

Nasdaq also believes that the proposal, by eliminating an impediment to companies using a Direct Listing with a Capital Raise, will help removing potential impediments to free and open markets consistent with Section 6(b)(5) of the Exchange Act while also supporting capital formation.

Finally, Nasdaq believes that the proposal to clarify several provisions of the existing rules without changing them is designed to remove impediments to and perfect the mechanism of a free and open market because such changes make the rules easier to understand and apply without changing their substance.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed amendments would not impose any burden on competition, but would rather increase competition. Nasdaq believes that allowing listing venues to improve their rules enhances competition among exchanges. Nasdaq also believes that this proposed change will give issuers interested in this pathway to access the capital markets additional flexibility in becoming a public company, and in that way promote competition among service providers, such as underwriters and other advisors, to such companies.

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

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 2, 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. Please include File Number SR-NASDAQ-2021-045 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-NASDAQ-2021-045. 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 such 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-NASDAQ-2021-045, and should be submitted on or before February 2, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³²

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2022-00383 Filed 1-11-22; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-93919; File No. SR-NYSENAT-2021-25]

Self-Regulatory Organizations; NYSE National, 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

January 6, 2022.

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the "Act")² and Rule 19b-4 thereunder,³ notice is hereby given that on December 27, 2021, NYSE National, Inc. ("NYSE National" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I 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-NYSENAT-2020-31 from December 31, 2021, to March 31, 2022, 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 National Rules 10.9261 and 10.9830. The proposed rule change is available on the Exchange's website at 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.

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

³² 17 CFR 200.30-3(a)(12).

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-NYSENAT-2020-31⁴ to Rules 10.9261 (Evidence and Procedure in Hearing) and 10.9830 (Hearing) from December 31, 2021, to March 31, 2022 to harmonize with recent changes by FINRA to extend the expiration date of the temporary amendments to its Rules 9261 and 9830. SR-NYSENAT-2020-31 temporarily granted to the Chief or Deputy Chief Hearing Officer the authority to order that hearings be conducted by video conference if warranted by public health risks posed by in-person hearings during the ongoing COVID-19 pandemic. The proposed rule change would not make any changes to the text of Exchange Rules 10.9261 and 10.9830.⁵

Background

In 2018, NYSE National adopted disciplinary rules that are, with certain exceptions, substantially the same as the disciplinary rules of its affiliate NYSE American LLC, which are in turn substantially similar to the FINRA Rule 8000 Series and Rule 9000 Series, and which set forth rules for conducting investigations and enforcement actions.⁶

In adopting disciplinary rules modeled on FINRA's rules, NYSE National adopted the hearing and evidentiary processes set forth in Rule 10.9261 and in Rule 10.9830 for hearings in matters involving temporary and permanent cease and desist orders under the Rule 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.⁷

In response to the COVID-19 global health crisis and the corresponding 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 9830.⁸

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 29, 2020, the Exchange filed to temporarily amend Rule 10.9261 and Rule 10.9830 to permit FINRA to conduct virtual hearings on its behalf.⁹ 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, 2021.¹⁰ On December 22, 2020, the Exchange similarly filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to April 30, 2021.¹¹ 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, 2021.¹² On April 20, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to August 31, 2021.¹³ 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, 2021.¹⁴ On August 27, 2021, the Exchange filed to extend the temporary amendments to Rule 10.9261 and Rule 10.9830 to December 31, 2021, after which the temporary amendments will

expire absent another proposed rule change filing by the Exchange.¹⁵

While there are signs of improvement, FINRA has determined that much uncertainty remains for the coming months. The presence of the Delta variant, dissimilar vaccination rates throughout the United States, and the uptick in transmissions in many locations indicate that COVID-19 remains an active and real public health concern.¹⁶ Due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID-19-related health concerns and corresponding restrictions,¹⁷ FINRA believes that there is a continued need for temporary relief beyond December 31, 2021.¹⁸ On December 7, 2021,

¹⁵ See Securities Exchange Act Release No. 92907 (September 9, 2021), 86 FR 51424 (September 15, 2021) (SR-NYSENAT-2021-16).

¹⁶ See Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (SR-FINRA-2021-031) ("SR-FINRA-2021-031"). FINRA noted that, for example, President Joe Biden on July 29, 2021, announced several measures to increase the number of people vaccinated against COVID-19 and to slow the spread of the Delta variant, including strengthening safety protocols for federal government employees and contractors. See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/07/29/factsheet-president-biden-to-announce-new-actions-to-get-more-americans-vaccinated-and-slow-the-spread-of-the-delta-variant/>. Thereafter, the Biden Administration announced on November 4, 2021, details of two major vaccination policies to further help fight COVID-19. See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/04/factsheet-biden-administration-announces-details-of-two-major-vaccination-policies/>. Most recently, President Biden announced several new actions to help protect Americans against the Delta and Omicron variants. See <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/02/factsheet-president-biden-announces-new-actions-to-protect-americans-against-the-delta-and-omicron-variants-as-we-battle-covid-19-this-winter/>. See SR-FINRA-2021-031, 86 FR at 71695, n. 6.

¹⁷ For instance, FINRA noted that the Centers for Disease Control and Prevention ("CDC") recently announced that the first confirmed case of COVID-19 caused by the Omicron variant was detected in the United States. See <https://www.cdc.gov/media/releases/2021/s1201-omicron-variant.html>. The CDC also recommends that fully vaccinated people wear a mask in public indoor settings in areas of substantial or high transmission and noted that fully vaccinated people might choose to wear a mask regardless of the level of transmission, particularly if they are immunocompromised or at increased risk for severe disease from COVID-19. See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>. Furthermore, as FINRA also noted, numerous states currently have COVID-19 restrictions in place. Six states (Hawaii, Illinois, Nevada, New Mexico, Oregon, and Washington) require most people to wear masks in indoor public places regardless of vaccination status, and three states (California, Connecticut, and New York) have mask mandates in indoor public places for those individuals who are unvaccinated. Several other states have mask mandates in certain settings, such as healthcare facilities, schools, and correctional facilities. See SR-FINRA-2021-031, 86 FR at 71696, n. 7.

¹⁸ See SR-FINRA-2021-031, 86 FR at 71695-96.

⁴ See Securities Exchange Act Release No. 90137 (October 8, 2020), 85 FR 65087 (October 14, 2020) (SR-NYSENAT-2020-31) ("SR-NYSENAT-2020-31").

⁵ The Exchange may submit a separate rule filing to extend the expiration date of the proposed extension beyond March 31, 2022 if the Exchange requires additional temporary relief from the rule requirements identified in SR-NYSENAT-2020-31. The amended NYSE National rules will revert back to their original state at the conclusion of the temporary relief period and any extension thereof.

⁶ See Securities Exchange Act Release No. 83289 (May 17, 2018), 83 FR 23968, 23976 (May 23, 2018) (SR-NYSENAT-2018-02) ("2018 Approval Order").

⁷ See *id.*

⁸ See Securities Exchange Act Release No. 89737 (September 2, 2020), 85 FR 55712 (September 9, 2020) (SR-FINRA-2020-027) ("SR-FINRA-2020-027").

⁹ See note 4, *supra*.

¹⁰ See Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (SR-FINRA-2020-042).

¹¹ See Securities Exchange Act Release No. 90822 (December 30, 2020), 86 FR 627 (January 6, 2021) (SR-NYSENAT-2020-39).

¹² See Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (SR-FINRA-2021-006).

¹³ See Securities Exchange Act Release No. 91634 (April 22, 2021), 86 FR 22477 (April 28, 2021) (SR-NYSENAT-2021-11).

¹⁴ See Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (SR-FINRA-2021-019).

FINRA accordingly filed to extend the expiration date of the temporary rule amendments to, among other rules, FINRA Rule 9261 and 9830 from December 31, 2021, to March 31, 2022.¹⁹

Proposed Rule Change

Consistent with FINRA's recent proposal, the Exchange proposes to extend the expiration date of the temporary rule amendments to NYSE National Rules 10.9261 and 10.9830 as set forth in SR-NYSENAT-2020-31 from December 31, 2021, to March 31, 2022.

As set forth in SR-FINRA 2021-031, while there are signs of improvement, much uncertainty remains for the coming months. The presence of the Delta variant, dissimilar vaccination rates throughout the United States, and the uptick in transmissions in many locations indicate that COVID-19 remains an active and real public health concern.²⁰ Due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID-19-related health concerns and corresponding restrictions,²¹ FINRA believes that there is a continued need for temporary relief beyond December 31, 2021.²² FINRA accordingly proposed to extend the expiration date of the temporary rule amendments from December 31, 2021, to March 31, 2022.

The Exchange proposes to similarly extend the expiration date of the temporary rule amendments to NYSE National Rules 10.9261 and 10.9830 as set forth in SR-NYSENAT-2020-31 from December 31, 2021, to March 31, 2022. The Exchange agrees with FINRA that, while there are signs of improvement, much uncertainty remains for the coming months. The Exchange also agrees that, due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID-19-related health concerns and corresponding restrictions, for the reasons set forth in SR-FINRA-2021-031, there is a continued need for this temporary relief beyond December 31, 2021. 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-2021-031, 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-2021-031, 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.²³ The Exchange believes that this is a reasonable procedure to continue to follow for hearings under Rules 9261 and 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,²⁴ in general, and furthers the objectives of Section 6(b)(5),²⁵ 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.²⁶

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-2021-031, will permit the Exchange to continue to effectively conduct hearings during the COVID-19 pandemic. Given the current and frequently changing COVID-19 conditions and the uncertainty around when those conditions will see meaningful, widespread and sustained improvement, 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 SR-NYSENAT-2020-31, 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 Act²⁷ 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-NYSENAT-2020-31, provides only temporary relief. As proposed, the changes would be in place through March 31, 2022. As noted in SR-NYSENAT-2020-31 and above, the amended rules will revert back to their original state at the conclusion of the 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.

²³ See SR-FINRA-2021-031, 86 FR at 71695, n. 13.

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ 15 U.S.C. 78f(b)(7) & 78f(d).

²⁷ 15 U.S.C. 78f(b)(7) & 78f(d).

¹⁹ See SR-FINRA-2021-031, 86 FR at 71695.

²⁰ See note 17, *supra*.

²¹ See note 16, *supra*.

²² See SR-FINRA-2021-031, 86 FR at 71695.

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 provide continued temporary relief given the impacts of the COVID-19 pandemic 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 December 31, 2021.

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 Act²⁸ and Rule 19b-4(f)(6) thereunder.²⁹ 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)³⁰ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),³¹ 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 the proposed rule change to extend the expiration date will continue to prevent unnecessary impediments to its 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 December 31, 2021.³² Importantly, the Exchange has also stated that extending the relief provided in SR-NYSENAT-2020-31 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of hearing participants.³³ The Commission also notes that this proposal extends without change the temporary relief previously provided by SR-NYSENAT-2020-31.³⁴ As proposed, the changes would be in place through March 31, 2022 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.³⁵ 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.³⁶

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)³⁷ 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. Please include File Number SR-NYSENAT-2021-25 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSENAT-2021-25. 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-NYSENAT-2021-25 and should be submitted on or before February 2, 2022.

²⁸ 15 U.S.C. 78s(b)(3)(A)(iii).

²⁹ 17 CFR 240.19b-4(f)(6).

³⁰ 17 CFR 240.19b-4(f)(6).

³¹ 17 CFR 240.19b-4(f)(6)(iii).

³² See *supra* Item II.

³³ See SR-FINRA-2021-031 at 71698 (noting the same with respect to FINRA employees in granting FINRA's request to waive the 30-day operative delay so that SR-FINRA-2021-031 would become operative immediately upon filing).

³⁴ See *supra* note 4.

³⁵ 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 March 31, 2022 it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

³⁶ 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).

³⁷ 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁸

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2022-00381 Filed 1-11-22; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-11021; 34-93925; IA-5938; IC-34466]

Adjustments to Civil Monetary Penalty Amounts

AGENCY: Securities and Exchange Commission.

ACTION: Notice.

SUMMARY: The Securities and Exchange Commission (the “Commission”) is publishing this notice (the “Notice”) pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the “2015 Act”). This Act requires all agencies to annually adjust for inflation the civil monetary penalties that can be imposed under the statutes administered by the agency and publish the adjusted amounts in the **Federal Register**. This Notice sets forth the annual inflation adjustment of the maximum amount of civil monetary penalties (“CMPs”) administered by the Commission under the Securities Act of 1933, the Securities Exchange Act of 1934 (the “Exchange Act”), the Investment Company Act of 1940, the Investment Advisers Act of 1940, and certain penalties under the Sarbanes-Oxley Act of 2002. These amounts are effective beginning on January 15, 2022, and will apply to all penalties imposed after that date for violations of the aforementioned statutes that occurred after November 2, 2015.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ng, Senior Special Counsel, Office of the General Counsel, at (202) 551-7957, or Hannah W. Riedel, Senior Counsel, Office of the General Counsel, at (202) 551-7918.

SUPPLEMENTARY INFORMATION:

I. Background

This Notice is being published pursuant to the 2015 Act,¹ which amended the Federal Civil Penalties

Inflation Adjustment Act of 1990 (the “Inflation Adjustment Act”).² The Inflation Adjustment Act previously had been amended by the Debt Collection Improvement Act of 1996 (the “DCIA”) ³ to require that each federal agency adopt regulations at least once every four years that adjust for inflation the CMPs that can be imposed under the statutes administered by the agency. Pursuant to this requirement, the Commission previously adopted regulations in 1996, 2001, 2005, 2009, and 2013 to adjust the maximum amount of the CMPs that could be imposed under the statutes the Commission administers.⁴

The 2015 Act replaces the inflation adjustment formula prescribed in the DCIA with a new formula for calculating the inflation-adjusted amount of CMPs. The 2015 Act requires that agencies use this new formula to re-calculate the inflation-adjusted amounts of the penalties they administer on an annual basis and publish these new amounts in the **Federal Register** by January 15 of each year.⁵ The Commission previously published the first annual adjustment required by the 2015 Act on January 6, 2017 (the “2017 Adjustment”).⁶ As part of the 2017 Adjustment, the Commission promulgated 17 CFR 201.1001(a) and Table I to Subsection 1001, which lists the penalty amounts for all violations that occurred on or before November 2, 2015. For violations occurring after November 2, 2015, Subsection 1001(b) provides that the applicable penalty amounts will be

² Public Law 101-410, 104 Stat. 890-892 (1990), codified at 28 U.S.C. 2461 note.

³ Public Law 104-134, Title III, § 31001(s)(1), 110 Stat. 1321-373 (1996), codified at 28 U.S.C. 2461 note.

⁴ See Release Nos. 33-7361, 34-37912, IA-1596, IC-22310, dated November 1, 1996 (effective December 9, 1996), previously found at 17 CFR 201.1001 and Table I to Subpart E of Part 201; Release Nos. 33-7946, 34-43897, IA-1921, IC-24846, dated January 31, 2001 (effective February 2, 2001), previously found at 17 CFR 201.1002 and Table II to Subpart E of Part 201; Release Nos. 33-8530, 34-51136, IA-2348, IC-26748, dated February 9, 2005 (effective February 14, 2005), previously found at 17 CFR 201.1003 and Table III to Subpart E of Part 201; Release Nos. 33-9009, 34-59449, IA-2845, IC-28635, dated February 25, 2009 (effective March 3, 2009), previously found at 17 CFR 201.1004 and Table IV to Subpart E of Part 201; and Release Nos. 33-9387, 34-68994, IA-3557, IC-30408, dated February 27, 2013 (effective March 5, 2013), previously found at 17 CFR 201.1005 and Table V to Subpart E of Part 201. The penalty amounts contained in these releases have now been consolidated into Table I to 17 CFR 201.1001.

⁵ 28 U.S.C. 2461 note Sec. 4.

⁶ Release Nos. 33-10276; 34-79749; IA-4599; IC-32414 (effective Jan. 18, 2017).

adjusted annually based on the formula set forth in the 2015 Act. Subsection 1001(b) further provides that these adjusted amounts will be published in the **Federal Register** and on the Commission’s website. The Commission published the two most recent annual adjustments on January 8, 2020 (“2020 Adjustment”) ⁷ and January 8, 2021 (“2021 Adjustment”).⁸

A CMP is defined in relevant part as any penalty, fine, or other sanction that: (1) is for a specific amount, or has a maximum amount, as provided by federal law; and (2) is assessed or enforced by an agency in an administrative proceeding or by a federal court pursuant to federal law.⁹ This definition applies to the monetary penalty provisions contained in four statutes administered by the Commission: The Securities Act, the Exchange Act, the Investment Company Act, and the Investment Advisers Act. In addition, the Sarbanes-Oxley Act provides the Public Company Accounting Oversight Board (the “PCAOB”) authority to levy civil monetary penalties in its disciplinary proceedings pursuant to 15 U.S.C. 7215(c)(4)(D).¹⁰ The definition of a CMP in the Inflation Adjustment Act encompasses such civil monetary penalties.¹¹

II. Adjusting the Commission’s Penalty Amounts for Inflation

This Notice sets forth the annual inflation adjustment required by the 2015 Act for all CMPs under the Securities Act, the Exchange Act, the Investment Company Act, and the Investment Advisers Act, and certain civil monetary penalties under the Sarbanes-Oxley Act.

⁷ Release Nos. 33-10740; 34-87905; IA-5428; IC-33740 (effective Jan. 15, 2020).

⁸ Release Nos. 33-10918; 34-90874; IA-5664; IC-34166 (effective Jan. 15, 2021).

⁹ 28 U.S.C. 2461 note Sec. 3(2).

¹⁰ 15 U.S.C. 7215(c)(4)(D).

¹¹ The Commission may by order affirm, modify, remand, or set aside sanctions, including civil monetary penalties, imposed by the PCAOB. See Section 107(c) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. 7217. The Commission may enforce such orders in federal district court pursuant to Section 21(e) of the Exchange Act. As a result, penalties assessed by the PCAOB in its disciplinary proceedings are penalties “enforced” by the Commission for purposes of the Inflation Adjustment Act. See *Adjustments to Civil Monetary Penalty Amounts*, Release No. 33-8530 (Feb. 4, 2005) [70 FR 7606 (Feb. 14, 2005)].

³⁸ 17 CFR 200.30-3(a)(12).

¹ Public Law 114-74 Sec. 701, 129 Stat. 599-601 (Nov. 2, 2015), codified at 28 U.S.C. 2461 note.