

only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CboeBZX-2018-061, and should be submitted on or before September 13, 2018.

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

**Eduardo A. Aleman,**  
Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-83880; File No. SR-CboeEDGX-2018-033]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Options Regulatory Fee

August 17, 2018.

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 August 9, 2018, Cboe EDGX Exchange, Inc. (the "Exchange" or "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III

below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend its Fees Schedule relating to the Options Regulatory Fee.

The text of the proposed rule change is available at the Exchange's website at [www.markets.cboe.com](http://www.markets.cboe.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 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 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 implement proposed changes to its Fees Schedule for its equity options platform ("BZX [sic] Options") to clarify how the Options Regulatory Fee ("ORF") is assessed and collected.

###### Background

By way of background, the ORF is assessed by the Exchange to each Member for options transactions cleared by the Member that are cleared by The Options Clearing Corporation ("OCC") in the customer range (*i.e.*, transactions that clear in a customer account at OCC) regardless of the exchange on which the transaction occurs. The ORF is designed to recover a material portion of the costs

to the Exchange of the supervision and regulation of Member customer options business, including performing routine surveillances, investigations, examinations, financial monitoring, as well as policy, rulemaking, interpretive and enforcement activities.<sup>5</sup> The Exchange believes that revenue generated from the ORF, when combined with all of the Exchange's other regulatory fees and fines, will cover a material portion, but not all, of the Exchange's regulatory costs.

The Exchange monitors the amount of revenue collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange monitors its regulatory costs and revenues at a minimum on a semi-annual basis. If the Exchange determines regulatory revenues exceed or are insufficient to cover a material portion of its regulatory costs, the Exchange will adjust the ORF by submitting a fee change filing to the Commission. The Exchange notifies Members of adjustments to the ORF via an exchange notice. The Exchange provides Members with such notice at least 30 calendar days prior to the effective date of the change.

Under the Exchange's current process, the ORF is assessed to Members and collected indirectly from Members through their clearing firms by OCC on behalf of the Exchange. The following scenarios reflect how the ORF is assessed and collected (these apply regardless if the transaction is executed on the Exchange or on an away exchange):

1. If a Member is the executing clearing firm on a transaction ("Executing Clearing Firm"), the ORF is assessed to and collected from that Member by OCC on behalf of the Exchange.

2. If a Member is the Executing Clearing Firm and the transaction is "given up" to a different Member that clears the transaction ("Clearing Give-up"), the ORF is assessed to the Executing Clearing Firm (the ORF is the obligation of the Executing Clearing Firm). The ORF is collected from the Clearing Give-up.

3. If the Executing Clearing Firm is a non-Member and the Clearing Give-up is a Member, the ORF is assessed to and collected from the Clearing Give-up.

<sup>5</sup> The Exchange notes that its regulatory responsibilities with respect to Member compliance with options sales practice rules have largely been allocated to FINRA under a 17d-2 agreement. The ORF is not designed to cover the cost of that options sales practice regulation. See Securities Exchange Act Release No. 76309 (October 29, 2015), 80 FR 68361 (November 4, 2015).

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

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

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

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

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

4. As of August 1, 2018, if a Member is the Executing Clearing Firm and a non-Member is the Clearing Give-up, the ORF will be assessed to the Executing Clearing Firm. The ORF is the obligation of the Executing Clearing Firm but will be collected from the non-Member Clearing Give-up (for the reasons described below). The Exchange notes that this assessment is consistent with how ORF is assessed and collected on two of the Exchange's affiliated exchanges.<sup>6</sup>

5. No ORF is assessed if neither the Executing Clearing Firm nor the Clearing Give-Up are Members.

The Exchange currently uses an OCC file that summarizes total trades cleared in the customer range by OCC number to determine the Executing Clearing Firm and the Clearing Give-up. As of August 1, 2018, the Exchange will use a different and more detailed OCC cleared trades file to determine the Executing Clearing Firm and the Clearing Give-up.<sup>7</sup>

In each of scenarios 1 through 4 above, if the transaction is transferred pursuant to a Clearing Member Trade Assignment ("CMTA") arrangement to another clearing firm who ultimately clears the transaction, the ORF is collected from the clearing firm that ultimately clears the transaction (which firm may be a non-Member), by OCC on behalf of the Exchange. No ORF is assessed if neither the Executing Clearing Firm nor the Clearing Give-Up are Members. Using CMTA transfer information provided by the OCC, the Exchange subtracts the ORF charge from the monthly ORF bill of the clearing firm that transfers the position and adds the charge to the monthly ORF bill of the clearing firm that receives the CMTA transfer (*i.e.*, the ultimate clearing firm). This process is performed at the end of each month on each transfer in the OCC CMTA transfer file for that month.<sup>8</sup>

#### Proposed Amendments to the Fees Schedule

The Exchange proposes to amend its Fees Schedule in the following respects to clarify how the ORF is assessed and collected.

First, the Exchange proposes to amend its Fees Schedule to clarify that the ORF is assessed by the Exchange to each Member for options transactions cleared by the Member (as opposed to "all" options transaction "executed and cleared" by the Member) that are cleared by OCC in the customer range regardless of the exchange on which the transaction occurs. Because the ORF is always assessed to a Clearing Member, the Exchange proposes to remove the words "executed and, or simply" from the Fee Schedule description of the ORF to clarify that the ORF is assessed for options transactions cleared by a Member.

Second, the Exchange proposes to make explicit that the Exchange uses reports from OCC when assessing and collecting the ORF, as noted above.

Third, the Exchange proposes to make clear in the Fees Schedule, that as of August 1, 2018, the ORF will be collected by OCC on behalf of the Exchange from the Clearing Member or non-Clearing Member that ultimately clears the transaction. While the ORF is an obligation of Members, due to industry request the ORF is collected from the clearing firm that ultimately clears the eligible trade, even if such firm is a not a Member. The Exchange, OCC and the industry agreed to this collection method in response to comments that by collecting the ORF in this manner Members and non-Members could more easily pass-through the ORF to their customers. As such, in scenario 4 above the ORF is collected from the non-Clearing Member that clears the transaction in order to facilitate the pass-through of the ORF to the end-customer. Likewise, collection of the ORF from the ultimate (CMTA) clearing firm facilitates the passing of the fee to the end-customer. In those cases where the ORF is collected from a non-Clearing Member, the Exchange (through OCC) collects the ORF as a convenience for the Member whose obligation it is to pay the fee to the Exchange.

Fourth, the Exchange proposes to clarify its process for assessing the ORF on linkage transactions. An options order entered on the Exchange may be routed to and executed on another exchange pursuant to the Options Order Protection and Locked/Crossed Market

Plan. The Exchange may engage a routing broker to provide routing services ("Routing Services") to facilitate linkage transactions. A customer order routed by a routing broker for execution at another exchange results in a transaction on that exchange and an obligation of the routing broker to pay the options regulatory fee, if any, of that exchange. After receiving a fill on the away exchange, the routing broker trades against the original order entered on the Exchange and incurs the BZX [sic] Options ORF. Pursuant to its agreement with the routing broker, the Exchange reimburses the routing broker for any options regulatory fee assessed by the Exchange and by the away market on which the customer order was executed. As a result, only the original customer order executed on the Exchange is assessed the ORF. The Exchange proposes to amend its Fees Schedule to clarify that, with respect to linkage transactions, the Exchange reimburses its routing broker providing Routing Services for options regulatory fees it incurs in connection with the Routing Services it provides.

Fifth, the Exchange proposes to change the method it uses to assess the ORF to better align with the Exchange's Fees Schedule. Currently, the Exchange assesses the ORF to a Member based on the OCC clearing number(s) that the Member registers with the Exchange. A Member may have additional OCC clearing numbers that are not registered with the Exchange because they are used by the Member to clear activity on other exchanges. If a Member uses a non-BZX [sic] Options registered OCC clearing number on a transaction and that clearing number is denoted as the Executing Clearing Firm or the Clearing Give-up, the ORF is not assessed to that transaction because the clearing number is not known to the Exchange. Such transactions are subject to the ORF under the Exchange's Fees Schedule because the Executing Clearing Firm or the Clearing Give-up was a Member. The ORF is assessed at the Member entity level, not at the OCC clearing number level. In order to conform its ORF billing practice to its Fees Schedule, the Exchange proposes to amend the Fees Schedule to require Members, pursuant to BZX [sic] Options Rule 24.1,<sup>9</sup> to provide the Exchange with a complete list of its OCC clearing numbers. The Exchange would use the

<sup>6</sup> See Securities Exchange Act Release No. 82164 (November 28, 2017), 82 FR 231 (December 4, 2017) (SR-CBOE-2017-074) and Securities Exchange Act Release No. 82163 (November 28, 2017), 82 FR 231 (December 4, 2017) (SR-C2-2017-031).

<sup>7</sup> The Exchange notes that in the case where a non-self-clearing Member executes a transaction on the Exchange, the Member's guaranteeing Clearing Member is reflected as the Executing Clearing Firm in the OCC cleared trades file and the ORF is assessed to and collected from the Executing Clearing Firm.

<sup>8</sup> The Exchange notes that OCC provides the Exchange and other exchanges with information to assist in excluding CMTA transfers done to correct bona fide errors from the ORF calculation. Specifically, if a clearing firm gives up or CMTA transfers a position to the wrong clearing firm, the firm that caused the error will send an offsetting CMTA transfer to that firm and send a new CMTA transfer to the correct firm. The offsetting CMTA transfer is marked with a CMTA Transfer ORF

Indicator which results in the original erroneous transfer being excluded from the ORF calculation.

<sup>9</sup> BZX [sic] Options Rule 24.1 provides that no Member shall refuse to make available to the Exchange such books, records or other information as may be called for under the Rules or as may be requested in connection with an investigation by the Exchange.

list provided solely for ORF billing purposes. Members would be required to keep such information up to date with the Exchange. The Exchange will issue an Exchange Notice to provide Members with notice of this change and a deadline for initial submission of its OCC clearing numbers list. The Exchange expects to implement this change for August 2018 ORF billing in order for the Exchange to provide Members with notice of this new requirement and time to comply.

The Exchange lastly proposes a couple of minor clean up changes to the Fees Schedule such as defining the "OCC" as "The Options Clearing Corporation".

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.<sup>10</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>11</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>12</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

The Exchange believes the proposed clarifications to the Fees Schedule with respect to how ORF is assessed and collected provides further transparency in the Fees Schedule and alleviates potential confusion. The alleviation of confusion removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest.

Additionally, the Exchange notes that the proposal to clarify that the ORF is assessed to Members for options

transactions cleared by the Member (as opposed to executed and cleared) is appropriate and equitable because it adds clarity to the Fee Schedule by better and more accurately describing the application of the ORF. The Exchange believes it is appropriate to charge the ORF only to transactions that clear as customer at the OCC. The Exchange believes that its broad regulatory responsibilities with respect to its Members' activities supports applying the ORF to transactions cleared by a Member. The Exchange's regulatory responsibilities are the same regardless of whether a Member executes a transaction or clears a transaction executed on its behalf. The Exchange regularly reviews all such activity, including performing surveillance for position limit violations, manipulation, insider trading, front-running and contrary exercise advice violations. The Exchange believes the proposal is equitable and not unfairly discriminatory because it applies in the same manner to Members subject to the ORF. The ORF is only assessed to a Member with respect to a particular transaction in which it is either the Executing Clearing Firm or the Clearing Give-up.

The Exchange believes the proposal to collect the ORF from non-Members that ultimately clear the transaction is an equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities. The Exchange notes that there is a material distinction between "assessing" the ORF and "collecting" the ORF. The Exchange does not assess the ORF to non-Members. The ORF is an obligation of Members. Once, however, the ORF is assessed to a Member for a particular transaction, the ORF may be collected from a Member or a non-Member, depending on how the transaction is cleared on OCC. If there was no change to the clearing number of the original transaction, the ORF would be collected from the Member. If there was a change to the clearing number of the original transaction and a non-Member becomes the ultimate clearing firm for that transaction, then the ORF will be collected from that non-Member. The Exchange believes that this collection practice is reasonable and appropriate, and was originally instituted at the request of the industry for the ORF be collected from the clearing firm that ultimately clears the transaction in order to facilitate the passing of the fee to the end-customer.

The Exchange believes that the proposal to clarify that the ORF is collected by OCC on behalf of the

Exchange from the Clearing Member that ultimately clears the transaction also provides clarity in the Fee Schedule and is reasonable. As discussed, if the ORF is assessed to a Member for a particular transaction and there was no change to the clearing number of the original transaction, the ORF would be collected from the Member. If there was a change to the clearing number of the original transaction and another Member becomes the ultimate clearing firm for that transaction, then the ORF will be collected from the Member that ultimately cleared the transaction. Similarly, as noted above, if there is a change to the clearing number of the original transaction and a non-Member becomes the ultimate clearing firm for that transaction, then the ORF will be collected from that non-Member.

The Exchange believes it is reasonable, equitable and nondiscriminatory not to pass the ORF to a CMTA transferee when neither the CMTA transferor, transferee nor Executing Clearing Firm is a Member because this would help ensure the ORF is not collected on any transactions that may not be subject to the ORF.

The Exchange also believes it is reasonable, equitable and nondiscriminatory to reimburse its routing broker for any options regulatory fees the broker incurs in connection with Routing Services because this helps ensure the Exchange does not charge the ORF more than once to a single customer order.

Lastly, the Exchange believes the minor clean-up change to define "OCC" reduces confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. This proposal does not create an unnecessary or inappropriate intra-market burden on competition because the ORF applies to all customer activity, thereby raising regulatory revenue to offset regulatory expenses. It also supplements the regulatory revenue derived from non-customer activity. This proposal does not create an unnecessary or inappropriate inter-market burden on competition because it is a regulatory fee that supports regulation in furtherance of the purposes of the Act.

<sup>10</sup> 15 U.S.C. 78f(b).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 15 U.S.C. 78f(b)(4).

The Exchange is obligated to ensure that the amount of regulatory revenue collected from the ORF, in combination with its other regulatory fees and fines, does not exceed regulatory costs.

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

The Exchange neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>13</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>14</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.

**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 No. SR-CboeEDGX-2018-033 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.
- All submissions should refer to File No. SR-CboeEDGX-2018-033. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CboeEDGX-2018-033, and should be submitted on or before September 13, 2018.

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

**Eduardo A. Aleman,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-83887]**

**Order Granting Applications by Nasdaq ISE, LLC, Nasdaq GEMX, LLC, and Nasdaq MRX, LLC for Exemption Pursuant to Section 36(a) of the Exchange Act From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference**

August 20, 2018.

Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX"), and Nasdaq MRX, LLC ("MRX") (each, a "Nasdaq Exchange," and collectively, the "Nasdaq Exchanges") have filed with the Securities and Exchange Commission ("Commission") an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act")<sup>1</sup> from the rule filing requirements of Section 19(b) of the Exchange Act<sup>2</sup> with respect to certain rules of Nasdaq BX, Inc. ("BX"), an affiliate of the

Nasdaq Exchanges, that the Nasdaq Exchanges seek to incorporate by reference.<sup>3</sup> Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

Recently, the Nasdaq Exchanges each filed a proposed rule change<sup>4</sup> under Section 19(b) of the Exchange Act to largely replace their existing investigatory, disciplinary, and adjudicatory rules with those contained in the BX Rule 8000 and 9000 Series, as such rules may be in effect from time to time. In the proposed rule changes, the Nasdaq Exchanges proposed to incorporate by reference the BX Rule 8000 and 9000 Series into new Chapters 80 and 90 of their respective rulebooks, and thus make these BX Rules applicable to their members, associated persons, and other persons subject to their jurisdiction. When the proposed rule changes become operative, Nasdaq Exchange members, associated persons, and other persons subject to the jurisdiction of the Nasdaq Exchanges will be required to comply with the BX Rule 8000 and 9000 Series as though such rules are fully set forth within each of the Nasdaq Exchange's rulebooks.

The Nasdaq Exchanges have requested, pursuant to Rule 0-12 under the Exchange Act,<sup>5</sup> that the Commission grant the Nasdaq Exchanges an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to each of the Nasdaq Exchange's rules that are effected solely by virtue of a change to the BX Rule 8000 and 9000 Series that are incorporated by reference. Specifically, the Nasdaq Exchanges request that they be permitted to incorporate by reference changes made to the BX Rule 8000 and 9000 Series that are cross-referenced in each of the Nasdaq Exchange's rules, without the need for each Nasdaq Exchange to file separately the same proposed rule changes pursuant to Section 19(b) of the Exchange Act.<sup>6</sup>

<sup>3</sup> See Letter from Brett M. Kitt, Senior Associate General Counsel, Nasdaq Inc., to Brent Fields, Secretary, Commission, dated July 16, 2018 ("Exemptive Request").

<sup>4</sup> See Securities Exchange Act Release Nos. 83703 (July 25, 2018) (SR-ISE-2018-59); 83704 (July 25, 2018) (SR-GEMX-2018-24); and 83705 (July 25, 2018) (SR-MRX-2018-23).

<sup>5</sup> 17 CFR 240.0-12.

<sup>6</sup> See Exemptive Request, *supra* note 3, at 2.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f).

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

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

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