions nationwide, FINRA recently filed a temporary rule change to grant FINRA's Office of Hearing Officers ("OHO") and the National Adjudicatory Council ("NAC") the authority to conduct certain hearings by video conference, if warranted by the current COVID-19-related public health risks posed by in-person hearings. Among the rules FINRA amended were Rules 9261

³ The Exchange may submit a separate rule filing to extend the expiration date of the proposed temporary amendments if the Exchange requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2020. The amended NYSE National rules will revert back to their current state at the conclusion of the temporary relief period and any extension thereof.

⁴ See Securities Exchange Act Release Nos. 83289 (May 17, 2018), 83 FR 23968, 23976 (May 23, 2018) (SR-NYSE-NAT-2018-02) ("2018 Approval Order").

⁵ See id.

and 9830.⁶

FINRA represented in its filing that its protocol for conducting hearings by video conference would ensure that such hearings maintain fair process for the parties by, among other things, FINRA's use of a high quality, secure and user-friendly video conferencing service and provide thorough instructions, training and technical support to all hearing participants.⁷ According to FINRA, the proposed changes were a reasonable interim solution to allow FINRA's critical adjudicatory processes to continue to function while protecting the health and safety of hearing participants as FINRA works towards resuming in-person hearings in a manner that is compliant with the current guidance of public health authorities.⁸

Pursuant to a regulatory services agreement ("RSA"), FINRA's Office of Hearing Officers will administer all aspects of adjudications, including assigning hearing officers to serve as NYSE National hearing officers. A hearing officer from OHO will, among other things, preside over the disciplinary hearing, select and chair the hearing panel, and prepare and issue written decisions. The Chief or Deputy Hearing Officer for all Exchange disciplinary hearings are currently drawn from OHO and are all FINRA employees. The Exchange believes that OHO will utilize the same video conference protocol and processes for Exchange matters under the RSA as it proposes for FINRA matters.

Given that FINRA and its Office of Hearing Officers administers disciplinary hearings on the Exchange's behalf, and given that the public health concerns addressed by FINRA's amendments apply equally to the Exchange's disciplinary hearings, the Exchange proposes to temporarily amend its disciplinary rules to

⁶ See Securities Exchange Act Release Nos. 83289 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR-FINRA-2020-027) ("FINRA Filing"). FINRA also proposed to temporarily amend FINRA Rules 1015 and 9524. FINRA Rule 1015 governs the process by which an applicant for new or continuing membership can appeal a decision rendered by FINRA's Department of Member Supervision under FINRA Rule 1014 or 1017 and request a hearing which would be conducted by a subcommittee of the NAC. See id. at 55714. The Exchange has not adopted FINRA Rule 1015. FINRA Rule 9524 governs the process by which a statutorily disqualified member firm or associated person can appeal the Department's recommendation to deny a firm or sponsoring firm's application to the NAC. See id. Under the Exchange's version of Rule 10.9524, if the CRO rejects the application, the ETP Holder or applicant may request a review by the Exchange Board of Directors. This differs from FINRA's process, which provides for a hearing before the NAC and further consideration by the FINRA Board of Directors.

⁷ See FINRA Filing, 85 FR at 55713.

⁸ See id.

allow FINRA to conduct virtual hearings on its behalf.

Proposed Rule Change

Rule 10.9261(b) states that if a disciplinary hearing is held, a party shall be entitled to be heard in-person, by counsel, or by the party's representative. Absent an agreement by all parties to proceed in another manner, an Exchange disciplinary hearings are in-person. As noted, the Chief and Deputy Hearing Officers for all Exchange and cross-market matters are supplied by OHO and are FINRA employees. Accordingly, absent an agreement by all parties to proceed in another manner, under Rule 10.9261(b) the Chief or Deputy Hearing Officer conducts disciplinary hearings in-person.

Similarly, Rule 10.9830 outlines the requirements for hearings for temporary and permanent cease and desist orders. Rule 10.9830(a), however, does not specify that a party shall be entitled to be heard in-person, by counsel, or by the party's representative.

Consistent with FINRA's temporary amendment to FINRA Rules 9261 and 9830, the Exchange proposes to temporarily grant the Chief or Deputy Chief Hearing Officer temporary authority to order, upon consideration of the current COVID-19-related public health risks presented by an in-person hearing, that a hearing under those rules be conducted by video conference. The proposed change will permit OHO to make an assessment, based on critical COVID-19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted, FINRA has adopted a detailed and thorough protocol to ensure that hearings conducted by video conference will maintain fair process for the parties.⁹ The Exchange believes that this is a reasonable procedure to follow in hearings under Rules 10.9261 and 10.9830 chaired by a FINRA employee.¹⁰

To effectuate these changes, the Exchange proposes to add the following sentence to Rule 10.9261(b):

Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing

⁹ See FINRA Filing, 85 FR at 55713.

¹⁰ The Exchange notes, as did FINRA, that SEC's Rules of Practice pertaining to temporary cease-and-desist orders provide that parties and witnesses may participate by telephone or, in the Commission's discretion, through the use of alternative technologies that allow remote access, such as a video link. See SEC Rule of Practice 511(d)(3); Comment (d); see FINRA Filing, 85 FR at 55714, n. 21.

Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

The proposed text is identical to the language adopted by FINRA.¹¹

Similarly, the Exchange proposes to add the following text to Rule 10.9830(a):

Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

Once again, the proposed language is identical to the language adopted by FINRA.¹²

(b) Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹³ in general, and furthers the objectives of Section 6(b)(5),¹⁴ in particular, because it is 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 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 change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.¹⁵

The Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As previously noted, the text of Rule 10.9261 and Rule 10.9830 is substantially the same as FINRA's rule. As such, the proposed rule change will foster cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect

¹¹ See FINRA Filing, 85 FR at 55712.

¹² Id.

¹³ 15 U.S.C. 78f(b).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ 15 U.S.C. 78f(b)(7) and 78f(d).

the mechanism of a free and open market and a national market system.

The Exchange believes that the proposed temporary rule change will permit the Exchange to effectively conduct hearings during the COVID-19 pandemic in situations where in-person hearings present likely public health risks. The ability to conduct hearings by video conference will thereby permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to proceed without delay, thereby enabling the Exchange to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

Conducting hearings via video conference will give the parties and adjudicators simultaneous visual and oral communication without the risks inherent in physical proximity during a pandemic. Temporarily permitting hearings for disciplinary matters to proceed by video conference maintains fair process by providing respondents a timely opportunity to address and potentially resolve any allegations of misconduct.

As noted, FINRA will use a high quality, secure video conferencing technology with features that will allow the parties to reasonably approximate those tasks that are typically performed at an in-person hearing, such as sharing documents, marking documents, and utilizing breakout rooms. FINRA will also provide training for participants on how to use the video conferencing platform and detailed guidance on the procedures that will govern such hearings. Moreover, the Chief or Deputy Chief Hearing Officer may take into consideration, among other things, a hearing participant's access to connectivity and technology in scheduling a video conference hearing and can also, at their discretion, allow a party or witness to participate by telephone, if necessary, to address such access issues.¹⁶

For the same reasons, the Exchange believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.¹⁷ The Exchange believes that the temporary proposed rule change strikes an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while accounting for the significant health and safety risks of in-person hearings stemming from the outbreak of COVID-19.

¹⁶ See text accompanying notes 9-10, *supra*.

¹⁷ 15 U.S.C. 78f(b)(7) and 78f(d).

4. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to provide temporary relief given the impacts of the COVID-19 pandemic. In its filing, FINRA provides an abbreviated economic impact assessment maintaining that the changes are necessary to temporarily rebalance the attendant benefits and costs of the obligations under FINRA Rules 1015, 9261, 9524 and 9830 in response to the impacts of the COVID-19 pandemic that is equally applicable to the changes the Exchange proposes.¹⁸ The Exchange accordingly incorporates FINRA’s abbreviated economic impact assessment by reference.

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

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

6. Extension of Time Period for Commission Action

Not applicable.

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

The Exchange believes that the proposal qualifies for immediate effectiveness upon filing as a “non-controversial” rule change in accordance with Section 19(b)(3)(A) of the Act¹⁹ and Rule 19b-4(f)(6) thereunder.²⁰

The Exchange asserts that the proposed rule changes (i) will not significantly affect the protection of investors or the public interest, (ii) will not impose any significant burden on competition, and (iii) by its terms, will not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule changes, along with a brief description and text of the proposed rule changes, at least five business days prior to the date of filing, or such shorter time as the Commission may designate.

¹⁸ See FINRA Filing, 85 FR at 55716.

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6).

The Exchange believes that this filing is non-controversial and eligible to become effective immediately because the proposal promotes uniformity in disciplinary rules across self-regulatory organizations and thereby enable the Exchange to continue conducting disciplinary hearings during the COVID-19 pandemic where the health risks of in-person hearings are significant. The Exchange proposes to adopt the rule changes in substantially the form that they were adopted by FINRA. The Exchange further believes that the proposed rule change would not significantly affect the protection of investors or the public interest or impose any significant burden on competition because the changes are based on the rules of FINRA. Moreover, the proposed rule change is not intended to address competitive issues but rather is concerned solely with providing temporary relief given the impacts of the COVID-19 pandemic.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4.²¹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

Not applicable.

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

Not applicable.

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

Not applicable.

11. Exhibits

Exhibit 1 – Form of Notice of Proposed Rule Change for Federal Register

Exhibit 5 – Text of Proposed Rule Change

²¹ 17 CFR 240.19b-4(f)(6).

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSENAT-2020-31)

[Date]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Harmonize Rules 10.9261 and 10.9830 with Recent Changes by the Financial Industry Regulatory Authority, Inc.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on September 29, 2020, NYSE National, Inc. (“NYSE National” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to harmonize Rules 10.9261 and 10.9830 with recent changes by the Financial Industry Regulatory Authority, Inc. (“FINRA”) that temporarily grants the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing novel coronavirus (“COVID-19”) pandemic. As proposed, these temporary amendments would be in effect through December 31, 2020. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization 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 those 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 parts of such statements.

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

1. Purpose

The Exchange proposes to harmonize Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) with recent changes by FINRA to its Rules 9261 and 9830 that temporarily grants to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID-19 pandemic. As proposed, these temporary amendments would be in effect through December 31, 2020.⁴

Background

In 2018, NYSE National adopted disciplinary rules that are, with certain exceptions, substantially the same as the disciplinary rules of its affiliate NYSE

⁴ The Exchange may submit a separate rule filing to extend the expiration date of the proposed temporary amendments if the Exchange requires temporary relief from the rule requirements identified in this proposal beyond December 31, 2020. The amended NYSE National rules will revert back to their current state at the conclusion of the temporary relief period and any extension thereof.

American LLC, which are in turn substantially similar to the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.⁵

In adopting disciplinary rules modeled on FINRA's rules, NYSE National adopted the hearing and evidentiary processes set forth in Rule 10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 9800 Series. As adopted, the text of Rule 10.9261 and Rule 10.9830 are substantially the same as the FINRA rules with certain modifications.⁶

In view of the ongoing spread of COVID-19 and its effect on FINRA's adjudicatory functions nationwide, FINRA recently filed a temporary rule change to grant FINRA's Office of Hearing Officers ("OHO") and the National Adjudicatory Council ("NAC") the authority to conduct certain hearings by video conference, if warranted by the current COVID-19-related public health risks posed by in-person hearings. Among the rules FINRA amended were Rules 9261 and 9830.⁷

⁵ See Securities Exchange Act Release Nos. 83289 (May 17, 2018), 83 FR 23968, 23976 (May 23, 2018) (SR-NYSE-NAT-2018-02) ("2018 Approval Order").

⁶ See id.

⁷ See Securities Exchange Act Release Nos. 83289 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR-FINRA-2020-027) ("FINRA Filing"). FINRA also proposed to temporarily amend FINRA Rules 1015 and 9524. FINRA Rule 1015 governs the process by which an applicant for new or continuing membership can appeal a decision rendered by FINRA's Department of Member Supervision under FINRA Rule 1014 or 1017 and request a hearing which would be conducted by a subcommittee of the NAC. See id. at 55714. The Exchange has not adopted FINRA Rule 1015. FINRA Rule 9524 governs the process by which a statutorily disqualified member firm or associated person can appeal the Department's recommendation to deny a firm or sponsoring firm's application to the NAC. See id. Under the Exchange's version of Rule 10.9524, if the CRO rejects the application, the ETP Holder or applicant may request a review by the Exchange Board of Directors. This differs from FINRA's process, which provides for a hearing before the NAC and further consideration by the FINRA

FINRA represented in its filing that its protocol for conducting hearings by video conference would ensure that such hearings maintain fair process for the parties by, among other things, FINRA's use of a high quality, secure and user-friendly video conferencing service and provide thorough instructions, training and technical support to all hearing participants.⁸ According to FINRA, the proposed changes were a reasonable interim solution to allow FINRA's critical adjudicatory processes to continue to function while protecting the health and safety of hearing participants as FINRA works towards resuming in-person hearings in a manner that is compliant with the current guidance of public health authorities.⁹

Pursuant to a regulatory services agreement ("RSA"), FINRA's Office of Hearing Officers will administer all aspects of adjudications, including assigning hearing officers to serve as NYSE National hearing officers. A hearing officer from OHO will, among other things, preside over the disciplinary hearing, select and chair the hearing panel, and prepare and issue written decisions. The Chief or Deputy Hearing Officer for all Exchange disciplinary hearings are currently drawn from OHO and are all FINRA employees. The Exchange believes that OHO will utilize the same video conference protocol and processes for Exchange matters under the RSA as it proposes for FINRA matters.

Given that FINRA and its Office of Hearing Officers administers disciplinary hearings on the Exchange's behalf, and given that the public health concerns addressed by FINRA's amendments apply equally to the Exchange's disciplinary hearings, the

Board of Directors.

⁸ See FINRA Filing, 85 FR at 55713.

⁹ See id.

Exchange proposes to temporarily amend its disciplinary rules to allow FINRA to conduct virtual hearings on its behalf.

Proposed Rule Change

Rule 10.9261(b) states that if a disciplinary hearing is held, a party shall be entitled to be heard in-person, by counsel, or by the party's representative. Absent an agreement by all parties to proceed in another manner, an Exchange disciplinary hearings are in-person. As noted, the Chief and Deputy Hearing Officers for all Exchange and cross-market matters are supplied by OHO and are FINRA employees. Accordingly, absent an agreement by all parties to proceed in another manner, under Rule 10.9261(b) the Chief or Deputy Hearing Officer conducts disciplinary hearings in-person.

Similarly, Rule 10.9830 outlines the requirements for hearings for temporary and permanent cease and desist orders. Rule 10.9830(a), however, does not specify that a party shall be entitled to be heard in-person, by counsel, or by the party's representative.

Consistent with FINRA's temporary amendment to FINRA Rules 9261 and 9830, the Exchange proposes to temporarily grant the Chief or Deputy Chief Hearing Officer temporary authority to order, upon consideration of the current COVID-19-related public health risks presented by an in-person hearing, that a hearing under those rules be conducted by video conference. The proposed change will permit OHO to make an assessment, based on critical COVID-19 data and criteria and the guidance of health and security consultants, whether an in-person hearing would compromise the health and safety of the hearing participants such that the hearing should proceed by video conference. As noted, FINRA has adopted a detailed and thorough protocol to ensure

that hearings conducted by video conference will maintain fair process for the parties.¹⁰

The Exchange believes that this is a reasonable procedure to follow in hearings under Rules 10.9261 and 10.9830 chaired by a FINRA employee.¹¹

To effectuate these changes, the Exchange proposes to add the following sentence to Rule 10.9261(b):

Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

The proposed text is identical to the language adopted by FINRA.¹²

Similarly, the Exchange proposes to add the following text to Rule 10.9830(a):

Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

Once again, the proposed language is identical to the language adopted by

¹⁰ See FINRA Filing, 85 FR at 55713.

¹¹ The Exchange notes, as did FINRA, that SEC's Rules of Practice pertaining to temporary cease-and-desist orders provide that parties and witnesses may participate by telephone or, in the Commission's discretion, through the use of alternative technologies that allow remote access, such as a video link. See SEC Rule of Practice 511(d)(3); Comment (d); see FINRA Filing, 85 FR at 55714, n. 21.

¹² See FINRA Filing, 85 FR at 55712.

FINRA.¹³

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹⁴ in general, and furthers the objectives of Section 6(b)(5),¹⁵ in particular, because it is 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 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 change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.¹⁶

The Exchange believes that the proposed rule changes support the objectives of the Act by providing greater harmonization between Exchange rules and FINRA rules of similar purpose, resulting in less burdensome and more efficient regulatory compliance. As previously noted, the text of Rule 10.9261 and Rule 10.9830 is substantially the same as FINRA's rule. As such, the proposed rule change 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.

¹³ Id.

¹⁴ 15 U.S.C. 78f(b).

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78f(b)(7) and 78f(d).

The Exchange believes that the proposed temporary rule change will permit the Exchange to effectively conduct hearings during the COVID-19 pandemic in situations where in-person hearings present likely public health risks. The ability to conduct hearings by video conference will thereby permit the adjudicatory functions of the Exchange's disciplinary rules to continue unabated, thereby avoiding protracted delays. The Exchange believes that this is especially important in matters where temporary and permanent cease and desist orders are sought because the proposed rule change would enable those hearings to proceed without delay, thereby enabling the Exchange to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

Conducting hearings via video conference will give the parties and adjudicators simultaneous visual and oral communication without the risks inherent in physical proximity during a pandemic. Temporarily permitting hearings for disciplinary matters to proceed by video conference maintains fair process by providing respondents a timely opportunity to address and potentially resolve any allegations of misconduct.

As noted, FINRA will use a high quality, secure video conferencing technology with features that will allow the parties to reasonably approximate those tasks that are typically performed at an in-person hearing, such as sharing documents, marking documents, and utilizing breakout rooms. FINRA will also provide training for participants on how to use the video conferencing platform and detailed guidance on the procedures that will govern such hearings. Moreover, the Chief or Deputy Chief Hearing Officer may take into consideration, among other things, a hearing participant's access to connectivity and technology in scheduling a video conference hearing and can also, at

their discretion, allow a party or witness to participate by telephone, if necessary, to address such access issues.¹⁷

For the same reasons, the Exchange believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.¹⁸ The Exchange believes that the temporary proposed rule change strikes an appropriate balance between providing fair process and enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets while accounting for the significant health and safety risks of in-person hearings stemming from the outbreak of COVID-19.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but is rather intended solely to provide temporary relief given the impacts of the COVID-19 pandemic. In its filing, FINRA provides an abbreviated economic impact assessment maintaining that the changes are necessary to temporarily rebalance the attendant benefits and costs of the obligations under FINRA Rules 1015, 9261, 9524 and 9830 in response to the impacts of the COVID-19 pandemic that is equally applicable to the changes the Exchange proposes.¹⁹ The Exchange accordingly incorporates FINRA's abbreviated economic impact assessment by reference.

¹⁷ See text accompanying notes 9-10, supra.

¹⁸ 15 U.S.C. 78f(b)(7) and 78f(d).

¹⁹ See FINRA Filing, 85 FR at 55716.

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

No written comments were solicited or received with respect to the proposed rule change.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act²⁰ and Rule 19b-4(f)(6) thereunder.²¹ Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

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 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)²² of the Act to determine whether the proposed rule change should be approved or disapproved.

²⁰ 15 U.S.C. 78s(b)(3)(A)(iii).

²¹ 17 CFR 240.19b-4(f)(6).

²² 15 U.S.C. 78s(b)(2)(B).

IV. Solicitation of Comments

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

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSENAT-2020-31 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-NYSENAT-2020-31. 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 rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m.

and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEENAT-2020-31 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²³

Eduardo A. Aleman
Deputy Secretary

²³ 17 CFR 200.30-3(a)(12).

Additions underlined.
Deletions [bracketed].

Rules of NYSE National, Inc.

* * * * *

Rule 10.9000. CODE OF PROCEDURE

* * * * *

10.9200. DISCIPLINARY PROCEEDINGS

* * * * *

Rule 10.9261. Evidence and Procedure in Hearing

(a) Submission of Documentary Evidence and List of Witnesses Before Hearing

No Change.

(b) Party's Right to Be Heard

If a hearing is held, a Party shall be entitled to be heard in person, by counsel, or by the Party's representative. Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

(c) Request to Submit Additional Evidence

No Change.

* * * * *

Rule 10.9800. TEMPORARY CEASE AND DESIST ORDERS

* * * * *

Rule 10.9830. Hearing

(a) When Held

The hearing shall be held not later than 15 days after service of the notice and filing initiating the temporary cease and desist proceeding, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. If a Hearing Officer or Hearing Panelist is recused or disqualified, the hearing shall be held not later than five days after a replacement Hearing Officer or Hearing Panelist is appointed. Upon consideration of the current public health risks presented by an in-person hearing, the Chief Hearing Officer or Deputy Chief Hearing Officer may, on a temporary basis, determine that the hearing shall be conducted, in whole or in part, by video conference.

(b) through (h) No Change

* * * * *