

fund office administrative, clerical, and supervisory time. The estimated aggregate average annual cost burden for the next 3 years for the information collection request in part 4262 is \$2,130,400, for approximately 5,326 contract hours assuming an average hourly rate of \$400 for work done by outside actuaries and attorneys. The actual hour burden and cost burden per plan will vary depending on plan size and other factors.

The collection of information under the regulation has been approved by OMB under control number 1212-0074 (expires July 31, 2023). PBGC intends to request that OMB extend its approval for 3 years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC is soliciting public comments to—

Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodologies and assumptions used;

Enhance the quality, utility, and clarity of the information to be collected; and

Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued in Washington, DC.

**Hilary Duke,**

*Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.*

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**BILLING CODE 7709-02-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96871; File No. SR-NYSEARCA-2023-10]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Expiration Date of the Temporary Amendments to Rules 10.9261 and 10.9830

February 9, 2023.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on January 30, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 extending the expiration date of the temporary amendments to Rules 10.9261 and 10.9830 as set forth in SR-NYSEArca-2020-85 from January 31, 2023 to April 30, 2023, in conformity with recent changes by the Financial Industry Regulatory Authority, Inc. (“FINRA”). The proposed rule change would not make any changes to the text of NYSE Arca Rules 10.9261 and 10.9830. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the 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.

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

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

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

##### 1. Purpose

The Exchange proposes extending the expiration date of the temporary amendments as set forth in SR-NYSEArca-2020-85<sup>4</sup> to Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) from January 31, 2023 to April 30, 2023, to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR-NYSEArca-2020-85 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by the current COVID-19 public health risks posed by in-person hearings. The proposed rule change would not make any changes to the text of Exchange Rules 10.9261 and 10.9830.<sup>5</sup>

##### Background

In 2019, NYSE Arca adopted disciplinary rules based on the text of the Rule 8000 and Rule 9000 Series of its affiliate NYSE American LLC (“NYSE American”), with certain changes. The NYSE American disciplinary rules are, in turn, substantially the same as the Rule 8000 Series and Rule 9000 Series of FINRA and the New York Stock Exchange LLC.<sup>6</sup> The NYSE Arca disciplinary rules were implemented on May 27, 2019.<sup>7</sup>

In adopting disciplinary rules modeled on FINRA's rules, NYSE Arca 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 10.9800 Series. As adopted, the text of Rule 10.9261 and Rule 10.9830 are substantially the same as the FINRA rules with certain modifications.<sup>8</sup>

In response to the COVID-19 global health crisis and the corresponding

<sup>4</sup> See Securities Exchange Act Release No. 90088 (October 5, 2020), 85 FR 64186 (October 9, 2020) (SR-NYSEArca-2020-85) (“SR-NYSEArca-2020-85”).

<sup>5</sup> The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond April 30, 2023 if the Exchange requires additional temporary relief from the rule requirements identified in SR-NYSEArca-2020-85. The amended NYSE Arca rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

<sup>6</sup> See Securities Exchange Act Release No. 85639 (April 12, 2019), 84 FR 16346 (April 18, 2019) (SR-NYSEArca-2019-15) (“2019 Notice”).

<sup>7</sup> See NYSE Arca Equities RB-19-060 & NYSE Arca Options RB-19-02 (April 26, 2019).

<sup>8</sup> See 2019 Notice, 84 FR at 16365 & 16373-4.

need to restrict in-person activities, on August 31, 2020, FINRA filed with the Commission a proposed rule change for immediate effectiveness, SR-FINRA-2020-027, which allowed FINRA's Office of Hearing Officers ("OHO") to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID-19-related public health risks posed by an in-person hearing. Among the rules FINRA amended were Rules 9261 and 9830.<sup>9</sup>

Given that FINRA and OHO administers disciplinary hearings on the Exchange's behalf, and that the public health concerns addressed by FINRA's amendments apply equally to Exchange disciplinary hearings, on September 23, 2020, the Exchange filed to temporarily amend Rule 10.9261 and Rule 10.9830 to permit FINRA to conduct virtual hearings on its behalf.<sup>10</sup> In December 2020, FINRA filed a proposed rule change, SR-FINRA-2020-042, to extend the expiration date of the temporary amendments in SR-FINRA-2020-027 from December 31, 2020, to April 30, 2021.<sup>11</sup> On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to April 30, 2021.<sup>12</sup> On April 1, 2021, FINRA filed a proposed rule change, SR-FINRA-2021-006, to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from April 30, 2021, to August 31, 2021.<sup>13</sup> On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to August 31, 2021.<sup>14</sup> On August 13, 2021, FINRA filed a proposed rule change, SR-FINRA-2021-019, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from August 31, 2021, to December 31, 2021.<sup>15</sup> On August 27, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule

10.9830 to December 31, 2021.<sup>16</sup> On December 7, 2021, FINRA filed a proposed rule change, SR-FINRA-2021-031, to extend the expiration date of the temporary amendments to, among other rules, FINRA Rule 9261 and 9830 from December 31, 2021, to March 31, 2022.<sup>17</sup> On December 27, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to March 31, 2022, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.<sup>18</sup> On March 7, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from March 31, 2022, to July 31, 2022.<sup>19</sup> On March 29, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to July 31, 2022.<sup>20</sup> On July 8, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from July 31, 2022 to October 31, 2022.<sup>21</sup> On July 29, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to October 31, 2022.<sup>22</sup> On October 17, 2022, FINRA filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from October 31, 2022 to January 31, 2023.<sup>23</sup> On October 28, 2022, the Exchange filed to extend the temporary amendments to Rule 9261 and Rule 9830 to January 31, 2023, after which the temporary amendments will expire absent another proposed rule change filing by the Exchange.<sup>24</sup>

According to FINRA, due to the upward trend in the number of COVID-19 cases since October 2022—when

FINRA last filed to extend the temporary relief, COVID-19 still remains a public health concern.<sup>25</sup> For example, according to the Centers for Disease Control and Prevention ("CDC"), approximately 61.73 percent of counties in the United States have a medium or high COVID-19 Community Level based on the CDC's most recent calculations.<sup>26</sup> The daily average number of hospital admissions is also on the rise.<sup>27</sup> Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID-19 in the future given the emergence of new Omicron variants that the CDC currently is tracking<sup>28</sup> and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.<sup>29</sup> Due to the continued presence and uncertainty of COVID-19, FINRA believes that there is a continued need for temporary relief beyond January 31, 2023.<sup>30</sup> On January 18, 2023, FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from January 31, 2023 to April 30, 2023.<sup>31</sup>

<sup>25</sup> See Securities Exchange Act Release No. 96746 (January 25, 2023) ("SR-FINRA-2023-001").

<sup>26</sup> See CDC, COVID Data Tracker—COVID-19 Integrated County View, [https://covid.cdc.gov/covid-data-tracker/#county-view?list\\_select\\_state=all\\_states&list\\_select\\_county=all\\_counties&data-type=CommunityLevels&null=CommunityLevels](https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels) (last visited Jan. 9, 2023).

<sup>27</sup> See CDC, COVID Data Tracker Weekly Review—Daily Trend in Number of New COVID-19 Hospital Admissions in the United States, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html> (last visited Jan. 9, 2023) ("The current 7-day daily average for December 28, 2022–January 3, 2023, was 6,519. This is a 16.1% increase from the prior 7-day average (5,613) from December 21–27, 2022.").

<sup>28</sup> These new Omicron variants include BQ.1.1, XBB.1.5 and BQ.1. See CDC, COVID Data Tracker—Variant Proportions, <https://covid.cdc.gov/covid-data-tracker/#variant-proportions> (last visited Jan. 9, 2023).

<sup>29</sup> A state-by-state comparison of vaccination rates is available at [https://covid.cdc.gov/covid-data-tracker/#vaccinations\\_vacc-people-additional-dose-totalpop](https://covid.cdc.gov/covid-data-tracker/#vaccinations_vacc-people-additional-dose-totalpop) (last visited Jan. 9, 2023).

<sup>30</sup> See SR-FINRA-2023-001.

<sup>31</sup> See generally SR-FINRA-2023-001. As a further basis for extending the temporary rule relief until April 30, 2023, FINRA noted that its Board has approved the submission of a rule proposal to the Commission to make permanent, with some modifications, the temporary rules to allow hearings to be conducted by video conference originally set forth in SR-FINRA-2020-027 and SR-FINRA-2020-015. See <https://www.finra.org/about/governance/finra-board-governors/meetings/update-finra-board-governors-meeting-december-2022>. See *id.*, at n 14. FINRA indicated that the extension of the temporary rule amendments until April 30, 2023 would help avoid FINRA's rules reverting to their original form and allow FINRA time to file for (and the Commission time to approve) the permanent rules. See *id.*

<sup>9</sup> See Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR-FINRA-2020-027) ("SR-FINRA-2020-027").

<sup>10</sup> See note 4, *supra*.

<sup>11</sup> See Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR-FINRA-2020-042).

<sup>12</sup> See Securities Exchange Act Release No. 90820 (December 30, 2020), 86 FR 647 (January 6, 2021) (SR-NYSEArca-2020-116).

<sup>13</sup> See Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR-FINRA-2021-006).

<sup>14</sup> See Securities Exchange Act Release No. 91633 (April 22, 2021), 86 FR 22474 (April 28, 2021) (SR-NYSEArca-2021-27).

<sup>15</sup> See Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR-FINRA-2021-019).

<sup>16</sup> See Securities Exchange Act Release No. 92909 (September 9, 2021), 86 FR 51415 (September 15, 2021) (SR-NYSEArca-2021-76).

<sup>17</sup> See Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR-FINRA-2021-31).

<sup>18</sup> See Securities Exchange Act Release No. 93918 (January 6, 2022), 87 FR 1810 (January 12, 2022) (SR-NYSEArca-2021-107).

<sup>19</sup> See Securities Exchange Act Release No. 94430 (March 16, 2022), 87 FR 16262 (March 22, 2022) (SR-FINRA-2022-004).

<sup>20</sup> See Securities Exchange Act Release No. 94663 (April 11, 2022), 87 FR 22587 (April 15, 2022) (SR-NYSEArca-2022-18).

<sup>21</sup> See Securities Exchange Act Release No. 95281 (July 14, 2022), 87 FR 43335 (July 20, 2022) (SR-FINRA-2022-018).

<sup>22</sup> See Securities Exchange Act Release No. 95475 (August 11, 2022), 87 FR 50673 (August 17, 2022) (SR-NYSEArca-2022-44).

<sup>23</sup> See Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (SR-FINRA-2022-029).

<sup>24</sup> See Securities Exchange Act Release No. 96259 (November 8, 2022), 87 FR 68536 (November 15, 2022) (SR-NYSEArca-2022-73).

### Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE Arca Rules 10.9261 and 10.9830 as set forth in SR-NYSEArca-2020-85 from January 31, 2023 to April 30, 2023.

As set forth in SR-FINRA-2023-001, due to the upward trend in the number of COVID-19 cases since October 2022—when FINRA last filed to extend the temporary relief, that COVID-19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention ("CDC"), approximately 61.73 percent of counties in the United States have a medium or high COVID-19 Community Level based on the CDC's most recent calculations.<sup>32</sup> The daily average number of hospital admissions is also on the rise.<sup>33</sup> Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID-19 in the future given the emergence of new Omicron variants that the CDC currently is tracking<sup>34</sup> and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.<sup>35</sup> Due to the continued presence and uncertainty of COVID-19, FINRA believes that there is a continued need for temporary relief beyond January 31, 2023.<sup>36</sup> FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from January 31, 2023 to April 30, 2023.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE Arca Rules 10.9261 and 10.9830 as set forth in SR-NYSEArca-2020-85 from January 31, 2023 to April 30, 2023. The Exchange agrees with FINRA that, due to the upward trend in the number of COVID-19 cases since October 2022—when FINRA last filed to extend the temporary relief, that COVID-19 still remains a public health concern. The Exchange also agrees that, due to the continued presence and uncertainty of COVID-19, for the reasons set forth in SR-FINRA-2023-001, there is a continued need for this temporary relief beyond January 31, 2023. The proposed

change would permit OHO to continue to assess, 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 in SR-FINRA-2023-001, in deciding whether to schedule a hearing by video conference, OHO may consider a variety of other factors in addition to COVID-19 trends. Similarly, as noted in SR-FINRA-2023-001, in SR-FINRA-2020-027, FINRA provided a non-exhaustive list of other factors OHO may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.<sup>37</sup> The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 10.9261 and 10.9830 chaired by a FINRA employee.

As noted below, the Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

### 2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,<sup>38</sup> in general, and furthers the objectives of Section 6(b)(5),<sup>39</sup> 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.<sup>40</sup>

The Exchange believes that the proposed rule change supports 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 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.

The proposed rule change, which extends the expiration date of the temporary amendments to Exchange rules consistent with FINRA's extension to its Rules 9261 and 9830 as set forth in SR-FINRA-2023-001, will permit the Exchange to continue to effectively conduct hearings given the continued presence and uncertainty of COVID-19. Given that COVID-19 remains a public health concern and the uncertainty around a potential spike in cases of the disease, without this relief allowing OHO to proceed by video conference, some or all hearings may have to be postponed. The ability to conduct hearings by video conference will 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 continue to proceed without delay, thereby enabling the Exchange to continue to take immediate action to stop significant, ongoing customer harm, to the benefit of the investing public.

As set forth in detail in the SR-NYSEArca-2020-85, the temporary relief to permit hearings to be conducted via video conference maintains fair process and will continue to provide fair process consistent with Sections 6(b)(7) and 6(d) of the Act<sup>41</sup> while striking 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 avoiding the COVID-19-related public health risks for hearing participants. The Exchange notes that this proposal, like SR-NYSEArca-2020-85, provides only temporary relief. As proposed, the changes would be in place through April 30, 2023. As noted in SR-NYSEArca-2020-85 and above, the amended rules will revert back to their original state at the conclusion of the

<sup>32</sup> See *supra* note 26 (CDC, COVID Data Tracker—COVID-19 Integrated County View).

<sup>33</sup> See *supra* note 27 (CDC, COVID Data Tracker Weekly Review—Daily Trend in Number of New COVID-19 Hospital Admissions in the United States).

<sup>34</sup> See *supra* note 28 (regarding the new Omicron variants described in CDC, COVID Data Tracker—Variant Proportions).

<sup>35</sup> See *supra* note 29 (regarding state-by-state comparison of COVID-19 vaccination rates).

<sup>36</sup> See SR-FINRA-2023-001.

<sup>37</sup> See SR-FINRA-2023-001.

<sup>38</sup> 15 U.S.C. 78f(b).

<sup>39</sup> 15 U.S.C. 78f(b)(5).

<sup>40</sup> 15 U.S.C. 78f(b)(7) and 78f(d).

<sup>41</sup> 15 U.S.C. 78f(b)(7) and 78f(d).

temporary relief period and, if applicable, any extension thereof.

Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

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

The Exchange does not believe that the proposed temporary 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 extend temporary relief necessitated by the continued presence and uncertainty of COVID-19 and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on January 31, 2023.

#### *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 Act<sup>42</sup> and Rule 19b-4(f)(6) thereunder.<sup>43</sup> 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.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>44</sup> normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>45</sup> the Commission

may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that there is a continued need to extend the temporary relief because the Exchange agrees with FINRA that the COVID-19 related health concerns necessitating this relief will continue beyond January 31, 2023.<sup>46</sup> The Exchange also states that extending the temporary relief provided in SR-NYSEArca-2020-85 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes so that the Exchange may continue to operate effectively and meet its critical investor protection goals, while also protecting the health and safety of hearing participants.<sup>47</sup> The Commission also notes that this proposal extends without change the temporary relief previously provided by SR-NYSEArca-2020-85.<sup>48</sup> As proposed, the temporary changes would be in place through April 30, 2023 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.<sup>49</sup> For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.<sup>50</sup>

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

<sup>46</sup> See *supra* Item II; see also SR-FINRA-2023-001.

<sup>47</sup> See SR-FINRA-2023-001 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR-FINRA-2023-001 would become operative immediately upon filing).

<sup>48</sup> See *supra* note 4.

<sup>49</sup> See *supra* note 5. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond April 30, 2023, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

<sup>50</sup> For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

under Section 19(b)(2)(B)<sup>51</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

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

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEARCA-2023-10 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-NYSEARCA-2023-10. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<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-NYSEARCA-2023-10 and

<sup>51</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>42</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>43</sup> 17 CFR 240.19b-4(f)(6).

<sup>44</sup> 17 CFR 240.19b-4(f)(6).

<sup>45</sup> 17 CFR 240.19b-4(f)(6)(iii).

should be submitted on or before March 8, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>52</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-03168 Filed 2-14-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-96867; File No. SR-MIAX-2023-04]

### Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 1308, Supervision of Accounts

February 9, 2023.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 2, 2023, Miami International Securities Exchange LLC (“MIAX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. MIAX has designated the proposed rule change as constituting a “non-controversial” rule change under Section 19(b)(3)(A) <sup>3</sup> of the Act and Rule 19b-4(f)(6) <sup>4</sup> thereunder, which renders the proposed rule change effective upon receipt of this filing by the Commission. 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 is filing a proposal to amend Exchange Rule 1308, Supervision of Accounts, to extend the temporary remote inspection relief for Members <sup>5</sup> through the earlier of the effective date of the FINRA pilot program on remote inspections (the

“FINRA Pilot Program”),<sup>6</sup> if approved, or December 31, 2023. The proposed extension would alleviate the ongoing operational challenges resulting from the COVID-19 pandemic that many member firms may continue to face in planning for and timely conducting required on-site inspections at locations requiring inspection in calendar year 2023.

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings>, at MIAX’s principal office, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The Exchange proposes to amend Exchange Rule 1308, Supervision of Accounts, to extend the temporary remote inspection relief for Members through the earlier of the effective date of the FINRA Pilot Program <sup>7</sup> if approved, or December 31, 2023.

The COVID-19 pandemic has caused a host of operational disruptions to the securities industry and impacted Members, regulators, investors, and other stakeholders. In response to the pandemic, the Exchange began providing temporary relief to Members from specified Exchange Rules and requirements, including Exchange Rule 1308(d), Annual Branch Office Inspections. While there are several signs that the pandemic has receded, much uncertainty still remains. The emergence of new variants, dissimilar vaccination rates through the U.S., and varying levels of transmissions of the virus all indicate that COVID-19 remains an active and real public health

concern. Against this setting, the Exchange understands the complexity Members face in assessing when and how to effectively and safely recall their employees back into offices alongside fashioning permanent telework arrangements or a hybrid workforce model in which some employees may work on-site in a commercial office space and other employees may work off-site in an alternative location (e.g., a personal residence).<sup>8</sup> Accordingly, due to the continued logistical challenge of going on-site to branch offices or locations while these public health and safety concerns related to COVID-19 persist coupled with several Members delaying their return-to-office plans, the Exchange believes that extending the temporary remote inspection relief to Members is warranted.

FINRA has filed with the Commission File No. SR-FINRA-2022-021, a proposed rule change to adopt a voluntary, remote inspections pilot program that is currently pending Commission review. The FINRA Pilot Program would provide for a voluntary, three-year remote inspection pilot program to allow broker-dealers to elect to fulfill their obligation under FINRA Rule 3110(c), Internal Inspections, by conducting inspections of some or all branch offices and non-branch locations remotely without an on-site visit to such office or location, subject to specified terms. FINRA has stated that the review period for its rule filing may extend well into 2023. Given the potential length of that review period, and the pilot program’s significant planning requirements and varying limitations applicable to specific firms and office locations, FINRA believes that firms that intend to participate in the pilot program, if approved, would need a significant number of months to prepare appropriately for the pilot program. Moreover, further FINRA guidance might be needed to guide implementation in various circumstances.

To provide regulatory certainty while the pilot program filing is pending, and to avoid overlapping provisions if it is approved, the Exchange is proposing to amend Rule 1308(d)(5) so that the temporary relief would expire on the earlier of the effective date of the FINRA Pilot Program, if approved, or December 31, 2023. In the event the FINRA Pilot Program is not approved by December

<sup>8</sup> For example, the Exchange understands that both the Commission and FINRA do not currently require employees to return to the office. See SEC Fiscal Year 2022 Agency Financial Report, available at <https://www.sec.gov/files/sec-2022-agency-financial-report.pdf> and <https://www.finra.org/rules-guidance/key-topics/covid-19>.

<sup>52</sup> 17 CFR 200.30-3(a)(12).

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See Exchange Rule 100.

<sup>6</sup> See Securities Exchange Act Release No. 95452 (Aug. 9, 2022), 87 FR 50144 (Aug. 15, 2022) (SR-FINRA-2022-021).

<sup>7</sup> *Id.*