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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85505; File No. SR-NASDAQ-2019-007]

**Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of
Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as
Modified by Amendment No. 2, to Reassign Certain Investigation and Enforcement
Functions Under the Exchange's Authority and Supervision**

April 3, 2019

I. Introduction

On February 5, 2019, The Nasdaq Stock Market LLC (“Exchange” or “Nasdaq”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to assume operational responsibility for certain investigation and enforcement functions currently performed by the Financial Industry Regulatory Authority (“FINRA”) under the Exchange’s authority and supervision. The proposed rule change was published for comment in the Federal Register on February 22, 2019.³ On February 28, 2019, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change as originally filed. On March 28, 2019, the Exchange filed Amendment No. 2 to the proposed rule change, which amended and replaced the proposed rule change, as modified by

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 85153 (February 15, 2019), 84 FR 5752.

Amendment No. 1.⁴ The Commission did not receive any comment letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 2 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. Description of the Proposal

Since it became a national securities exchange, the Exchange has contracted with FINRA through various regulatory services agreements to perform certain regulatory functions on its behalf.⁵ At the same time, the Exchange has retained operational responsibility for a number of regulatory functions, including real-time surveillance, qualification of companies listed on the Exchange, and most surveillance related to its affiliated options markets.⁶

The Exchange now proposes to reallocate operational responsibility from FINRA to Nasdaq Regulation for certain investigation and enforcement activities, specifically: (1) investigation and enforcement responsibilities for conduct occurring on the Nasdaq Options Market,⁷ and (2) investigation and enforcement responsibilities for conduct occurring on

⁴ In Amendment No. 2, the Exchange: (1) revised the timing for the phased transition; (2) stated that Nasdaq Regulation will coordinate with other self-regulatory organizations to the extent it is investigating activity occurring on non-Nasdaq options markets; (3) specified that Nasdaq BX, Inc. (“BX”) will file a similar proposed rule change to request Commission approval for Nasdaq Regulation to perform the same functions on behalf of BX; (4) provided an example of contested disciplinary proceedings that will continue to be handled by FINRA; (5) represented that the investigatory and disciplinary processes and related rules applicable to its members that FINRA currently follows on the Exchange’s behalf will remain the same; and (6) made other technical, clarifying, and conforming changes. Amendment No. 2 is available at <https://www.sec.gov/comments/sr-nasdaq-2019-007/srnasdaq2019007-5252816-183726.pdf>.

⁵ See Amendment No. 2, supra note 4 at 4.

⁶ See id.

⁷ The Exchange states that, as appropriate, Nasdaq Regulation will coordinate with other

Nasdaq's equity market only (i.e., not also on non-Nasdaq equities markets).⁸ The Exchange states that it anticipates a phased transition whereby it would assume increasing investigation and enforcement responsibility throughout 2019 and into 2020.⁹ The Exchange also anticipates transitioning certain matters currently pending with FINRA to the Nasdaq Enforcement Department if Nasdaq Regulation believes doing so is consistent with ensuring prompt resolution of regulatory matters.¹⁰

The Exchange states that FINRA will continue to perform certain functions, including, among other things: (1) the investigation and enforcement of conduct occurring on the Nasdaq equity market that also relates to cross market activity on non-Nasdaq exchanges; (2) the handling of contested disciplinary proceedings arising out of Nasdaq Regulation-led investigation and enforcement activities;¹¹ and (3) matters covered by agreements to allocate regulatory responsibility under Rule 17d-2 of the Act.¹²

self-regulatory organizations to the extent it is investigating activity occurring on non-Nasdaq options markets to ensure no regulatory duplication occurs. See id. at 5 n.7.

⁸ See id. at 5. The Exchange believes its expertise in its own market structure, coupled with its expertise in surveillance activities, would enable it to conduct investigation and enforcement responsibilities for the Exchange effectively, efficiently, and with immediacy. See id. at 6. The Exchange also states that Commission approval of the proposal would allow it to better leverage its surveillance, investigation, and enforcement teams, to deliver increased efficiencies in the regulation of its market, and to act promptly and provide more effective regulation. See id. at 9.

⁹ See id. at 8.

¹⁰ See id.

¹¹ The Exchange states that, for example, pursuant to Rule 9216, if at the conclusion of a Nasdaq Regulation-led investigation, Nasdaq Regulation has reason to believe that a violation occurred but the Respondent disputes the violation and therefore does not execute an Acceptance, Waiver, and Consent ("AWC") letter, or if the Respondent executes the AWC letter but the Nasdaq Review Council, Review Subcommittee, or FINRA's Office of Disciplinary Affairs does not accept the executed letter, the Exchange may decide to pursue formal disciplinary proceedings. In such a case, the Exchange would refer the matter to FINRA to handle the formal disciplinary proceedings on its

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange¹³ and, in particular, with Sections 6(b)(5) and 6(b)(7) of the Act.¹⁴ As noted above, since it became a national securities exchange, the Exchange has contracted with FINRA through various regulatory services agreements to perform certain regulatory functions on its behalf.¹⁵ Nasdaq Rule 0150 requires that, unless Nasdaq obtains prior Commission approval, the regulatory functions subject to the regulatory services agreement in effect at the time when Nasdaq began to operate a national securities exchange must at all times continue to be performed by FINRA or an affiliate thereof or by another independent self-regulatory organization. The Exchange now proposes to reallocate operational responsibility for the specific investigation and enforcement activities discussed above from FINRA to Nasdaq Regulation.¹⁶ The Commission believes that the Exchange could leverage its knowledge of its markets and members, its experience with investigation and enforcement work, and its surveillance, investigation, and enforcement staff, in helping it to effectively and efficiently conduct the reallocated investigation and enforcement activities. The Commission

behalf. FINRA's Office of Hearing Officers will continue to be responsible for the administration of the hearing process. See id. at 7 n.12.

¹² See id. at 7. The Exchange represents that, as with all investigation and enforcement work, all tasks delegated to FINRA are subject to Nasdaq's supervision and ultimate responsibility. See id.

¹³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5), (7).

¹⁵ See supra note 5 and accompanying text.

¹⁶ See supra notes 7-8 and accompanying text.

also notes that the proposal would be an incremental reallocation of operational responsibility because Nasdaq Regulation currently performs the same investigative and enforcement work on behalf of Nasdaq PHLX LLC, Nasdaq ISE, LLC, Nasdaq GEMX, LLC, and Nasdaq MRX, LLC.¹⁷ In addition, the Exchange states that Nasdaq Regulation has instituted the requisite infrastructure to accommodate the internalization of the investigative and enforcement work on behalf of the Exchange.¹⁸ Moreover, the Exchange states that Nasdaq Regulation has developed comprehensive plans covering the transition and has met regularly for more than one year to ensure a smooth transition of the work and prevent any gaps in regulatory coverage.¹⁹ Accordingly, the Commission believes that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or

¹⁷ See Amendment No. 2, *supra* note 4 at 6.

¹⁸ See *id.* at 7. Specifically, Nasdaq has created a new investigation and enforcement group to perform the functions covered by this proposal, which included hiring additional staff. See *id.* at 8. Nasdaq would also leverage its existing staff of analysts, lawyers, programmers, and market structure experts to assist, where necessary, with performing the new functions covered by this proposal. See *id.*

¹⁹ See *id.* The investigatory and disciplinary processes and related rules applicable to Exchange members that FINRA currently follows on the Exchange's behalf (i.e., the Series 8000 and 9000 rules) will remain the same. See *id.* at 8 n.14.

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2019-007 on the subject line.

Paper Comments:

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

All submissions should refer to File Number SR-NASDAQ-2019-007. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2019-007 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the Federal Register. The Commission notes that, in Amendment No. 2, the Exchange revised the timing for the phased transition, provided that BX will file a separate proposal to request Commission approval for Nasdaq Regulation to perform the same functions on behalf of BX, provided additional information to clarify and support the proposal, and did not materially change the substance of the proposal. The Commission also notes that the original proposal was subject to a 21-day comment period and no comments were received. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,²⁰ to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-NASDAQ-2019-007), as modified by Amendment No. 2 be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Eduardo A. Aleman,

Deputy Secretary.

²⁰ 15 U.S.C. 78s(b)(2).

²¹ Id.

²² 17 CFR 200.30-3(a)(12).

