

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-2021-09, and should be submitted on or before March 2, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-91055; File No. SR-NASDAQ-2020-027]

**Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Withdrawal of Proposed Rule Change To Apply Additional Initial Listing Criteria for Companies Primarily Operating in Restrictive Markets**

February 3, 2021.

On May 29, 2020, The Nasdaq Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), 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> a proposed rule change to apply additional initial listing criteria for companies primarily operating in a jurisdiction that has secrecy laws, blocking statutes, national security laws or other laws or regulations restricting access to information by regulators of U.S.-listed companies in such jurisdiction. The proposed rule change

was published for comment in the **Federal Register** on June 12, 2020.<sup>3</sup>

On July 21, 2020, pursuant to Section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On September 9, 2020, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule change.<sup>7</sup> On December 3, 2020, the Commission extended the period for consideration of the proposed rule change to February 7, 2021.<sup>8</sup>

On February 1, 2021, the Exchange withdrew the proposed rule change (SR-NASDAQ-2020-027).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-91047; File No. SR-FINRA-2021-002]

**Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Private Placement Filer Form Under FINRA Rules 5122 and 5123**

February 3, 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 January 27, 2021, the Financial Industry Regulatory Authority, Inc. ("FINRA")

<sup>3</sup> See Securities Exchange Act Release No. 89027 (June 8, 2020), 85 FR 35962. Comments on the proposed rule change can be found at: <https://www.sec.gov/comments/sr-nasdaq-2020-027/srnasdaq2020027.htm>.

<sup>4</sup> 15 U.S.C. 78s(b)(2).

<sup>5</sup> See Securities Exchange Act Release No. 89358, 85 FR 45275 (July 27, 2020). The Commission designated September 10, 2020, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

<sup>6</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>7</sup> See Securities Exchange Act Release No. 89799, 85 FR 57282 (September 15, 2020).

<sup>8</sup> See Securities Exchange Act Release No. 90559, 85 FR 79249 (December 9, 2020).

<sup>9</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.

filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal 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**

FINRA is proposing changes to the Private Placement Filer Form ("Filer Form") that members complete when submitting private placement filings under FINRA Rules 5122 (Private Placements of Securities Issued by Members) or 5123 (Private Placements of Securities). The proposal does not make any changes to the text of FINRA rules.

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

In its filing with the Commission, FINRA 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. FINRA 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**

Rules 5122 and 5123 require a FINRA member to file information regarding private placements in which the member participates.<sup>4</sup> When Rule 5123

<sup>3</sup> 17 CFR 240.19b-4(f)(6). Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

<sup>4</sup> Both Rules 5122 and 5123 provide exemptions from the filing requirement when certain types of securities are sold or securities are sold to certain types of investors. See Rules 5122(c) and 5123(b).

<sup>20</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.

became effective on December 3, 2012,<sup>5</sup> FINRA required members to use the Filer Form for filings under both rules.<sup>6</sup> Members submit the Filer Form and relevant offering documents to FINRA through the FINRA Gateway.<sup>7</sup> On July 1, 2013, FINRA amended Rule 5123 to require members to file the requisite information “in a manner prescribed by FINRA” and also began using an updated version of the Filer Form.<sup>8</sup> On May 22, 2017, FINRA began using a further updated Filer Form.<sup>9</sup> The changes proposed herein would update the version of the Filer Form that has been in use since May 2017 for filings made pursuant to Rule 5122 and Rule 5123.

The proposed changes would represent the fourth version of the Filer Form since Rule 5123 became effective in 2012. Updates to the Filer Form would assist FINRA in fulfilling its regulatory responsibilities by improving the quality of information that is filed with it about the private placement and the member’s role in offering the securities. Specifically, FINRA proposes to clarify questions that may have been unclear to members, and add other questions that, with the benefit of experience, FINRA believes would help it better understand the issues and potential risks associated with a private placement.

The Filer Form has three main components: (1) The “Participating Member Information” section, which seeks information about the members

that are selling the private placement; (2) the “Issuer Information” section, which captures basic information about the issuer; and (3) the “Offering Information” section, which seeks information about the offering.<sup>10</sup>

FINRA proposes changes to the Filer Form that would add or clarify questions or other information requested in the Offering Information section. The benefit to members and FINRA would be twofold. When a FINRA review of the submitted Filer Form identifies a potential concern or a need for additional information, it typically leads to follow-up questions by FINRA staff. These inquiries absorb members’ and FINRA’s resources. The proposed changes to the Filer Form would provide more focused and complete information that, in many cases, would obviate the need for these follow-up inquiries. In addition, the proposed changes would enable FINRA to get better information about those issues in private placement transactions that have presented the most risk in disciplinary cases.

The proposed changes address three key categories of offering information that can benefit from more focused or complete information in the Offering Information section of the Filer Form: (i) Contingency offerings; (ii) the disciplinary history of the issuer, its principals and related parties; and (iii) the use of proceeds.

FINRA also proposes to add a new question regarding FINRA Rule 3280 (Private Securities Transactions of an Associated Person). In addition, FINRA proposes updates to existing questions regarding the member’s date of first sale or offer, the Securities Act registration exemptions that apply and what type of documents are being filed with FINRA.

The Filer Form does not set standards of disclosure or information gathering requirements for members that participate in private placements.<sup>11</sup> Rather, the information provided by members on the Filer Form assists FINRA in focusing its review on the areas of heightened concern in the private placement market. Based on a review of private placement enforcement actions from 2016 to 2018, FINRA found frequent violations resulting from improper contingency

arrangements,<sup>12</sup> inadequate investigations concerning disciplinary history<sup>13</sup> and the issuer’s intended use of proceeds,<sup>14</sup> and private offerings sold by associated persons away from their firm without proper authorization and oversight.<sup>15</sup>

The proposed Filer Form changes would help address these concerns and streamline the existing information collection procedure that FINRA relies on to fulfill its regulatory responsibility related to private placements.

The questions in the Offering Information section of the Filer Form can generally be answered either by: (i) Inputting requested information or responding “unknown”; or (ii) checking one of three “radio buttons” for “yes,” “no,” or “unknown.” The proposed changes to the Filer Form would not alter this general approach. Members would continue to have the option to respond “unknown” to each proposed new or revised question or request for information. Therefore, the Filer Form, as proposed to be modified, would not impose any new obligation on members to seek out information that they do not

<sup>5</sup> See Securities Exchange Act Release No. 67157 (June 7, 2012), 77 FR 35457 (June 13, 2012) (Notice of Filing of Amendments No. 2 and No. 3 and Order Granting Accelerated Approval of File No. SR-FINRA-2011-057); *Regulatory Notice* 12-40 (September 2012).

<sup>6</sup> See *Regulatory Notice* 12-40 (September 2012). See also *Regulatory Notice* 13-26 (August 2013); Securities Exchange Act Release No. 69843 (June 25, 2013), 78 FR 39367 (July 1, 2013) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Members’ Filing Obligations Under FINRA Rule 5123 (Private Placements of Securities) File No. SR-FINRA-2013-026).

<sup>7</sup> FINRA Gateway is an online compliance tool that provides consolidated access to FINRA applications and allows members to submit required filings electronically to meet their compliance and regulatory obligations.

<sup>8</sup> See *Regulatory Notice* 13-26 (August 2013) and Securities Exchange Act Release No. 69843 (June 25, 2013), 78 FR 39367 (July 1, 2013) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Members’ Filing Obligations Under FINRA Rule 5123 (Private Placements of Securities) File No. SR-FINRA-2013-026).

<sup>9</sup> See *Regulatory Notice* 17-17 (April 2017) and Securities Exchange Act Release No. 80321 (March 28, 2017), 82 FR 16245 (April 3, 2017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Private Placement Filer Form Under FINRA Rules 5122 and 5123 File No. SR-FINRA-2017-008).

<sup>10</sup> FINRA staff also monitor SEC and FINRA disciplinary actions involving private placements. This monitoring enables FINRA to identify issues that frequently occur in private placements.

<sup>11</sup> The scope of a member’s obligations to conduct a reasonable investigation of a private placement is addressed in *Regulatory Notice* 10-22 (April 2010). FINRA Rules 5122 and 5123 and the Filer Form do not impose any additional requirement of reasonable investigation beyond what is discussed in that *Notice*.

<sup>12</sup> FINRA has found that members failed to safeguard investor funds in offerings that were subject to certain conditions to close or failed to return funds to investors as required when the issuer made material changes to the terms of the contingency or offering. See, e.g., *McDonald Partners LLC*, FINRA AWC No. 2015043649601 (February 21, 2018); *Financial America Securities, Inc.*, FINRA AWC No. 2014042711601 (May 26, 2016); *Dawson James Securities, Inc.*, FINRA AWC No. 2015044393901 (February 07, 2017); *TerraNova Capital Equities, Inc.*, FINRA AWC No. 2015047958301 (December 21, 2017).

<sup>13</sup> In recent cases, including those involving fraud, FINRA has found that members did not meet their obligation to conduct a reasonable investigation of the offering when they failed to identify or follow up on areas of heightened concern regarding the background of the issuer, its principals, or related parties. See, e.g., *First American Securities, Inc.*, FINRA AWC No. 2015046056405 (November 7, 2016); *Richard Gomez*, FINRA NAC Decision No. 2011030293503 (March 28, 2018); *Carolina Financial Securities, LLC and Bruce V. Roberts*, FINRA OHO Decision No. 2014040295201 (May 26, 2017).

<sup>14</sup> In recent cases, including those involving fraud, FINRA has found that members did not meet their obligation to conduct a reasonable investigation of the offering when they failed to review or follow up on areas of heightened concern regarding related party transactions or the issuer’s intended use of proceeds. See, e.g., *Harold Lee Connell*, FINRA AWC No. 2016051493702 (June 12, 2018); *Carolina Financial Securities, LLC and Bruce V. Roberts*, FINRA OHO Decision No. 2014040295201 (May 26, 2017); *Bridge Capital Associates, Inc.*, FINRA AWC No. 2014039283801 (December 12, 2016).

<sup>15</sup> See, e.g., *First American Securities, Inc.*, FINRA AWC No. 2015046056405 (November 7, 2016); *Richard Gomez*, FINRA NAC Decision No. 2011030293503 (March 28, 2018); *Ahmed Ghassan Gheith*, FINRA AWC No. 2016052540603 (April 24, 2018); *Brandon D. Gioffre*, FINRA AWC No. 2015046448701 (June 23, 2016).

already have.<sup>16</sup> FINRA also notes that the Filer Form provides (and would continue to provide) a free text box at the end of the form for members that wish to clarify their answers or add other relevant information with regard to particular questions or requests for information.

#### Contingency Offerings

The proposed changes to the Offering Information section would add and clarify several questions regarding contingency offerings;<sup>17</sup> FINRA continues to observe numerous instances of non-compliance with this type of offering.<sup>18</sup> The Filer Form today asks if the contingency has been met at the time of filing. The proposed changes to the Filer Form would add three additional questions/requests if the offering is a contingency offering, each with the option to respond “unknown”:

- (1) A request for the member to provide the date by which the contingency must be met;
- (2) a question asking if there have been any changes to the original terms of the contingency during the course of the offering (*e.g.*, extension of the date by which the contingency must be met);<sup>19</sup> and
- (3) a question regarding whether “the subscription process involves your firm receiving or transmitting investor funds in the offering”. This last question would provide FINRA with transparency regarding whether the broker-dealer is subject to the requirements for handling funds under SEA Rule 15c2-4.<sup>20</sup> If the

member responds “yes” to this last question, the Filer Form would ask if “your firm is acting as the agent or trustee for investor funds until the contingency is met.” The terms “agent or trustee” are used in SEA Rule 15c2-4, which governs the manner in which a member must handle investors’ funds in a contingency offering. If the member responds “yes” or “unknown” there would be no more questions. If the member responds “no,” the Filer Form would require the member to provide the name of the escrow agent in a free text box or respond “unknown.”

#### Disciplinary History

The Offering Information section also would be revised to add questions regarding disciplinary history. Currently, the Filer Form asks whether the issuer, any officer, director or executive management of the issuer, sponsor, general partner, manager, advisor, or any of the issuer’s affiliates has been the subject of SEC, FINRA or state disciplinary actions or proceedings or criminal complaints within the last 10 years. The proposed revisions to the Filer Form would change the current question to also inquire about “other federal agency” disciplinary actions (in addition to SEC, FINRA and state disciplinary actions or proceedings or criminal complaints) within the last 10 years. If the member responds “yes” to the revised question, the Filer Form would request the identification of the individual or entity that was the subject of such action or allow the member to respond “unknown.” For each identified entry, the proposed revisions to the Filer Form would first ask whether the individual or entity has registration records in the Central Registration Depository (“CRD®”). If the member responds “yes” to the CRD question, then the member would enter the name of the individual or entity with no more questions.<sup>21</sup> If instead the member responds “no” or “unknown” to the CRD question, the Filer Form would request that the member provide the name of the individual or entity with the disciplinary history or respond “unknown.” If the member provides the name of the entity or individual with the disciplinary history, the Filer Form’s next requests would be for three pieces

of information, each of which includes the option to select “unknown”: (1) The type of action or proceeding (that may be selected from a drop down box); (2) the approximate year that the event was initiated; and (3) the status of the event (that may be selected from a list of options provided in a drop down box). While the information requested in these three questions would assist FINRA’s review of an area of concern, FINRA recognizes that by providing the unknown option, it is possible that some members may not possess definitive information needed to answer the questions. If the member responds “unknown” when requested to provide the name of the entity or individual with the disciplinary history, there are no more questions.

#### Use of Proceeds

The Offering Information section would be revised to include a reformulation of the existing request for information regarding the use of the offering proceeds. Currently, the Filer Form asks whether the issuer is “able to” use offering proceeds to make or repay loans to, or purchase assets from any officer, director or executive management of the issuer, sponsor, general partner, manager, advisor or any of the issuer’s affiliates. The proposed changes to the Filer Form would reformulate the current question by asking whether the issuer “intends to” use (rather than is “able to” use)<sup>22</sup> offering proceeds to make or repay loans to, or purchase assets from, the listed persons. The proposed changes to the Filer Form also would expand the scope of the current question by asking whether the issuer intends to “otherwise direct investor proceeds” to the listed persons. The question would retain the option to respond “unknown.” If the member responds “yes” to this question despite the option to respond “unknown,” the proposed changes to the Filer Form would add a request for the member to identify the type(s) of payment(s) and the approximate dollar amount, and would provide the option to respond “unknown.”

#### Private Securities Transactions

The Offering Information section would be revised to add a question regarding identification of private securities transactions. FINRA seeks to have more information regarding how frequently private offerings are sold by

<sup>16</sup> The Filer Form provides that the member submitting the filing must answer the questions “[b]ased on the information contained in the offering document (or if otherwise known by your firm).”

<sup>17</sup> For purposes of the Filer Form, a contingency offering is a private placement in which the closing or sale of securities in the private placement is contingent on an event or condition, typically the receipt of orders for a minimum aggregate dollar amount or number of securities by an expiration date. Members participating in contingency offerings must understand and comply with the requirements of SEA Rules 10b-9 and 15c2-4. See Private Placement FAQ #1 under the heading “Filing Form” available on the *finra.org* website.

<sup>18</sup> See *Regulatory Notice* 16-08 (February 2016). FINRA’s review of securities offering documents has revealed instances in which broker-dealers have not complied with the contingency offering requirements of SEA Rules 10b-9 and 15c2-4. In the *Notice*, FINRA provided guidance regarding the requirements of SEA Rules 10b-9 and 15c2-4 and reminded broker-dealers of their responsibility to have procedures reasonably designed to achieve compliance with these rules.

<sup>19</sup> As noted, the member submitting the Filer Form must answer the questions “[b]ased on the information contained in the offering document (or if otherwise known by your firm).” The member may provide further information in the free text box at the end of the Filer Form.

<sup>20</sup> Rule 15c2-4 requires that upon receiving money or other consideration from an investor in a contingency offering, a broker-dealer must

promptly either (1) deposit those funds into “a separate bank account” for which the broker-dealer is the account holder and is designated as agent or trustee; or (2) transmit those funds to a bank that has agreed in writing to act as the escrow agent for the offering.

<sup>21</sup> Using the “CRD lookup” function, the member selects whether the subject is an individual or entity, then enters either the name or CRD number and selects the appropriate result to generate the name and CRD number in the Filer Form.

<sup>22</sup> The replacement of “able to use” with “intends to use” is meant to clarify the question, which seeks information about the member’s understanding of the issuer’s intended use of proceeds. It would not constitute a substantive change to the information required by the Filer Form.

associated persons away from their firm. The proposed changes to the Filer Form would ask “if your firm is filing an offering that your associated person is selling in a private securities transaction subject to FINRA Rule 3280”.<sup>23</sup> The member may respond “yes”, “no” or “unknown.”

#### Information Clarification and Accuracy Improvement

Finally, FINRA proposes minor changes to three existing questions in the Offering Information section of the Filer Form in order to clarify the information requested and improve the accuracy of responses. The first proposed change is to the current questions concerning the member’s date of first sale or offer, which FINRA relies upon to assess the timeliness of the filings. For Rule 5123 filings, the current Filer Form requests that the member provide the date of its first sale in the offering (by way of a calendar box) or respond “unknown,” and separately instructs the member to check a box if sales have yet to commence. These questions would be replaced with “Has your firm commenced sales of the offering?” The member may respond “yes,” “no,” or “unknown.” If the member has answered “yes” that it commenced sales, the Filer Form would request that the member enter the date of first sale or respond “unknown.” Likewise, for Rule 5122 filings, the current Filer Form requests that the member provide the date of first offer (by way of a calendar box) or respond “unknown,” and separately instructs the member to check a box if sales have yet to commence. These questions would be replaced with “Has your firm made any offers for the private placement or otherwise provided the offering documents to any investor?” As with the Rule 5123 filings, the member may respond “yes,” “no,” or “unknown.” If the member has answered “yes,” the Filer Form would request the member enter the date of first offer or provision of offering documents to any investor or respond “unknown.”

Second, the proposed changes to the Offering Information section would update the options that a member may select when answering what exemption

<sup>23</sup> FINRA Rule 3280 (Private Securities Transactions of an Associated Person) requires, prior to participating in any private securities transaction, an associated person to provide written notice to the member with which he is associated describing in detail the proposed transaction and the person’s proposed role therein, including if compensation will be received. In the case of a transaction in which the associated person may receive selling compensation, that transaction must be approved in writing by the member.

from registration the issuer is relying upon. The current question allows the member to select Rule 505. Rule 505 was repealed in 2016 and is no longer an available exemption; therefore, the Filer Form would remove that option.<sup>24</sup>

Third, the proposed changes to the Filer Form would amend the process by which the member uploads offering documents that it used in connection with the sale of the offering. For each document the member uploads, the Filer Form would request that the member identify the type of document by selecting an option from a drop down box (e.g., private placement memorandum or term sheet) with an option to identify the document as “other” and the option to select multiple types of documents (e.g., indicate that the document is a term sheet and a private placement memorandum).

#### Conclusion

As noted above, the proposed revisions to the Filer Form would assist FINRA in fulfilling its regulatory responsibilities by improving the quality of information that is filed with it about the private placement and the member’s role in offering the securities. Specifically, FINRA proposes to clarify questions that may have been unclear to members, and add other questions that, with the benefit of experience, FINRA believes would help it better understand the issues and potential risks associated with a private placement (e.g., an offering with an unmet contingency, an issuer with disciplinary history or associated persons’ selling private offerings away from their firms). In addition, the proposed new questions should in many cases obviate the need for follow-up questions after filing and would therefore streamline the existing information collection procedure that FINRA relies on to fulfil its regulatory responsibilities related to private placements.

FINRA has filed the proposed changes for immediate effectiveness. FINRA anticipates that the implementation date will be May 22, 2021.

#### 2. Statutory Basis

FINRA believes that the proposed changes to the Filer Form are consistent with the provisions of Section 15A(b)(6) of the Act,<sup>25</sup> which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

<sup>24</sup> See Securities Act Release No. 10238 (October 26, 2016), 81 FR 83494 (November 21, 2016).

<sup>25</sup> 15 U.S.C. 78o-3(b)(6).

trade, and, in general, to protect investors and the public interest, in that it will assist in FINRA’s efforts to detect and prevent fraud in connection with specified private placements. In addition, the proposed changes would assist FINRA in evaluating the specified private placement activities of members and assess whether members are conducting a reasonable investigation and whether members are complying with private placement obligations including regarding contingency offerings for private placement offerings in which they participate.

#### B. Self-Regulatory Organization’s Statement on Burden on Competition Economic Impact Assessment

FINRA has undertaken an economic impact assessment, as set forth below, to analyze the regulatory need for the proposed changes, their potential economic impacts, including anticipated costs, benefits, and competitive effects, relative to the current baseline, and the alternatives FINRA considered in assessing how best to meet FINRA’s regulatory objectives.

#### Regulatory Need

The proposed Filer Form changes are intended to streamline the existing information collection procedure in fulfilling FINRA’s regulatory responsibility related to private placements. In particular, in connection with its review of submitted Filer Forms, FINRA spends significant time and resources in making follow-up inquiries to members in areas of heightened concern, including terms of contingency offerings, disciplinary history, and use of proceeds after members submit the Filer Form. Constraints of regulatory resources in this process may lead to unnecessary or prolonged reviews and investigations, thereby imposing extra costs and regulatory uncertainty for members.<sup>26</sup> These constraints may even hinder FINRA’s ability to detect fraudulent acts and practices in an accurate and timely manner.

#### Economic Baseline

The economic baseline for the proposed changes is the current Filer Form under FINRA Rules 5122 and 5123, and FINRA’s existing private placement regulatory procedure. FINRA has collected information detailing

<sup>26</sup> The private placement filing requirement is a notice filing only and members do not wait for approval from FINRA in connection with a private placement. If FINRA asks questions of the member in response to its filing, the member may become concerned that there may be a potential compliance issue with the private placement.

2,353 private placement filings submitted by 394 members with initial filing dates between May 1, 2019 and May 1, 2020. The average (maximum) number of filings per member is 6 (157) during the period.<sup>27</sup> Of the 2,353 filings, 48% provided “yes” answers to at least one of the three existing questions identifying whether the filing relates to a contingency offering; whether the issuer, its principals or related parties have disciplinary histories; and whether offering proceeds may be used by the issuer or related parties for certain identified purposes.<sup>28</sup>

According to the current regulatory procedure, FINRA reviews the information provided in the Filer Form along with other data to determine the risk profile of a private placement through its triage program. In the case in which an offering receives a high-risk assessment, FINRA initiates a further review and gathers details about the private placement. FINRA also frequently conducts informational inquiries to members if a review raises further concern and leads to a FINRA investigation. Because of the time and resources needed to respond, these regulatory inquiries can be costly to members. These inquiries also tend to require significant regulatory resources, cause delays in FINRA reviews and investigations, and impose extra communication costs and regulatory uncertainty on members after the filing process.

#### Economic Impacts

The proposal would add questions in the Filer Form with the option to answer “unknown” pertaining to the issues of heightened concern including contingency offerings, disciplinary history, use of proceeds, and private offerings sold by associated persons away from their firms.<sup>29</sup> In cases where members choose to provide additional information, the further questions or requests for information at the outset would shift the responsibility of information collection on the key issues from FINRA (after the filing) to these members (upon filing). FINRA believes that these members already know the requested information and accordingly would have no increases in relevant costs of information collection or would

face relatively low costs of information collection if they do not already know the requested information and perform additional investigation to determine it, instead of answering “unknown.” Subsequent regulatory inquiries to obtain such information based on the existing Filer Form, in comparison, could require significant FINRA resources and impose higher costs and regulatory uncertainty on these members. The proposal could therefore reduce information collection costs as a whole for FINRA and members by avoiding regulatory inquiries to obtain the information requested in the new proposed questions, and thereby streamlining the regulatory process.

The proposal would also help FINRA better understand the scope and severity of existing high-risk matters in private placements. By allowing access to additional information in areas of heightened concern, the proposal would assist FINRA in refining its triage program, thereby extending its ability to assess risk profiles and detect fraudulent and manipulative acts and practices in these areas. FINRA believes that members may likely benefit from fewer unnecessary reviews and shortened review and investigation cycles due to a streamlined regulatory process and enhanced regulatory insights. The proposal’s benefits, however, may vary depending on how frequently additional information is provided rather than “unknown” responses to the new questions in the Filer Form following the proposal.

The proposed amendments could minimally increase the costs of collecting and providing additional information for members who answer “yes” to one of the three existing questions regarding contingency offerings, the disciplinary history of the issuer, its principals and related parties, and the use of proceeds. FINRA believes that this cost increase to members, however, is relatively low overall compared with the benefit they would receive from reduced regulatory communication costs and uncertainty. In addition, members that would choose to provide “unknown” answers to each new question would not be subject to such a cost increase. FINRA does not expect cost increases will deter member entry to the industry or private placement offerings or result in any significant burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

#### Alternatives Considered

An alternative considered by FINRA was to prohibit “unknown” responses in the Filer Form. This alternative may

lead to greater benefit, for example, from efficiencies in regulatory procedure and enhanced regulatory insights into high-risk matters. However, FINRA believes that the alternative would pose higher information collection costs on members. The proposal, therefore, permits “unknown” responses. Members may, however, choose to expend effort and incur associated costs with collecting and reporting additional information.

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

Written comments were neither solicited nor received.

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

Because the foregoing 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 for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>30</sup> and Rule 19b-4(f)(6) thereunder.<sup>31</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-FINRA-2021-002 on the subject line.

<sup>27</sup> Among the filing members, 70% of them are frequent filers who had also filed at least one private placement filing during the period of May 1, 2018 and May 1, 2019.

<sup>28</sup> The rest of the filings provided either “no” or “unknown” answers to these questions.

<sup>29</sup> As mentioned earlier, the proposal would also make minor changes to clarify existing questions and improve the accuracy of responses in the Filer Form.

<sup>30</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>31</sup> 17 CFR 240.19b-4(f)(6).



*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-FINRA-2021-002. 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 FINRA. 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-FINRA-2021-002 and should be submitted on or before March 2, 2021.

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

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-02588 Filed 2-8-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91049; File No. SR-C2-2021-002]

### Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Policy Relating to Billing Errors

February 3, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on January 22, 2021, Cboe C2 Exchange, Inc. (the "Exchange" or "C2") 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 Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder.<sup>4</sup> 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

Cboe C2 Exchange, Inc. ("C2" or the "Exchange") is filing with the Securities and Exchange Commission (the "Commission") a proposed rule change to establish a policy relating to billing errors. The Exchange has designated this proposal as non-controversial and provided the Commission with the notice required by Rule 19b-4(f)(6)(iii) under the Act.<sup>5</sup>

The text of the proposed rule change is provided in Exhibit 5. The text of the proposed rule change is available on the Exchange's website at <http://markets.cboe.com/>, at the Exchange's principal office and at the Public Reference Room of the Commission.

#### 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 a provision of its fees schedule which relates to billing errors and fee disputes. The Exchange currently provides that any potential billing errors relating to fees assessed by C2 must be brought to the attention of C2's Accounting Department within three months from the invoice date. Additionally, all fees assessed shall be deemed final and non-refundable after three months from the invoice date. However, the fees schedule further provides that the Exchange is not precluded from assessing fees more than three months after they were incurred if those fees were required to be paid pursuant to the C2 Fee Schedule in effect at the time the fees were incurred. The Exchange proposes to eliminate the current language in the fees schedule and replace it with language recently adopted by its affiliated exchanges.<sup>6</sup> Particularly, the Exchange proposes to provide: "All fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error shall be considered final. Any dispute concerning fees or rebates billed by the Exchange must be submitted to the Exchange in writing and must be accompanied by supporting documentation."<sup>7</sup>

The proposed language would result in all fees and rebates assessed prior to the three full calendar months before the month in which the Exchange becomes aware of a billing error to be considered final. Particularly, the Exchange will resolve an error by crediting or debiting Trading Permit Holders ("TPHs") and Non-TPHs based on the fees or rebates that should have been applied in the three full calendar months preceding the month in which the Exchange became aware of the error, including to all impacted transactions

<sup>6</sup> See SR-CboeBZX-2020-094; SR-CboeBYX-2020-034; SR-CboeEDGA-2020-032; SR-CboeEDGX-2020-064.

<sup>7</sup> The current language relating to billing errors and fee disputes is located at the end of the fees schedule. The Exchange proposes to relocate the new language relating to billing errors and fee disputes to the top of the fees schedule.

<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)(iii).

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

<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>32</sup> 17 CFR 200.30-3(a)(12).