

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-100187; File No. SR-NYSECHX-2024-18)

May 21, 2024

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Its Rules Concerning Supervision to Adopt Rules Based on NYSE American Rules 3110 - Equities and 3120 - Equities

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (“Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that, on May 16, 2024, the NYSE Chicago, Inc. (“NYSE Chicago” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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 to amend its rules concerning supervision to adopt rules based on NYSE American Rules 3110 - Equities (Supervision) and 3120 - Equities (Supervisory Control System) and make certain conforming changes. 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

¹ 15 U.S.C. 78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

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.

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

1. Purpose

The Exchange proposes to amend its rules concerning supervision to adopt rules based on NYSE American Rules 3110 - Equities (Supervision) and 3120 - Equities (Supervisory Control System) and make certain conforming changes. More specifically, the Exchange proposes to (1) adopt new rule text that is substantially similar to NYSE American Rule 3110 - Equities and NYSE American Rule 3120 - Equities; (2) delete Article 6, Rule 5 (Registration, Supervision and Training) except for certain text that will be retained as new Rule 11.20 (Adherence to Law); and (3) make conforming changes to Rule 10.9217 (Violations Appropriate for Disposition Under Rule 9216(b)).

Background and Proposed Rule Change

Current Supervision Rules

The Exchange's current supervision Rule is Article 6, Rule 5.

Subsection (a) of Article 6, Rule 5 sets forth a basic declaration that Participants are responsible for adherence to federal securities laws and Exchange rules, and must reasonably supervise their operations and associated persons to prevent violations of thereof.

Subsection (b) provides for the designation of persons with supervisory authority. Specifically, the rule provides that each Participant Firm must designate a principal executive officer, general partner or managing partner to hold overall authority and responsibility for the Participant Firm's internal supervision and compliance with securities laws and regulations,

although under the rule the designated supervisor under the rule may formally delegate their supervisory duties and authority to other persons within the firm. The rule also requires that Participants⁴ maintain, for a period of not less than six years (the first two years in an easily accessible place), records of the names of all persons who are designated as supervisory personnel and the dates for which those designations are effective. In the absence of such designation by a Participant Firm, the rule provides that the firm's General Partner(s), President, Chief Executive Officer or other principal executive officer shall be deemed to be responsible for a Firm's internal supervision and compliance function. In addition, each Participant Firm shall designate and specifically identify to the Exchange on Schedule A of Form BD one or more principals to serve as a Chief Compliance Officer.

Article 6, Rule 5(c) governs written supervisory procedures, and provides that each Participant Firm shall establish, maintain and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered and associated persons. Such written procedures must be reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable rules of the Exchange. The rule further specifies that the Participant Firm's written supervisory procedures must set forth the following: the supervisory system established by the Participant Firm; the titles, registration status and locations of the required supervisory personnel; and the responsibilities of each supervisor as they relate to the types of business engaged in, applicable securities laws and the rules of the Exchange. Article 6, Rule 5(c) requires that a copy of a Participant Firm's written

⁴ The term "Participant" is defined in Article 1, Rule 1(s) to mean, among other things, any Participant Firm that holds a valid Trading Permit and that a Participant shall be considered a "member" of the Exchange for purposes of the Act. If a Participant is not a natural person, the Participant may also be referred to as a Participant Firm, but unless the context requires otherwise, the term Participant shall refer to an individual Participant and/or a Participant Firm. For the avoidance of doubt, this rule filing will use the phrase Participant and/or Participant Firm.

supervisory procedures or the relevant portions thereof, be maintained at each location where supervisory activities are conducted on behalf of the firm. Each Participant Firm is required to periodically review and amend its written supervisory procedures as appropriate within a reasonable time, including but not limited to, updates required by changes in applicable securities laws and regulations, including the rules of the Exchange, and as changes occur in the supervisory system. In addition, the rule provides that each Participant Firm shall be responsible for communicating these amendments within its organization. Finally, the rule requires each Participant Firm to maintain records evidencing actual review of transactions, systems, programs or other activities by the designated supervisory personnel pursuant the written supervisory procedures.

Article 6, Rule 5(d) governs internal controls and training. The rule requires that at least annually, each Participant Firm must discuss compliance matters with its registered and associated persons and must maintain records confirming the dates of these discussions and the subject matters that were discussed. Each Participant Firm must also establish internal controls to determine that proper supervision is being exercised.

Article 6, Rule 5(e) governs branch and resident offices. Under the rule, a Participant Firm for which this Exchange is the Designated Examining Authority or which is subject to examination by another self-regulatory organization not having a comparable rule, shall not open a branch or resident office unless it has obtained the prior written approval of the Exchange. Application for approval of the opening of a branch or resident office must be made on a form provided by the Exchange at least one month (or such shorter period as the Exchange may approve) prior to the proposed opening date of the office. A Participant Firm maintaining branch or resident offices must establish procedures providing for close supervision of such offices, and

maintain a close, responsible relationship with the person in charge of such office or offices. A designated partner or officer of the main office is personally responsible for proper supervision of such branch or resident office.

Finally, Supplementary Material .01 governs registration of new branch offices and sets forth the steps to be taken when registering new branch offices as required by Article 6, Rule 5(d). Supplementary Material .01 requires each Participant Firm to forward a completed Form BR to the Exchange. In addition, prior to approval of the branch office, the office manager or the registered representative in charge must have completed the Exchange requirements for registration. The office may begin operating as a branch on receipt of written approval from the Exchange.

Proposed Rule Change

The Exchange proposes to delete the foregoing rules relating to supervision (except as noted below), which are, in main part, either duplicative of, or do not align with, the proposed supervision requirements discussed below, and adopt the text of NYSE American Rules 3110 - Equities and 3120 - Equities, subject to certain technical and conforming changes.⁵ The text in current rule Article 6, Rule 5(a) following the heading “Adherence to Law” would be retained in its entirety and moved to Rule 11 governing business conduct without substantive change as new Rule 11.20, also titled “Adherence to Law.”⁶

Proposed Rule 11.3110 (Supervision)

Proposed Rule 11.3110 is based primarily on requirements in the NYSE American and

⁵ The technical and conforming changes are that the Exchange would substitute “Participant Firm” for “member organization” and change a cross-reference to NYSE American Rules 2210 to Exchange Rule 11.2210.

⁶ The Exchange notes that its affiliate NYSE National, Inc. has a similar business conduct rule. See NYSE National Rule 11.3.2 (Violations Prohibited).

FINRA rulebooks and current Article 6, Rule 5 relating to, among other things, supervisory systems, written procedures, internal inspections, and review of correspondence.

Proposed Rule 11.3110(a)

Proposed Rule 11.3110(a) would cover supervisory systems and would require each Participant Firm to establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules. Under the proposed rule, final responsibility for proper supervision would rest with the Participant Firm. In addition, a Participant Firm's supervisory system would need to provide, at a minimum, for the following:

- The establishment and maintenance of written procedures as required by proposed Rule 11.3110.
- The designation, where applicable, of an appropriately registered principal with authority to carry out the supervisory responsibilities of the Participant Firm for each type of business in which it engages for which registration as a broker-dealer is required.
- The registration and designation as a branch office or an office of supervisory jurisdiction ("OSJ") of each location, including the main office, that meets the definitions contained in proposed Rule 11.3110(e). The Exchange has not previously designated OSJs. As such, the requirements relating to OSJs described hereinafter would be new for Participant Firms.
- The designation of one or more appropriately registered principals in each OSJ and one or more appropriately registered representatives or principals in each non-OSJ branch office with authority to carry out the supervisory responsibilities

assigned to that office by the Participant Firm.

- The assignment of each registered person to an appropriately registered representative or principal who would be responsible for supervising that person's activities.
- The use of reasonable efforts to determine that all supervisory personnel are qualified, either by virtue of experience or training, to carry out their assigned responsibilities.
- The participation of each registered representative and registered principal, either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the Participant Firm at which compliance matters relevant to the activities of the representative and principal are discussed, which may occur in conjunction with the discussion of other matters and may be conducted at a central or regional location or at the representative's or principal's place of business.

Proposed Rule 11.3110(b)

Proposed Rule 11.3110(b)(1) would address written procedures and would require each Participant Firm to establish, maintain, and enforce written procedures to supervise the types of business in which it engages and the activities of its associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations and applicable Exchange rules.

Under proposed Rule 11.3110(b)(2), the supervisory procedures required by proposed Rule 11.3110(b) would need to include procedures for the review by a registered principal, evidenced in writing, of all transactions relating to the investment banking or securities business

of the Participant Firm.

Consistent with NYSE American Rule 3110(b)(3) - Equities, proposed Rule 11.3110(b)(3) would be marked “Reserved.”

Under proposed Rule 11.3110(b)(4), the supervisory procedures required by proposed Rule 11.3110(b) would need to also include procedures for the review of incoming and outgoing written (including electronic) correspondence and internal communications relating to the Participant Firm’s investment banking or securities business and be appropriate for the Participant Firm’s business, size, structure, and customers. The supervisory procedures would need to require the Participant Firm’s review of:

- Incoming and outgoing written (including electronic) correspondence to properly identify and handle in accordance with firm procedures, customer complaints, instructions, funds and securities, and communications that are of a subject matter that require review under Exchange rules and federal securities laws.
- Internal communications to properly identify those communications that are of a subject matter that require review under Exchange rules and federal securities laws.

Such reviews would need to be conducted by a registered principal and evidenced in writing, either electronically or on paper. Those communications include (without limitation) certain communications with the public that require a principal’s preapproval (Rule 11.2210).

Proposed Rule 11.3110(b)(5) requires a Participant Firm’s supervisory procedures to include procedures to capture, acknowledge, and respond to all written (including electronic) customer complaints.

Under proposed Rule 11.3110(b)(6), the supervisory procedures required by proposed

Rule 11.3110(b) would need to set forth the supervisory system established by the Participant Firm pursuant to proposed Rule 11.3110(a), and would need to include:

- The titles, registration status, and locations of the required supervisory personnel and the responsibilities of each supervisory person as these relate to the types of business engaged in, applicable securities laws and regulations, and Exchange rules.
- A record, preserved by the Participant Firm for a period of not less than three years, the first two years in an easily accessible place, of the names of all persons who are designated as supervisory personnel and the dates for which such designation is or was effective.
- Procedures prohibiting associated persons who perform a supervisory function from:
 - Supervising their own activities; and
 - Reporting to, or having their compensation or continued employment determined by, a person or persons they are supervising.
 - If a Participant Firm determines, with respect to any of its supervisory personnel, that compliance with the preceding two bullets is not possible because of the Participant Firm's size or a supervisory personnel's position within the firm, the Participant Firm would need to document:
 - The factors the Participant Firm used to reach such determination; and
 - How the supervisory arrangement with respect to such

supervisory personnel otherwise complies with proposed Rule 11.3110(a).

- Procedures reasonably designed to prevent the supervisory system required pursuant to proposed Rule 11.3110(a) from being compromised due to the conflicts of interest that may be present with respect to the associated person being supervised, including the position of such person, the revenue such person generates for the firm, or any compensation that the associated person conducting the supervision may derive from the associated person being supervised.

Proposed Rule 11.3110(b)(7) would require a Participant Firm to keep and maintain a copy of its written supervisory procedures, or such relevant portions, in each OSJ and at each location where supervisory activities are conducted on behalf of the Participant Firm. Each Participant Firm would need to promptly amend its written supervisory procedures to reflect changes in applicable securities laws or regulations, including Exchange rules, and as changes occur in its supervisory system. Each Participant Firm would be responsible for promptly communicating its written supervisory procedures and amendments to all associated persons to whom such written supervisory procedures and amendments are relevant based on their activities and responsibilities.

Proposed Rule 11.3110(c)

Proposed Rule 11.3110(c) would cover internal inspections. Proposed Rule 11.3110(c)(1) would require each Participant Firm to conduct a review, at least annually (on a calendar-year basis), of the businesses in which it engages. The review would need to be reasonably designed to assist the Participant Firm in detecting and preventing violations of, and achieving compliance with, applicable securities laws and regulations, and with applicable

Exchange rules. Each Participant Firm would need to review the activities of each office, which would include the periodic examination of customer accounts to detect and prevent irregularities or abuses. Each Participant Firm would also need to retain a written record of the date upon which each review and inspection is conducted.

In addition, proposed Rule 11.3110(c)(1) would require each Participant Firm to inspect at least annually (on a calendar-year basis) every OSJ and any branch office that supervises one or more non-branch locations. Each Participant Firm would need to also inspect at least every three years every branch office that does not supervise one or more non-branch locations. In establishing how often to inspect each non-supervisory branch office, the Participant Firm would need to consider whether the nature and complexity of the securities activities for which the location is responsible, the volume of business done at the location, and the number of associated persons assigned to the location require the non-supervisory branch office to be inspected more frequently than every three years. If a Participant Firm establishes a more frequent inspection cycle, the Participant Firm would need to ensure that at least every three years, the inspection requirements enumerated in proposed Rule 11.3110(c)(2) have been met. The Participant Firm's written supervisory and inspection procedures would need to set forth the non-supervisory branch office examination cycle, an explanation of the factors the Participant Firm used in determining the frequency of the examinations in the cycle, and the manner in which a Participant Firm will comply with proposed Rule 11.3110(c)(2) if using more frequent inspections than every three years. Each Participant Firm would need to inspect, on a regular periodic schedule, every non-branch location. In establishing such schedule, the Participant Firm would need to consider the nature and complexity of the securities activities for which the location is responsible and the nature and extent of contact with customers. The Participant

Firm's written supervisory and inspection procedures would also need to set forth the schedule and an explanation regarding how the Participant Firm determined the frequency of the examination.

Proposed Rule 11.3110(c)(2) would require the inspection and review by a Participant Firm pursuant to proposed Rule 11.3110(c)(1) to be reduced to a written report and kept on file by the Participant Firm for a minimum of three years, unless the inspection is being conducted pursuant to proposed Rule 11.3110(c)(1)(C) and the regular periodic schedule is longer than a three-year cycle, in which case the report would need to be kept on file at least until the next inspection report has been written. Under proposed Rule 11.3110(c)(2)(A), if applicable to the location being inspected, that location's written inspection report would need to include, without limitation, the testing and verification of the Participant Firm's policies and procedures, including supervisory policies and procedures in the following areas:

- Safeguarding of customer funds and securities;
- Maintaining books and records;
- Supervision of supervisory personnel;
- Transmittals of funds (e.g., wires or checks, etc.) or securities from customers to third party accounts; from customer accounts to outside entities (e.g., banks, investment companies, etc.); from customer accounts to locations other than a customer's primary residence (e.g., post office box, "in care of" accounts, alternate address, etc.); and between customers and registered representatives, including the hand-delivery of checks; and
- Changes of customer account information, including address and investment objectives changes and validation of such changes.

The policies and procedures regarding transmittals of funds would need to include a means or method of customer confirmation, notification, or follow-up that can be documented. Participant Firm s may use reasonable risk-based criteria to determine the authenticity of the transmittal instructions. The policies and procedures regarding changes of customer account information would need to include, for each change processed, a means or method of customer confirmation, notification, or follow-up that can be documented and that complies with SEA Rules 17a-3(a)(17)(i)(B)(2) and 17a-3(a)(17)(i)(B)(3).

If a Participant Firm does not engage in all of the activities enumerated in the bullets immediately above at the location being inspected, the Participant Firm would need to identify those activities in the Participant Firm’s written supervisory procedures or the location’s written inspection report and document in the Participant Firm’s written supervisory procedures or the location’s written inspection report that supervisory policies and procedures for such activities would need to be in place at that location before the Participant Firm can engage in them.

Under proposed Rule 11.3110(c)(3), for each inspection conducted pursuant to the proposed rule, a Participant Firm would need to:

- have procedures reasonably designed to prevent the effectiveness of inspections from being compromised due to the conflicts of interest that may be present with respect to the location being inspected, including but not limited to, economic, commercial, or financial interests in the associated persons and businesses being inspected; and
- ensure that the person conducting an inspection is not an associated person assigned to the location or is not directly or indirectly supervised by, or otherwise reporting to, an associated person assigned to the location. If a

Participant Firm determines that compliance with this requirement is not possible either because of a Participant Firm's size or its business model, the Participant Firm would need to document in the inspection report both the factors the Participant Firm used to make its determination and how the inspection otherwise complies with proposed Rule 11.3110(c)(1).

The Exchange currently does not have a comparable rule.

Proposed Rule 11.3110(d)

Section 15(g) of the Act,⁷ adopted as part of the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA"),⁸ requires every registered broker or dealer to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by the broker or dealer or any associated person of the broker or dealer.

Proposed Rule 11.3110(d) would cover transaction reviews and investigations. Proposed Rule 11.3110(d)(1) would require each Participant Firm to include in its supervisory procedures a process for the review of securities transactions reasonably designed to identify trades that may violate the provisions of the Act, the rules thereunder, or Exchange rules prohibiting insider trading and manipulative and deceptive devices that are effected for the:

- Accounts of the Participant Firm;
- Accounts introduced or carried by the Participant Firm in which a person associated with the Participant Firm has a beneficial interest or the authority to make investment decisions;

⁷ 15 U.S.C. 78o(g).

⁸ See Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100-704, 102 Stat. 4677.

- Accounts of a person associated with the Participant Firm that are disclosed to the Participant Firm pursuant to Article 8, Rule 6 (Prohibited Accounts) or FINRA Rule 3210 (Accounts At Other Broker-Dealers and Financial Institutions), as applicable; and
- Covered accounts.

Under proposed Rule 11.3110(d)(2), each Participant Firm would need promptly to conduct an internal investigation into any such trade to determine whether a violation of those laws or rules has occurred. In addition, under proposed Rule 11.3110(d)(3), a Participant Firm engaging in investment banking services would need to file with the Exchange, written reports, signed by a senior officer of the Participant Firm, at such times and, without limitation, including such content, as follows:

- Within ten business days of the end of each calendar quarter, a written report describing each internal investigation initiated in the previous calendar quarter pursuant to proposed Rule 11.3110(d)(2), including the identity of the Participant Firm, the date each internal investigation commenced, the status of each open internal investigation, the resolution of any internal investigation reached during the previous calendar quarter, and, with respect to each internal investigation, the identity of the security, trades, accounts, associated persons of the Participant Firm, or associated person of the Participant Firm's family members holding a covered account, under review, and that includes a copy of the Participant Firm's policies and procedures required by proposed Rule 11.3110(d)(1).

- Within five business days of completion of an internal investigation pursuant to proposed Rule 11.3110(d)(2) in which it was determined that a violation of the provisions of the Act, the rules thereunder, or Exchange rules prohibiting insider trading and manipulative and deceptive devices had occurred, a written report detailing the completion of the investigation, including the results of the investigation, any internal disciplinary action taken, and any referral of the matter to the Exchange, another SRO, the SEC, or any other federal, state, or international regulatory authority.

For purposes of proposed Rule 11.3110(d)(4) the following definitions would apply:

- The term “covered account” would include any account introduced or carried by the Participant Firm that is held by:
 - The spouse of a person associated with the Participant Firm;
 - A child of the person associated with the Participant Firm or such person’s spouse, provided that the child resides in the same household as or is financially dependent upon the person associated with the Participant Firm;
 - Any other related individual over whose account the person associated with the Participant Firm has control; or
 - Any other individual over whose account the associated person of the Participant Firm has control and to whose financial support such person materially contributes.
- The term “investment banking services” would include, without limitation, acting as an underwriter, participating in a selling group in an offering for the

issuer, or otherwise acting in furtherance of a public offering of the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital or equity lines of credit or serving as placement agent for the issuer or otherwise acting in furtherance of a private offering of the issuer.

Proposed Rule 11.3110(e)⁹

Proposed Rule 11.3110(e) would define OSJ and branch office. As noted above, OSJ would be a new designation for the Exchange and the definition of the term would substantially mirror NYSE American's definition. The term would mean any office of a Participant Firm at which any one or more of the following functions take place:

- Order execution or market making;
- Structuring of public offerings or private placements;
- Maintaining custody of customers' funds or securities;
- Final acceptance (approval) of new accounts on behalf of the Participant Firm;
- Review and endorsement of customer orders;
- Final approval of retail communications for use by persons associated with the Participant Firm, pursuant to Rule 11.2210(b)(1), except for an office that solely conducts final approval of research reports; or
- Responsibility for supervising the activities of persons associated with the Participant Firm at one or more other branch offices of the Participant Firm.

The definition of "branch office" would be new and would mean any location where one or more associated persons of a Participant Firm regularly conducts the business of effecting any

⁹ Like its affiliate NYSE American, the Exchange does not propose to adopt current FINRA Rule 3110(e), which governs the responsibility to investigate applicants for registration.

transactions in, or inducing or attempting to induce the purchase or sale of, any security, or is held out as such, excluding:

- Any location that is established solely for customer service or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;
- Any location that is the associated person's primary residence, provided that
 - only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;
 - the location is not held out to the public as an office and the associated person does not meet with customers at the location;
 - neither customer funds nor securities are handled at that location;
 - the associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, retail communications and other communications to the public by such associated person;
 - the associated person's correspondence and communications with the public are subject to the firm's supervision in accordance with proposed Rule 11.3110;
 - electronic communications (e.g., e-mail) are made through the Participant Firm's electronic system;

- all orders are entered through the designated branch office or an electronic system established by the Participant Firm that is reviewable at the branch office;
- written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the Participant Firm; and
- a list of the residence locations is maintained by the Participant Firm.
- Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the Participant Firm complies with the first eight bullet points immediately above;
- Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;
- Any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year, provided that any retail communication identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised;
- The Floor of a registered national securities exchange where a Participant Firm conducts a direct access business with public customers; or
- A temporary location established in response to the implementation of a business continuity plan.

Notwithstanding the exclusions for branch offices described above, any location that is responsible for supervising the activities of persons associated with the Participant Firm at one or more non-branch locations of the Participant Firm would be considered a branch office.

The term “business day” would not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

Proposed Supplementary Materials to Rule 11.3110

Proposed Supplementary Material .01 to Rule 11.3110 would require a Participant Firm’s main office location to be registered and designated as a branch office or OSJ if it meets the definitions of a “branch office” or “office of supervisory jurisdiction” as set forth in proposed Rule 11.3110(e). In general, the nature of activities conducted at a main office will satisfy the requirements of such terms.

Proposed Supplementary Material .02 to Rule 11.3110 would provide that, in addition to the locations that meet the definition of OSJ in proposed Rule 11.3110(e), each Participant Firm would need to also register and designate other offices as OSJs as is necessary to supervise its associated persons in accordance with the standards set forth in proposed Rule 11.3110. In making a determination as to whether to designate a location as an OSJ, the Participant Firm should consider the following factors:

- Whether registered persons at the location engage in retail sales or other activities involving regular contact with public customers;
- Whether a substantial number of registered persons conduct securities activities at, or are otherwise supervised from, such location;
- Whether the location is geographically distant from another OSJ of the firm;

- Whether the Participant Firm’s registered persons are geographically dispersed; and
- Whether the securities activities at such location are diverse or complex.

Proposed Supplementary Material .03 to Rule 11.3110 would provide additional guidance relating to proposed Rule 11.3110(a)(4), which requires a Participant Firm to designate one or more appropriately registered principals in each OSJ with the authority to carry out the supervisory responsibilities assigned to that office (“on-site principal”). The proposed Supplementary Material would provide that the designated on-site principal for each OSJ would need to have a physical presence, on a regular and routine basis, at each OSJ for which the principal has supervisory responsibilities. Consequently, there is a general presumption that a principal will not be designated and assigned to be the on-site principal pursuant to proposed Rule 11.3110(a)(4) to supervise more than one OSJ. If a Participant Firm determines it is necessary to designate and assign one appropriately registered principal to be the on-site principal pursuant to proposed Rule 11.3110(a)(4) to supervise two or more OSJs, the Participant Firm would need to take into consideration, among others, the following factors:

- Whether the on-site principal is qualified by virtue of experience and training to supervise the activities and associated persons in each location;
- Whether the on-site principal has the capacity and time to supervise the activities and associated persons in each location;
- Whether the on-site principal is a producing registered representative;
- Whether the OSJ locations are in sufficiently close proximity to ensure that the on-site principal is physically present at each location on a regular and routine basis; and

- The nature of activities at each location, including size and number of associated persons, scope of business activities, nature and complexity of products and services offered, volume of business done, the disciplinary history of persons assigned to such locations, and any other indicators of irregularities or misconduct.

The Participant Firm would need to establish, maintain, and enforce written supervisory procedures regarding the supervision of all OSJs. In all cases where a Participant Firm designates and assigns one on-site principal to supervise more than one OSJ, the Participant Firm would need to document in the Participant Firm's written supervisory and inspection procedures the factors used to determine why the Participant Firm considers such supervisory structure to be reasonable and the determination by the Participant Firm will be subject to scrutiny.

Proposed Supplementary Material .04 to Rule 11.3110 would provide that a Participant Firm is not required to conduct in-person meetings with each registered person or group of registered persons to comply with the annual compliance meeting (or interview) required by proposed Rule 11.3110(a)(7). A Participant Firm that chooses to conduct compliance meetings using other methods (e.g., on-demand webcast or course, video conference, interactive classroom setting, telephone, or other electronic means) would need to ensure, at a minimum, that each registered person attends the entire meeting (e.g., an on-demand annual compliance webcast would require each registered person to use a unique user ID and password to gain access and use a technology platform to track the time spent on the webcast, provide click-as-you go confirmation, and have an attestation of completion at the end of a webcast) and is able to ask questions regarding the presentation and receive answers in a timely fashion (e.g., an on-demand annual compliance webcast that allows registered persons to ask questions via an email to a

presenter or a centralized address or via a telephone hotline and receive timely responses directly or view such responses on the Participant Firm's intranet site).

Proposed Supplementary Material .05 to Rule 11.3110 would provide that a Participant Firm may use a risk-based review system to comply with proposed Rule 11.3110(b)(2)'s requirement that a registered principal review all transactions relating to the investment banking or securities business of the Participant Firm. A Participant Firm is not required to conduct detailed reviews of each transaction if a Participant Firm is using a reasonably designed risk-based review system that provides a Participant Firm with sufficient information that permits the Participant Firm to focus on the areas that pose the greatest numbers and risks of violation.

Proposed Supplementary Material .06 to Rule 11.3110 would provide that, by employing risk-based principles, a Participant Firm would need to decide the extent to which additional policies and procedures for the review of:

- Incoming and outgoing written (including electronic) correspondence that fall outside of the subject matters listed in proposed Rule 11.3110(b)(4) are necessary for its business and structure. If a Participant Firm's procedures do not require that all correspondence be reviewed before use or distribution, the procedures would need to provide for:
 - The education and training of associated persons regarding the firm's procedures governing correspondence;
 - The documentation of such education and training; and
 - Surveillance and follow-up to ensure that such procedures are implemented and followed.
- Internal communications that are not of a subject matter that require review

under Exchange rules and federal securities laws are necessary for its business and structure.

Proposed Supplementary Material .07 to Rule 11.3110 would provide that the evidence of review required in proposed Rule 11.3110(b)(4) would need to be chronicled either electronically or on paper and clearly identify the reviewer, the internal communication or correspondence that was reviewed, the date of review, and the actions taken by the Participant Firm as a result of any significant regulatory issues identified during the review. Merely opening a communication would not be sufficient review.

Proposed Supplementary Material .08 to Rule 11.3110 would provide that, in the course of the supervision and review of correspondence and internal communications required by proposed Rule 11.3110(b)(4), a supervisor/principal may delegate certain functions to persons who need not be registered. However, the supervisor/principal remains ultimately responsible for the performance of all necessary supervisory reviews, irrespective of whether he or she delegates functions related to the review. Accordingly, supervisors/principals would need to take reasonable and appropriate action to ensure delegated functions are properly executed and should evidence performance of their procedures sufficiently to demonstrate overall supervisory control.

Proposed Supplementary Material .09 to Rule 11.3110 would provide that each Participant Firm would need to retain the internal communications and correspondence of associated persons relating to the Participant Firm's investment banking or securities business for the period of time and accessibility specified in SEA Rule 17a-4(b). The names of the persons who prepared outgoing correspondence and who reviewed the correspondence would need to be ascertainable from the retained records, and the retained records would need to be readily available to the Exchange, upon request.

Proposed Supplementary Material .10 to Rule 11.3110 would provide that a Participant Firm's determination that it is not possible to comply with proposed Rules 3110(b)(6)(C)(i) or (b)(6)(C)(ii) prohibiting supervisory personnel from supervising their own activities and from reporting to, or otherwise having compensation or continued employment determined by, a person or persons they are supervising generally will arise in instances where:

- The Participant Firm is a sole proprietor in a single-person firm;
- A registered person is the Participant Firm's most senior executive officer (or similar position); or
- A registered person is one of several of the Participant Firm's most senior executive officers (or similar positions).

Proposed Supplementary Material .11 to Rule 11.3110 would provide that a Participant Firm may use electronic media to satisfy its obligation to communicate its written supervisory procedures, and any amendment thereto, pursuant to proposed Rule 11.3110(b)(7), provided that:

- The written supervisory procedures have been promptly communicated to, and are readily accessible by, all associated persons to whom such supervisory procedures apply based on their activities and responsibilities through, for example, the Participant Firm's intranet system;
- All amendments to the written supervisory procedures are promptly posted to the Participant Firm's electronic media;
- Associated persons are notified that amendments relevant to their activities and responsibilities have been made to the written supervisory procedures;
- The Participant Firm has reasonable procedures to monitor and maintain the security of the material posted to ensure that it cannot be altered by

unauthorized persons; and

- The Participant Firm retains current and prior versions of its written supervisory procedures in compliance with the applicable record retention requirements of SEA Rule 17a-4(e)(7).

Proposed Supplementary Material .12 to Rule 11.3110 would provide that, in fulfilling its obligations under proposed Rule 11.3110(c), each Participant Firm would need to conduct a review, at least annually, of the businesses in which it engages. The review would need to be reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations and with Exchange rules. Each Participant Firm would need to establish and maintain supervisory procedures that take into consideration, among other things, the firm's size, organizational structure, scope of business activities, number and location of the firm's offices, the nature and complexity of the products and services offered by the firm, the volume of business done, the number of associated persons assigned to a location, the disciplinary history of registered representatives or associated persons, and any indicators of irregularities or misconduct (i.e., "red flags"), etc. The procedures established and reviews conducted would need to provide that the quality of supervision at remote locations is sufficient to ensure compliance with applicable securities laws and regulations and with Exchange rules. A Participant Firm would need to be especially diligent in establishing procedures and conducting reasonable reviews with respect to a non-branch location where a registered representative engages in securities activities. Based on the factors outlined above, Participant Firms may need to impose reasonably designed supervisory procedures for certain locations or may need to provide for more frequent reviews of certain locations.

Proposed Supplementary Material .13 to Rule 11.3110 would provide additional guidance

to proposed Rule 11.3110(c)(1)(C), which would require a Participant Firm to inspect on a regular periodic schedule every non-branch location. In establishing a non-branch location inspection schedule, there is a general presumption that a non-branch location will be inspected at least every three years, even in the absence of any indicators of irregularities or misconduct (i.e., “red flags”). If a Participant Firm establishes a longer periodic inspection schedule, the Participant Firm would need to document in its written supervisory and inspection procedures the factors used in determining that a longer periodic inspection cycle is appropriate.

Proposed Supplementary Material .14 to Rule 11.3110 would provide that a Participant Firm’s determination that it is not possible to comply with proposed Rule 11.3110(c)(3)(B) with respect to who is not allowed to conduct a location’s inspection will generally arise in instances where:

- The Participant Firm has only one office; or
- The Participant Firm has a business model where small or single person offices report directly to an OSJ manager who is also considered the offices’ branch office manager.

Proposed Supplementary Material .15 to Rule 11.3110 would provide that for purposes of the proposed rule, the term “associated person” and “person associated with a Participant Firm” would have the same meaning as the terms “person associated with a member” or “associated person of a member” as defined in Article I (rr) of the FINRA By-Laws.¹⁰

¹⁰ Article I (rr) of FINRA’s By-Laws provides that “person associated with a member” or “associated person of a member” means: (1) a natural person who is registered or has applied for registration under FINRA’s rules; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the FINRA under its By-Laws or rules; and (3) for purposes of FINRA Rule 8210, any other person listed in Schedule A of Form BD of a member.

Finally, proposed Supplementary Material .16 to Rule 11.3110 would provide that individuals in charge of a group of employees shall reasonably discharge their duties and obligations with respect to supervision and control of those employees related to the business of their employer and compliance with securities laws and regulations and Exchange rules.

Proposed Rule 11.3120 (Supervisory Control System)

Proposed Rule 11.3120(a), which is based on NYSE American Rule 3120(a) - Equities, would provide that each Participant Firm would need to designate and specifically identify to the Exchange one or more principals who would need to establish, maintain, and enforce a system of supervisory control policies and procedures that:

- Test and verify that the Participant Firm's supervisory procedures are reasonably designed with respect to the activities of the Participant Firm and its associated persons, to achieve compliance with applicable securities laws and regulations, and with applicable Exchange rules; and
- Create additional or amend supervisory procedures where the need is identified by such testing and verification.

The designated principal or principals would be required to submit to the Participant Firm's senior management no less than annually, a report detailing each Participant Firm's system of supervisory controls, the summary of the test results and significant identified exceptions, and any additional or amended supervisory procedures created in response to the test results.

Proposed Rule 11.3120(b) would provide that each report provided to senior management pursuant to proposed Rule 11.3120(a) in the calendar year following a calendar year in which a Participant Firm reported \$200 million or more in gross revenue would need to include, to the

extent applicable to the Participant Firm's business:

- A tabulation of the reports pertaining to customer complaints and internal investigations made to the Exchange during the preceding year; and
- Discussion of the preceding year's compliance efforts, including procedures and educational programs, in each of the following areas:
 - Trading and market activities;
 - Investment banking activities;
 - Antifraud and sales practices;
 - Finance and operations;
 - Supervision; and
 - Anti-money laundering.

The proposed rule change seeks to mitigate compliance costs and burdens with respect to proposed Rule 11.3120's annual reporting requirements by requiring that only Participant Firms reporting \$200 million or more in gross revenues in the preceding year include in their annual reports supplemental information. The Exchange also believes that the proposed threshold strikes the appropriate balance as it encompasses larger Participant Firms, Participant Firms engaged in significant underwriting activities and substantial trading activities or market making business, and Participant Firms with extensive sales platforms.

Proposed Rule 11.3120(c) would provide that, for purposes of proposed Rule 11.3120(b), "gross revenue" is defined as:

- Total revenue as reported on FOCUS Form Part II or IIA (line item 4030) less commodities revenue (line item 3990), if applicable; or
- Total revenue as reported on FOCUS Form Part II CSE (line item 4030) less,

if applicable,

- Commissions on commodity transactions (line item 3991); and
- Commodities gains or losses (line items 3924 and 3904).

Proposed Supplementary Material .01 to Rule 11.3120 would provide that for purposes of the proposed rule, the term “associated person” and “person associated with a Participant Firm” would have the same meaning as the terms “person associated with a member” or “associated person of a member” as defined in Article I (rr) of the FINRA By-Laws.¹¹

Finally, the Exchange proposes conforming changes to Rule 10.9217 to replace references to Article 6, Rule 5(a) & (b) with proposed Rule 11.20 and Rule 11.3110(a) as well as references to Article 6, Rule 5(c) with Rule 11.3110(b)(1).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,¹² in general, and furthers the objectives of Section 6(b)(5),¹³ in particular, because it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed rule change supports the objectives of the Act by providing greater harmonization between Exchange rules and the rules of its affiliates and FINRA of similar purpose, resulting in less burdensome and more efficient regulatory compliance. In particular, Exchange Participant Firms that are also FINRA members are already subject to Exchange supervisory rules and FINRA Rules 3110 and 3120, and harmonizing these rules by adopting proposed Rules 11.3110 and 11.3120 would promote just and equitable principles of trade by requiring a single standard

¹¹ See note 10, *supra*.

¹² 15 U.S.C. 78f(b).

¹³ 15 U.S.C. 78f(b)(5).

for supervision. To the extent the Exchange has proposed changes that differ from the NYSE American version of the Exchange rules, such changes are generally technical in nature and do not change the substance of the proposed rules. The Exchange also believes that the proposed rule change will update and add specificity to the requirements governing supervision, which will promote just and equitable principles of trade and help to protect investors.

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 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 rather to achieve greater consistency between the Exchange's rules and the rules of its affiliate and FINRA concerning supervision.

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 Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵ 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.

¹⁴ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁵ 17 CFR 240.19b-4(f)(6).

A proposed rule change filed under Rule 19b-4(f)(6)¹⁶ normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁷ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

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)¹⁸ 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 (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NYSECHX-2024-18 on the subject line.

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

¹⁸ 15 U.S.C. 78s(b)(2)(B).

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-NYSECHX-2024-18. 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 (<https://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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

All submissions should refer to file number SR-NYSECHX-2024-18 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

Sherry R. Haywood,
Assistant Secretary.

¹⁹ 17 CFR 200.30-3(a)(12).