

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93114; File No. 4-575)

September 23, 2021

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 Among the Financial Industry Regulatory Authority, Inc., The Nasdaq Stock Market LLC, and Nasdaq BX, Inc.

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 September 2, 2021, pursuant to Rule 17d-2 of the Act,² by the Financial Industry Regulatory Authority, Inc. (“FINRA”), The Nasdaq Stock Market LLC (“Nasdaq”), and Nasdaq BX, Inc. (“BX”) (collectively, “Participating Organizations” or “parties”). This agreement amends and restates the agreement entered into between FINRA and BX on December 5, 2008, entitled “Agreement between Financial Industry Regulatory Authority, Inc. and Boston Stock Exchange, Incorporated pursuant to Rule 17d-2 under the Securities Exchange Act of 1934,” and any subsequent amendments thereafter, and the agreement entered into between FINRA and Nasdaq approved by the Commission on July 12, 2006, entitled “Agreement between the National Association of Securities Dealers, Inc. and The Nasdaq Stock Market LLC Pursuant to Section 17(d) and Rule 17d-2,” and any subsequent amendments thereafter.

I. Introduction

¹ 15 U.S.C. 78q(d).

² 17 CFR 240.17d-2.

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 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

³ 15 U.S.C. 78s(g)(1).

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.

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 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.

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

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

II. The Plan

On January 8, 2009, the Commission declared effective the Plan entered into between FINRA and the Boston Stock Exchange, Incorporated (n/k/a Nasdaq BX, Inc. (“BX”)) 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 BX 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 BX rule for which FINRA bears responsibility under the Plan for overseeing and enforcing with respect to BX members that are also members of FINRA and the associated persons therewith (“Certification”).

III. Proposed Amendment to the Plan

On September 2, 2021, the parties submitted a proposed amendment to the Plan (“Amended Plan”). The primary purpose of the Amended Plan is to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e-4 under the Act, to reflect the name change of Boston Stock Exchange, Incorporated to Nasdaq BX, Inc., and to add Nasdaq as a Participant to the Plan.¹² The text of the proposed Amended Plan, which replaces and supersedes the current Plan in its entirety, is as follows:

* * * * *

¹¹ See Securities Exchange Act Release No. 59218 (January 8, 2009), 74 FR 2143 (January 14, 2009)

¹² The Amended Plan replaces and supersedes the agreement between FINRA and Nasdaq. See Securities Exchange Act Release No. 54136 (July 12, 2006), 71 FR 40759 (July 18, 2006).

**AGREEMENT [BETWEEN] AMONG FINANCIAL INDUSTRY
REGULATORY AUTHORITY, INC., THE NASDAQ STOCK MARKET LLC AND
[BOSTON STOCK EXCHANGE, INCORPORATED] NASDAQ BX, INC. PURSUANT
TO
RULE 17d-2 UNDER THE SECURITIES EXCHANGE ACT OF 1934**

This Agreement, by and [between]among the Financial Industry Regulatory Authority, Inc. (“FINRA”), The Nasdaq Stock Market LLC (“Nasdaq”) and [Boston Stock Exchange, Incorporated]Nasdaq BX, Inc. (“BX”), is made this [5th] 30th day of [December]August, [2008]2021 (the “Agreement”), pursuant to Section 17(d) of the 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, Nasdaq and BX 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 BX on December 5, 2008, entitled “Agreement between Financial Industry Regulatory Authority, Inc. and Boston Stock Exchange, Incorporated pursuant to Rule 17d-2 under the Securities Exchange Act of 1934,” and any subsequent amendments thereafter and the agreement entered into between FINRA and Nasdaq approved by the SEC on July 12, 2006, entitled “Agreement between the National Association of Securities Dealers, Inc. and The Nasdaq Stock Market LLC Pursuant to Section 17(d) and Rule 17d-2,” and any subsequent amendments thereafter.

WHEREAS, FINRA, Nasdaq and BX desire to reduce duplication in the examination, of their [Dual]Common Members (as defined herein) and in the filing and processing of certain registration and membership records; and

WHEREAS, FINRA, Nasdaq and BX 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, Nasdaq and BX hereby agree as follows:

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

(b) “Common Rules” shall mean Nasdaq Rules and BX 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 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 provision or rule, or a [Dual]Common 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, Nasdaq, BX or FINRA rules as they pertain to violations of insider trading activities, which is covered by a separate 17d-2 Agreement by and among [the American Stock Exchange, LLC, BATS Exchange, Inc., Boston Stock Exchange, Inc., CBOE Stock Exchange, LLC, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The

NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock Exchange, Inc.] 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 [October 17, 2008]September 23, 2020. Common Rules shall not include any provisions regarding: (i) notice, reporting or any other filings made directly to or from Nasdaq or BX; (ii) incorporation by reference of other Nasdaq or BX 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 Nasdaq or BX; (iv) prior written approval of Nasdaq or BX; and (v) payment of fees or fines to Nasdaq or BX.

(c) “[Dual]Common Members” shall mean those members of FINRA and a member of at least one of Nasdaq or BX [members that are also members of FINRA] and the associated persons therewith.

(d) “Effective Date” shall have the meaning set forth in paragraph [14]13.

(e) “Enforcement Responsibilities” shall mean the conduct of appropriate proceedings, in accordance with FINRA’s Code of Procedure (the [NASD] 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 FINRA's Code of Procedure and sanctions guidelines.

(f) “Regulatory Responsibilities” shall mean the examination responsibilities and Enforcement Responsibilities relating to compliance by the [Dual]Common 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 Common Members with Rule 14e-4 of the Securities Exchange Act (“Rule 14e-4”), with a focus on the standardized call option provision of Rule 14e-4(a)(1)(ii)(D).

2. Regulatory [and Enforcement] Responsibilities. FINRA shall assume Regulatory Responsibilities [and Enforcement Responsibilities] for [Dual]Common Members. Attached as Exhibit 1 to this Agreement and made part hereof, Nasdaq and BX furnished FINRA with a current list of Common Rules and certified to FINRA that such rules that are Nasdaq Rules and BX 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 rules of Nasdaq, BX or FINRA, Nasdaq and BX shall submit an updated list of Common Rules to FINRA for review which shall add Nasdaq Rules and BX Rules not included in the current list of Common Rules that qualify as Common Rules as defined in this Agreement; delete Nasdaq Rules and BX 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 Nasdaq Rules and BX 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 Nasdaq and BX shall retain full responsibility for (unless otherwise addressed by separate agreement or rule) (collectively, the “Retained Responsibilities”) the following:

- (a) [S]urveillance, examination, investigation and enforcement with respect to trading activities or practices involving Nasdaq’s or BX’s own marketplaces;
- (b) registration pursuant to [its]Nasdaq’s or BX’s applicable rules of associated persons (i.e., registration rules that are not Common Rules);
- (c) discharge of [its]Nasdaq’s or BX’s duties and obligations as a Designated Examining Authority pursuant to Rule 17d-1 under the Exchange Act; and
- (d) any Nasdaq Rules and BX Rules that are not Common Rules.

[3. **Dual Members.** Prior to the Effective Date, BX shall furnish FINRA with a current list of Common Members, which shall be updated no less frequently than once each quarter.]

[4.]3. No Charge. There shall be no charge to Nasdaq and BX by FINRA for performing the Regulatory Responsibilities [and Enforcement Responsibilities] under this Agreement except as hereinafter provided]. FINRA shall provide Nasdaq and BX with ninety (90) days advance

written notice in the event FINRA decides to impose any charges to Nasdaq and BX for performing the Regulatory Responsibilities under this Agreement. If FINRA determines to impose a charge, Nasdaq and BX 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.]4. Reassignment of Regulatory Responsibilities. Notwithstanding any provision hereof, this Agreement shall be subject to any statute, or any rule or order of the Commission reassigning Regulatory Responsibilities between self-regulatory organizations. To the extent such action is inconsistent with this Agreement, such action shall supersede the provisions hereof to the extent necessary for them to be properly effectuated and the provisions hereof in that respect shall be null and void.

[6.]5. Notification of Violations. In the event that FINRA becomes aware of apparent violations of any Nasdaq Rules or BX Rules, which are not listed as Common Rules, discovered pursuant to the performance of the Regulatory Responsibilities assumed hereunder, FINRA shall notify Nasdaq and BX of those apparent violations for such response as Nasdaq and BX deems appropriate. In the event that Nasdaq or BX becomes aware of apparent violations of any Common Rules, discovered pursuant to the performance of the Retained Responsibilities, Nasdaq and BX shall notify FINRA of those apparent violations and such matters shall be handled by FINRA as provided 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. Apparent violations of Common Rules, FINRA Rules, federal securities laws, and rules and regulations thereunder, 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]Common Member is the subject of an investigation relating to a transaction on Nasdaq or BX, Nasdaq and BX, at each party's [may in its] discretion assume concurrent jurisdiction and responsibility.

[7.]6. Continued Assistance.

(a) FINRA shall make available to Nasdaq and BX all information obtained by FINRA in the performance by it of the Regulatory Responsibilities hereunder with respect to the [Dual]Common Members subject to this Agreement. In particular, and not in limitation of the foregoing, FINRA shall furnish Nasdaq and BX any information it obtains about [Dual]Common Members which reflects adversely on their financial condition. Nasdaq and BX shall make available to FINRA any information coming to [its]their attention that reflects adversely on the financial condition of [Dual]Common 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.

[8.]7. [Dual]Common Member Applications.

(a) [Dual]Common 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 allied persons, partners, officers, registered personnel and any other person required to be approved by the rules of [both]Nasdaq, BX and FINRA or associated with [Dual]Common Members thereof. Upon request, FINRA shall advise Nasdaq and BX of any changes of allied members, partners, officers, registered personnel and other persons required to be approved by the rules of [both]Nasdaq, BX and FINRA.

(b) [Dual]Common Members shall be required to send to FINRA all letters, termination notices or other material respecting the individuals listed in paragraph [8]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]Common 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 Nasdaq and BX advised of its actions in this regard for such subsequent proceedings as Nasdaq and BX 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 a person associated therewith or other persons required to register or qualify by examination meets the Nasdaq or BX requirements for general membership or for specified categories of membership or

participation in Nasdaq or BX, such as Equities Market Maker, Equities ECN, Order Entry Firm, or any similar type of Nasdaq or BX 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 [8]7(d), including termination or limitation on activities, of a member or a participant of Nasdaq or BX, or a person associated with, or requesting association with, a member or participant of Nasdaq or BX.

[9.]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]Common Members and any other applications required of [Dual]Common Members with respect to the Common Rules as they may be amended from time to time. Upon request, FINRA shall advise Nasdaq and BX of the opening, address change and termination of branch and main offices of [Dual]Common Members and the names of such branch office managers.

[10.]9. **Customer Complaints.** Nasdaq and BX shall forward to FINRA copies of all customer complaints involving [Dual]Common Members received by Nasdaq and BX 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.

[11.]10. **Advertising.** FINRA shall assume responsibility to review the advertising of [Dual]Common 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.

[12.]11. **No Restrictions on Regulatory Action.** Nothing contained in this Agreement shall restrict or in any way encumber the right of either party to conduct its own independent or concurrent investigation, examination or enforcement proceeding of or against [Dual]Common Members, as either party, in its sole discretion, shall deem appropriate or necessary.

[13.]12. **Termination.** This Agreement may be terminated by Nasdaq, BX 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 [4]3.

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

[15.]14. **Arbitration.** In the event of a dispute between the parties as to the operation of this Agreement, Nasdaq, BX 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 Section [15]14 shall interfere with a party's right to terminate this Agreement as set forth herein.

[16. **Notification of Members.** BX and FINRA shall notify Dual Members of this Agreement after the Effective Date by means of a uniform joint notice.]

[17.]15. 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.

[18.]16. Limitation of Liability. [Neither FINRA nor BX]None of the parties nor any of their respective directors, governors, officers or employees shall be liable to [the]any 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 any party [one or the other of FINRA or BX] and caused by the willful misconduct of [the other]another party or their respective directors, governors, officers or employees. No warranties, express or implied, are made by [FINRA or BX]any party hereto with respect to any of the responsibilities to be performed by [each of] them hereunder.

[19.]17. Relief from Responsibility. Pursuant to Sections 17(d)(1)(A) and 19(g) of the Exchange Act and Rule 17d-2 thereunder, FINRA, Nasdaq and BX join in requesting the Commission, upon its approval of this Agreement or any part thereof, to relieve Nasdaq and BX 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.

[20.]18. **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.

[21.]19. **Separate Agreement.** This Agreement is wholly separate from (1) 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, and MIAX Emerald, LLC approved by the Commission on February 12, 2019 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 (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, and MIAX Emerald, LLC approved by the Commission on February 11, 2019 involving options-related market surveillance matters and such agreements as may be amended from time to time.

[22.]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

[Valid beginning December 15, 2008]

NOTE: The entire existing table of rules should be deleted and replaced with the table below and for the remainder of the exhibit new text is underlined and deleted text is in brackets.

NASDAQ AND BX RULES CERTIFICATION
FOR 17d-2 AGREEMENT WITH FINRA

The Nasdaq Stock Market LLC (“Nasdaq”) and [Boston Stock Exchange, Incorporated]Nasdaq BX, Inc. (“BX”) hereby certify[ies] that the requirements contained in the Nasdaq and BX rules listed below are identical to, or substantially similar to, the [NASD and] FINRA rules noted below:

#Common Rules shall not include provisions regarding (i) notice, reporting or any other filings made directly to or from Nasdaq or BX, (ii) incorporation by reference to other Nasdaq or BX 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 Nasdaq or BX, (iv) prior written approval of Nasdaq or BX, and (v) payment of fees or fines to Nasdaq or BX.

BX Rule	Nasdaq Rule	FINRA Rule
General 2, Section 15. Business Continuity Plans [#]	General 2, Section 15. Business Continuity Plans [#]	4370. Business Continuity Plans
General 2, Section 10. Executive Representative	General 2, Section 10. Executive Representative	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 [#]	General 3, Rule 1002(b) Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction [#]	FINRA Bylaws Article III, Sec. 1

General 3, Rule 1002(d). Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction [#]	General 3, Rule 1002(d). 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, 1012(c)(1). Duty to Ensure the Accuracy, Completeness, and Current Nature of Membership Information Filed with the Exchange [#]	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 Bylaws Article IV, sec. 1(c) of the By- Laws.
General 4, Section 1, 1210. Registration Requirements [#]	General 4, Section 1, 1210. Registration Requirements [#]	1210. Registration Requirements
General 4, Section 1, 1220. Registration Categories ^{1#}	General 4, Section 1, 1220. Registration Categories ^{1#}	1220. Registration Categories
General 4, Section 1, 1220.06. Eliminated Registration Categories ¹	General 4, Section 1, 1220.06. Eliminated Registration Categories ²	1220.06. Eliminated Registration Categories

¹ FINRA shall only have Regulatory Responsibilities regarding BX General 4, Section 1220 to the extent that BX recognizes the same categories of limited principal and representative registration as the BX Rule, by incorporating Nasdaq General 4, Section 1220, does not recognize registration related to investment banking, research, government securities, investment company and variable contracts products, direct participation programs, private securities offerings, and operations professional.

² FINRA shall only have Regulatory Responsibilities regarding Nasdaq General 4, Section 1220 to the extent that Nasdaq recognizes the same categories of limited principal and representative registration as Nasdaq General 4, Section 1220 does not recognize registration related to investment banking, research, government securities, investment company and variable contracts products, direct participation programs, private securities offerings, and operations professional.

General 4, Section 1, Rule 1230(1)-(2)(D) Associated Persons Exempt from Registration [#]	General 4, Section 1, Rule 1230(1)-(2)(D) Associated Persons Exempt from Registration [#]	1230. Associated Persons Exempt from Registration
General 4, Section 1, 1240. Continuing Education Requirements	General 4, Section 1, 1240. Continuing Education Requirements	1240. Continuing Education Requirements
General 4, Section 1, 1250. Electronic Filing Requirements for Uniform Forms [#]	General 4, Section 1, 1250. Electronic Filing Requirements for Uniform Forms [#]	1010. Electronic Filing Requirements for Uniform Forms and FINRA Bylaws Article V, Section 2
Equity 5, Section 1. Definitions	Equity 5, Section 1. Definitions	7410. Definitions
Equity 5, Section 2. Applicability	Equity 5, Section 2. Applicability	7420. Applicability
Equity 5, Section 3. Synchronization of Member Business Clocks	Equity 5, Section 3. Synchronization of Member Business Clocks	7430. Synchronization of Member Business Clocks
Equity 5, Section 4. Recording of Order Information	Equity 5, Section 4. Recording of Order Information	7440. Recording of Order Information
Equity 5, Section 5. Order Data Transmission Requirements	Equity 5, Section 5. Order Data Transmission Requirements	7450. Order Data Transmission Requirements
Equity 5, Section 6. Violation of Order Audit Trail System Rules	Equity 5, Section 6. Violation of Order Audit Trail System Rules	7460. Violation of Order Audit Trail System Rules
General 9, Section 1(a). Standards of Commercial Honor and Principles of Trade	General 9, Section 1(a). Standards of Commercial Honor and Principles of Trade	2010. Standards of Commercial Honor and Principles of Trade*
General 9, Section 1(b). Trading Ahead of Customer Orders	General 9, Section 1(b). Prohibition Against Trading Ahead of Customer Orders	5320. Prohibition Against Trading Ahead of Customer Orders
General 9, Section 1(c). Front Running Policy	General 9, Section 1(c). Front Running Policy	5270. Front Running of Block Transactions
General 9, Section 1(d). Trading Ahead of Research Reports	General 9, Section 1(d). Trading Ahead of Research Reports	5280. Trading Ahead of Research Reports
General 9, Section 1(e). Anti-Intimidation/Coordination	General 9, Section 1(e). Anti-Intimidation/Coordination	5240. Anti-Intimidation/Coordination

General 9, Section 1(f). Confirmation of Callable Common Stock	General 9, Section 1(f). Confirmation of Callable Common Stock	2232. Customer Confirmations
General 9, Section 1(g). Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes	General 9, Section 1(h). Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes	2140. Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes
General 9, Section 1(i). Use of Manipulative, Deceptive or Other Fraudulent Devices	General 9, Section 1(g). Use of Manipulative, Deceptive or Other Fraudulent Devices	2020. Use of Manipulative, Deceptive or Other Fraudulent Devices*
General 9, Section 2. Customers' Securities or Funds	General 9, Section 2. Customers' Securities or Funds	2150. Improper Use of Customers' Securities or Funds; Prohibition Against Guarantees and Sharing in Accounts
General 9, Section 3. Communications with the Public	General 9, Section 3. Communications with the Public	2210. Communications with the Public
General 9, Section 5. Telemarketing	General 9, Section 5. Telemarketing	3230. Telemarketing
General 9, Section 6. Forwarding of Proxy and Other Issuer-Related Materials	General 9, Section 6. Forwarding of Proxy and Other Issuer-Related Materials	2251. Processing and Forwarding of Proxy and Other Issuer-Related Materials
General 9, Section 7(a). Disclosure of Financial Condition	General 9, Section 7(a). Disclosure of Financial Condition	2261. Disclosure of Financial Condition
General 9, Section 7(b). Disclosure of Control Relationship with Issuer	General 9, Section 7(b). Disclosure of Control Relationship with Issuer	2262. Disclosure of Control Relationship with Issuer
General 9, Section 7(c). Disclosure of Participation or Interest in Primary or Secondary Distribution	General 9, Section 7(c). Disclosure of Participation or Interest in Primary or Secondary Distribution	2269. Disclosure of Participation or Interest in Primary or Secondary Distribution
General 9, Section 10 Recommendations to Customers (Suitability)	General 9, Section 10 Recommendations to Customers (Suitability)	2111. Suitability
General 9, Section 11. Best Execution and Interpositioning	General 9, Section 11. Best Execution and Interpositioning	5310. Best Execution and Interpositioning
General 9, Section 12. Customer Account Statements	General 9, Section 12. Customer Account Statements	2231. Customer Account Statements

General 9, Section 13. Margin Disclosure Statement	General 9, Section 13. Margin Disclosure Statement	2264. Margin Disclosure Statement
General 9, Section 14. Approval Procedures for Day-Trading Accounts	General 9, Section 14. Approval Procedures for Day-Trading Accounts	2130. Approval Procedures for Day-Trading Accounts and Rule 2270 Day-Trading Risk Disclosure Statement
General 9, Section 15. Borrowing From or Lending to Customers	General 9, Section 15. Borrowing From or Lending to Customers	3240. Borrowing From or Lending to Customers
General 9, Section 16. Charges for Services Performed	General 9, Section 16. Charges for Services Performed	2122. Charges for Services Performed
General 9, Section 18. Payments for Market Making	General 9, Section 18. Payments for Market Making	5250. Payments for Market Making
General 9, Section 19. Discretionary Accounts	General 9, Section 19. Discretionary Accounts	3260. Discretionary Accounts
General 9, Section 20. Supervision	General 9, Section 20. Supervision	3110. Supervision
General 9, Section 21(a). Supervisory Control System, Annual Certification of Compliance and Supervisory Processes	General 9, Section 21(a). Supervisory Control System, Annual Certification of Compliance and Supervisory Processes	3120. Supervisory Control System
General 9, Section 21(c). Supervisory Control System, Annual Certification of Compliance and Supervisory Processes	General 9, Section 21(c). Supervisory Control System, Annual Certification of Compliance and Supervisory Processes	3130. Annual Certification of Compliance and Supervisory Processes
General 9, Section 23. Outside Business Activities of an Associated Person	General 9, Section 23. Outside Business Activities of an Associated Person	3270. Outside Business Activities of an Associated Person
General 9, Section 24. Private Securities Transactions of an Associated Person	General 9, Section 24. Private Securities Transactions of an Associated Person	3280. Private Securities Transactions of an Associated Person
General 9, Section 25. Transactions for or by Associated Persons	General 9, Section 25. Transactions for or by Associated Persons	3210. Accounts at Other Broker-Dealers and Financial Institutions
General 9, Section 26. Influencing or Rewarding Employees of Others	General 9, Section 26. Influencing or Rewarding Employees of Others	3220. Influencing or Rewarding Employees of Others

General 9, Section 27. Reporting Requirements#	General 9, Section 27. Reporting Requirements#	4530. Reporting Requirements
General 9, Section 28. Disclosure to Associated Persons When Signing Form U-4	General 9, Section 28. Disclosure to Associated Persons When Signing Form U-4	2263. Arbitration Disclosure to Associated Persons When Signing or Acknowledging Form U-4
General 9, Section 30. Books and Records, Section 43. General Requirements	General 9, Section 30. Books and Records, Section 43. General Requirements	4511. General Requirements
General 9, Section 31. Use of Information Obtained in Fiduciary Capacity	General 9, Section 31. Use of Information Obtained in Fiduciary Capacity	2060. Use of Information Obtained in Fiduciary Capacity
General 9, Section 37. Anti-Money Laundering Compliance Program	General 9, Section 37. Anti-Money Laundering Compliance Program	3310. Anti-Money Laundering Compliance Program
General 9, Section 39. Fidelity Bonds	General 9, Section 39. Fidelity Bonds	4360. Fidelity Bonds
General 9, Section 30. Books and Records, (d) Record of Written Complaints; (e) "Complaint" Defined	General 9, Section 44. Records of Written Customer Complaints	4513. Records of Written Customer Complaints
General 9, Section 30. Books and Records, (b) Customer Account Information	General 9, Section 45. Customer Account Information	4512. Customer Account Information
General 9, Section 30. Books and Records, (g) Negotiable Instruments Drawn From A Customer's Account	General 9, Section 46. Authorization Records for Negotiable Instruments Drawn From a Customer's Account	4514. Authorization Records for Negotiable Instruments Drawn From a Customer's Account
General 9, Section 30. Books and Records, (j) Changes in Account Name or Designation	General 9, Section 47. Approval and Documentation of Changes in Account Name or Designation	4515. Approval and Documentation of Changes in Account Name or Designation
General 9, Section 49. Payments Involving Publications that Influence the Market Price of a Security	General 9, Section 49. Payments Involving Publications that Influence the Market Price of a Security	5230. Payments Involving Publications that Influence the Market Price of a Security
General 9, Section 50. Foreign Members#	General 9, Section 50. Foreign Members#	1021. Foreign Members

General 9, Section 51. Research Analysts	General 9, Section 51. Research Analyst	2241. Research Analysts and Research Reports
General 9, Section 71. Custodian of Books and Records	General 9, Section 71. Custodian of Books and Records	4570. Custodian of Books and Record, (a) Designation of Custodian
Equity 9, Section 1 Adjustment of Open Orders	Equity 9, Section 1. Adjustment of Open Orders	5330. Adjustment of Orders
Equity 9, Section 3. Publication of Transactions and Quotations	Equity 9, Section 3. Publication of Transactions and Quotations	5210. Publication of Transactions and Quotations
Equity 9, Section 10. Prompt Receipt and Delivery of Securities	Equity 9, Section 10. Prompt Receipt and Delivery of Securities	11860(a)(4)(A). Purchases
Equity 10, Section 1. Direct Participation Programs	Equity 10, Section 1. Direct Participation Programs	2310. Direct Participation Programs
Equity 10, Section 2. Investment Company Securities	Equity 10, Section 2. Investment Company Securities	2341. Investment Company Securities
2841. General	Equity 10, Section 3(a). General	2351(a). General Provisions Applicable to Trading in Index Warrants, Currency Index Warrants and Currency Warrants
Equity 10, Section 4 Position Limits; 5 Exercise Limits; and 7 Liquidation of Index Warrant Positions	Equity 10, Section 4 Position Limits; 5 Exercise Limits; and 7 Liquidation of Index Warrant Positions	2357. Position and Exercise Limits; Liquidations

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

- SEC '34 Act Section 28(e) Effect on Existing Law
- SEC '34 Act Rule 10b-10 Confirmation of Transactions
- SEC '34 Act Rule 203 of Regulation SHO Borrowing and Delivery Requirements
- SEC '34 Act Rule 606 of Regulation NMS Disclosure of Order Routing Information
- SEC '34 Act Rule 607 of Regulation NMS Customer Account Statements
- SEA Rule 14e-4 – Prohibited Transactions in Connection with Partial Tender Offers[^]

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

* 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 [the American Stock Exchange, LLC, BATS Exchange, Inc. Boston Stock Exchange,

Inc., CBOE Stock Exchange, LLC, Chicago Stock Exchange, Inc., Financial Industry Regulatory Authority, Inc., International Securities Exchange, LLC, The NASDAQ Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange, LLC, NYSE Arca Inc., NYSE Regulation, Inc., and Philadelphia Stock Exchange, Inc.] 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., and Investors' Exchange LLC and the Long-Term Stock Exchange, Inc. as approved by the SEC on [October 17, 2008]September 23, 2020.

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 4-575 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 4-575. 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, BX, and Nasdaq. 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 4-575 and should be submitted on or before [insert date 21 days from 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 Act¹³ and Rule 17d-2(c) thereunder¹⁴ 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 FINRA, BX, and Nasdaq. Accordingly, the proposed Amended Plan promotes efficiency by reducing costs to Common Members. Furthermore, because BX, Nasdaq and FINRA will coordinate their regulatory functions in accordance with the Amended Plan, the Amended Plan should promote investor protection.

¹³ 15 U.S.C. 78q(d).

¹⁴ 17 CFR 240.17d-2(c).

The Commission notes that, under the Amended Plan, BX, Nasdaq and FINRA have allocated regulatory responsibility for those BX and Nasdaq 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 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, BX and Nasdaq will each review the Certification at least annually, or more frequently if required by changes in either the rules of BX, Nasdaq, or FINRA, and, if necessary, submit to FINRA an updated list of Common Rules to add BX or Nasdaq rules not included on the then-current list of Common Rules that are substantially similar to FINRA rules; delete BX or Nasdaq 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 BX or Nasdaq rules that qualify as common rules.¹⁵ 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.

¹⁵ See paragraph 2 of the Amended Plan.

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 BX and Nasdaq rules that are substantially similar to the rules of FINRA for Common Members of BX and FINRA, and Nasdaq 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 BX or Nasdaq 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 BX and Nasdaq rule to the Certification that is not substantially similar to a FINRA rule; delete a BX and Nasdaq rule from the Certification that is substantially similar to a FINRA rule; or leave on the Certification a BX and Nasdaq 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.¹⁶

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 Amended Plan is to allocate surveillance, investigation, and enforcement responsibilities for Rule 14e-4 under the Act, to reflect the name change of Boston Stock Exchange, Incorporated to Nasdaq BX, Inc., and to add Nasdaq as a Participant to the Plan. The Commission notes that the prior version of this plan immediately prior to this

¹⁶ 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.

proposed amendment was published for comment and the Commission did not receive any comments thereon.¹⁷ Furthermore, the Commission does not believe that the amendment to the plan raises any new regulatory issues that the Commission has not previously considered.

VI. Conclusion

This order gives effect to the Amended Plan filed with the Commission in File No. 4-575. 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. 4-575, between the FINRA, BX, and Nasdaq, filed pursuant to Rule 17d-2 under the Act, hereby is approved and declared effective.

IT IS FURTHER ORDERED that BX and Nasdaq are relieved of those responsibilities allocated to FINRA under the Amended Plan in File No. 4-575.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁸

J. Matthew DeLesDernier
Assistant Secretary

¹⁷ See supra note 11 (citing to Securities Exchange Act Release No. 59218).

¹⁸ 17 CFR 200.30-3(a)(34).