

*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>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</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>11</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>12</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 Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will allow the 14 day period to take effect immediately. For this reason, the Commission designates the proposed rule change to be operative upon filing.<sup>13</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 under Section 19(b)(2)(B)<sup>14</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-NYSE-2021-31 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-NYSE-2021-31. 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-NYSE-2021-31, and should be submitted on or before June 8, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-10381 Filed 5-17-21; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-91877]**

**Order Granting Application by Nasdaq PHLX LLC for an Exemption Pursuant to Section 36(a) of the Exchange Act From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference**

May 12, 2021.

Nasdaq PHLX LLC ("PHLX" or the "Exchange") has filed with the Securities and Exchange Commission ("Commission") an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> from the rule filing requirements of Section 19(b) of the Act<sup>2</sup> with respect to certain rules of the Financial Industry Regulatory Authority, Inc. ("FINRA") that the Exchange seeks to incorporate by reference.<sup>3</sup> Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

On March 17, 2021, the Commission published notice of the Exchange's proposal to adopt rules that update an existing but outdated reference to an NASD rule to refer instead to a current FINRA rule, and that incorporate certain FINRA rules related to recordkeeping requirements.<sup>4</sup> The proposed rule change was immediately effective upon filing pursuant to Section

<sup>15</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78mm(a)(1).

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

<sup>3</sup> See Letter from Angela Dunn, Principal Associate General Counsel, to J. Matthew DeLesDernier, Assistant Secretary, Securities and Exchange Commission, dated March 5, 2021 ("Exemptive Request").

<sup>4</sup> See Exchange Act Release No. 91342 (Mar. 17, 2021), 86 FR 15538 (Mar. 23, 2021) (SR-PHLX-2021-13).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>13</sup> For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>14</sup> 15 U.S.C. 78s(b)(2)(B).

19(b)(3)(A)(iii) <sup>5</sup> of the Exchange Act 4, and Rule 19b-4(f)(6) thereunder.<sup>6</sup>

The Exchange has requested, pursuant to Rule 0-12 under the Exchange Act,<sup>7</sup> that the Commission grant the Exchange an exemption from the rule filing requirements of Section 19(b) of the Act for changes to those PHLX rules that are effected solely by virtue of a change to a FINRA rule that is incorporated by reference.<sup>8</sup> Specifically, PHLX requests that it be permitted to incorporate changes made to each FINRA rule (or series of rules as the case may be) that is incorporated by reference in the following PHLX Rules, without the need for the Exchange to file separately the same proposed rule changes pursuant to Section 19(b) of the Exchange Act:<sup>9</sup>

- General 9, Section 19 (Discretionary Accounts), which incorporates by reference FINRA Rule 3260;
- General 9, Section 30 (Books and Records), which incorporates by reference FINRA Rule 4511; and
- General 9, Section 45 (Customer Account Information), which incorporates by reference FINRA Rule 4512.

The Exchange states that the direct incorporations by reference of FINRA rules, which are regulatory in nature,<sup>10</sup> are intended to ensure that the Exchange's Rulebook will remain consistent at all times with respect to the Exchange's Rulebook pertaining to Discretionary Accounts, Books and Records, and Customer Account Information, and for that reason, the Exchange believes the exemption is appropriate.<sup>11</sup>

The Exchange represents that, as a condition to the requested exemption from Section 19(b) of the Exchange Act, the Exchange will provide written notice to its members whenever FINRA proposes a change to a cross-referenced rule.<sup>12</sup> Such notice will alert Exchange members to the proposed rule change and give them an opportunity to comment on the proposal.<sup>13</sup>

The Commission has issued exemptions similar to the Exchange's

request.<sup>14</sup> In granting one such exemption in 2010, the Commission repeated a prior 2004 Commission statement that it would consider similar future exemption requests from other SROs, provided that:

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0-12 under the Act;<sup>15</sup>
- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (e.g., the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and
- The incorporating SRO has reasonable procedures in place to provide written notice to its members

<sup>14</sup> See, e.g., Exchange Act Release Nos. 83296 (May 21, 2018), 83 FR 24362 (May 25, 2018) (order granting NYSE National, Inc.'s exemptive request relating to rules of FINRA incorporated by reference); 83040 (April 12, 2018), 83 FR 17198 (April 18, 2018) (order granting MIAX PEARL's exemptive request relating to rules of MIAX incorporated by reference); 78101 (June 17, 2016), 81 FR 41141, 41165 (June 23, 2016) (order granting application for registration as a national securities exchange of Investors' Exchange, LLC and exemptive request relating to rules of FINRA incorporated by reference); 76998 (January 29, 2016), 81 FR 6066, 6083-84 (February 4, 2016) (order granting application for registration as a national securities exchange of ISE Mercury, LLC (now known as Nasdaq MRX, LLC) and exemptive request relating to rules of the International Securities Exchange, LLC (now known as Nasdaq ISE, LLC) ("ISE") incorporated by reference, including index options rules); 70050 (July 26, 2013), 78 FR 46622, 46642 (August 1, 2013) (order granting application for registration as a national securities exchange of Topaz Exchange, LLC (now known as Nasdaq GEMX, LLC) and exemptive request relating to rules of ISE incorporated by reference, including index options rules); 61152 (December 10, 2009), 74 FR 66699, 66709-10 (December 16, 2009) (order granting application for registration as a national securities exchange of C2 Options Exchange, Incorporated and exemptive request relating to rules of CBOE incorporated by reference, including index options rules). See also, e.g., Exchange Act Release No. 61534 (February 18, 2010), 75 FR 8760 (February 25, 2010) (order granting BATS Exchange, Inc.'s exemptive request relating to rules incorporated by reference by the BATS Exchange Options Market rules) ("BATS Options Market Order").

<sup>15</sup> See 17 CFR 240.0-12; Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Act).

each time a change is proposed to the incorporated rules of another SRO.<sup>16</sup>

The Commission believes that the Exchange has satisfied each of these conditions. The Commission also believes that granting the Exchange an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of Commission and Exchange resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.<sup>17</sup> Finally, the Commission notes that any changes that the Exchange would make to General 9, Section 19 (Discretionary Accounts), General 9, Section 30 (Books and Records), and General 9, Section 45 (Customer Account Information), other than those changes that incorporate by reference changes to the FINRA rules specifically referenced herein, are not exempted from Section 19(b) of the Exchange Act. The Commission therefore finds it appropriate in the public interest and consistent with the protection of investors to exempt the Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the following PHLX rules: General 9, Section 19 (Discretionary Accounts), which incorporates by reference FINRA Rule 3260; General 9, Section 30 (Books and Records), which incorporates by reference FINRA Rule 4511; and General 9, Section 45 (Customer Account Information), which incorporates by reference FINRA Rule 4512. This exemption is conditioned upon the Exchange promptly providing written notice to its members whenever FINRA changes a rule that the Exchange has incorporated by reference.

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act,<sup>18</sup> that the Exchange is exempt from the rule filing requirements of Section 19(b) of the Act solely with respect to changes to PHLX Rules General 9, Section 19 (Discretionary Accounts), which incorporates by reference FINRA Rule 3260; General 9 Section 30 (Books and Records), which incorporates by reference FINRA Rule 4511; and General 9, Section 45 (Customer Account Information), which incorporates by reference FINRA Rule 4512, provided that the Exchange promptly provides

<sup>16</sup> See BATS Options Market Order, *supra* note 14 (citing Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (order granting exemptive request relating to rules incorporated by reference by several SROs) ("2004 Order").

<sup>17</sup> See *id.* at 8761. See also 2004 Order, *supra* note 16, at 8502.

<sup>18</sup> 15 U.S.C. 78mm.

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

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

<sup>7</sup> 17 CFR 240.0-12.

<sup>8</sup> See Exemptive Request, *supra* note 3, at 2.

<sup>9</sup> *Id.*

<sup>10</sup> See *id.* The Exchange represents that the FINRA rules proposed to be incorporated by reference are not trading rules.

<sup>11</sup> See *id.* at 3.

<sup>12</sup> The Exchange represents that it will provide such notice on its website in the same website location it uses to post its own proposed rule change filings pursuant to Rule 19b-4(l) within the same timeframe required by such Rule. The PHLX website will also include a link to the FINRA website where applicable proposed rule change is posted. See *id.* at 2.

<sup>13</sup> See *id.*

written notice to its members whenever FINRA proposes to change a rule that the Exchange has incorporated by reference.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021–10391 Filed 5–17–21; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–91881; File No. SR–NSCC–2021–006]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Clarifications, Corrections and Certain Other Changes to the NSCC Rules & Procedures

May 12, 2021.

Pursuant to 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 May 7, 2021, National Securities Clearing Corporation (“NSCC”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act <sup>3</sup> and Rule 19b–4(f)(4) thereunder. <sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to the NSCC Rules & Procedures (“Rules”) in order to (i) correct or clarify the use of certain defined terms in the Rules, (ii) make certain clarifications in the Rules, (iii) make certain technical changes to the Rules, (iv) add a disclaimer regarding trademarks and servicemarks in the Rules and (v) change certain notice provisions relating to rule changes, each as described in more detail below. <sup>5</sup>

#### II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### (A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

NSCC is proposing to (i) correct or clarify the use of certain defined terms in the Rules, (ii) make certain clarifications in the Rules, (iii) make certain technical changes to the Rules, (iv) add a disclaimer regarding trademarks and servicemarks in the Rules and (v) change certain notice provisions relating to rule changes, each as described in more detail below.

###### (i) Proposal To Correct the Use of Certain Defined Terms in the Rules

Certain capitalized terms are used but not defined, certain terms are defined but the defined terms are not used consistently and certain defined terms are duplicative in the Rules. NSCC is proposing to correct and clarify the use of certain defined terms in the Rules as follows:

- Move the defined term “Affiliate” from Rule 4A to Rule 1 as the term is used in a number of places in the Rules and remove “, as defined in Rule 4A” after the use of the term Affiliate in Section 7 of Rule 7 and Section A of Procedure II
- clarify the definitions of “Board” and “Board of Directors” in Rule 1 to ensure that it is clear that both terms are defined and have the same meaning
- capitalize “business day” throughout the Rules to reflect that it is a defined term
- add a defined term “Exchange Act” in Rule 1 for the Securities Exchange Act of 1934, as amended and replace “Securities Exchange Act of 1934, as amended” and “Securities Exchange Act of 1934” and “Act” with the new defined term in a number of places in the Rules
- capitalize “affiliate” in the definition of “Family-Issued Securities” in Rule 1 to reflect that it is a defined term
- add a defined term “GAAP” in Rule 1 as the abbreviation is currently used in a number of places in the Rules to describe generally accepted accounting principles, consistently applied
- delete “(or IMA Member)” from the definition of “Investment Manager/Agent Member” in Rule 1 and delete “IMA” as a defined term in Section 2(j) of Rule 2 as they are duplicative of an existing defined term “Investment Manager/Agent Member” that has the same meaning; replace the use of “IMA Members” in a footnote in Rule 2A with “Investment Manager/Agent Members” using the existing defined term Investment Manager/Agent Member
- add a defined term “NSCC” in Rule 1 as the term is currently used in a number of places in the Rules to describe NSCC
- add a defined term “SEC” in Rule 1 for the Securities Exchange Commission and replace “Securities Exchange Commission,” “U.S. Securities and Exchange Commission” and “Commission” with the defined term in a number of places in the Rules
- change reference of “Non-U.S.” to “non-U.S.” in a footnote in Rule 2A to reflect that Non-U.S. is not a defined term
- use the existing defined term “NSCC website” rather than other descriptions of the NSCC website such as the “Corporation’s website” and “website” in Section 2 of Rule 2B and “website” and “NSCC’s website” in Section 7 of Rule 45; remove a duplicative definition of NSCC website in Section 7 of Rule 45
- capitalize “corporation” in Section 4 of Rule 7 to reflect the existing defined term
- use the existing defined term “CFTC” in place of “Commodity Futures Trading Commission” in Section 6 of Rule 7 and in place of “Commodities Futures Trading Commission” in, Section (b) of Rule 49
- change “Guidelines” to “guidelines” in Section 2(b)(vii) of Rule 15 to reflect that Guidelines is not a defined term
- change references to “Time of Insolvency” to “time of insolvency” in Section 4 of Rule 45 to reflect that the term is not defined in the Rules
- capitalize “rules” in Section 7 of Rule 45 and in Section C(3) of Rule 52 to reflect the existing defined term
- change “Fund/Serv Eligible Fund” to “Fund/SERV Eligible Fund” in Section 12 of Rule 50 to reflect the correct capitalization of the defined term

<sup>19</sup> 17 CFR 200.30–3(a)(76).

<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)(4).

<sup>5</sup> Terms not defined herein are defined in the Rules, available at [http://dtcc.com/~media/Files/Downloads/legal/rules/nscc\\_rules.pdf](http://dtcc.com/~media/Files/Downloads/legal/rules/nscc_rules.pdf).