



**SECURITIES AND EXCHANGE COMMISSION**  
**[Release No. 34-99846; File No. SR-NASDAQ-2023-022]**

**Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 2 and 3, to Create a New, Non-Trading Limited Underwriter Membership Class and Impose Related Requirements for Principal Underwriting Activity**

March 22, 2024.

I. Introduction

On July 12, 2023, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to create a new, non-trading limited underwriter membership class and impose related requirements for principal underwriting activity in connection with a company applying for initial listing on the exchange with a transaction involving an underwriter. The proposed rule change was published for comment in the Federal Register on July 31, 2023.<sup>3</sup>

On September 12, 2023, pursuant to section 19(b)(2) of the Act,<sup>4</sup> the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.<sup>5</sup> On September 29, 2023, the Commission instituted proceedings under section 19(b)(2)(B) of the Act<sup>6</sup> to determine whether to approve or disapprove the proposed rule

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

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

<sup>3</sup> See Securities Exchange Act Release No. 97985 (July 25, 2023), 88 FR 49508 (“Notice”).

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

<sup>5</sup> See Securities Exchange Act Release No. 98366, 88 FR 63999 (Sept. 18, 2023). The Commission designated October 29, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

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

change.<sup>7</sup> On September 29, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.<sup>8</sup> On January 22, 2024, the Exchange filed Amendment No. 2 to the proposed rule change which amended and replaced the proposed rule change, as modified by Amendment No. 1, in its entirety.<sup>9</sup> On January 26, 2024, the Commission extended the time period for approving or disapproving the proposal to March 27, 2024.<sup>10</sup> The proposed rule change, as modified by Amendment No. 2, was published for comment in the Federal Register on February 23, 2024.<sup>11</sup> On March 18, 2024, the Exchange filed Amendment No. 3 to the proposed rule change.<sup>12</sup> The Commission has received no comment

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<sup>7</sup> See Securities Exchange Act Release No. 98606, 88 FR 68894 (Oct. 4, 2023).

<sup>8</sup> Amendment No. 1 is available at <https://www.sec.gov/comments/sr-nasdaq-2023-022/srnasdaq2023022-267740-644342.pdf> (“Amendment No. 1”). In Amendment No. 1, the Exchange, among other things: (i) removed a proposed exemption from registration for certain investment banking representatives associated solely with Limited Underwriting Members; (ii) removed proposed rule language from proposed General 3, Section 1032(a), which provided that any person shall be eligible to become associated persons of a Limited Underwriting Member; (iii) removed General 4 from the list of rules applicable to Limited Underwriting Members in proposed General 3, Section 1031(c)(1); and (iv) revised proposed General 3, Section 1031(c)(2) to clarify that associated persons of Limited Underwriting Members shall at all times be properly qualified and registered under the Financial Industry Regulatory Authority (“FINRA”) rules. Further, the Exchange provided additional reasons it is not proposing to apply certain existing rules to Limited Underwriting Members.

<sup>9</sup> Amendment No. 2 is available at <https://www.sec.gov/comments/sr-nasdaq-2023-022/srnasdaq2023022-414859-982462.pdf>. In Amendment No. 2, the Exchange, among other things: (i) updated the numbering in Listing Rule 5210 to account for recently added rule language and a related reference to Listing Rule 5210 in proposed General 3, Section 1031(b); (ii) excluded General 3, Section 1032 from the rules the Exchange proposes to apply to Limited Underwriting Members (see infra note 14 and accompanying text) under proposed General 3, Section 1031(c)(1); (iii) added General 9, Section 21 to the rules the Exchange proposes to apply to Limited Underwriting Members under proposed General 3, Section 1031(c)(1); (iv) updated Equity 7, Section 10 to reflect a recent change in the membership fee; and (v) added a statutory basis for the imposition of fees. Amendment No. 2 superseded Amendment No. 1, so the changes made in Amendment No. 1, unless otherwise amended, are incorporated into Amendment No. 2. See supra note 8.

<sup>10</sup> See Securities Exchange Act Release No. 99433, 89 FR 6559 (Feb. 1, 2024).

<sup>11</sup> See Securities Exchange Act Release No. 99557 (Feb. 16, 2024), 89 FR 13779 (“Amendment No. 2”).

<sup>12</sup> Amendment No. 3 is available at <https://www.sec.gov/comments/sr-nasdaq-2023-022/srnasdaq2023022-447779-1145462.pdf> (“Amendment No. 3”). In Amendment No. 3, the Exchange modified the proposal by: (i) adding back proposed rule language from

letters on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons and is approving the proposed rule change, as modified by Amendment Nos. 2 and 3, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 2 and 3

The Exchange is proposing to amend its rules to create a new limited membership class for underwriters that are FINRA members seeking only to serve as a principal underwriter for a company applying to list on the Exchange (and not seeking access to transact on the Exchange) and require a company applying for initial listing in connection with a transaction involving an underwriter to have a principal underwriter that is a Member<sup>13</sup> or a broker or dealer admitted to limited underwriting membership in the Exchange (“Limited Underwriting Member”).<sup>14</sup> The

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the original proposal to General 3, Section 1031(a)(2) about eligibility to become an associated person and modifying the title of General 3, Section 1031(a) to reflect that change; (ii) adding back language from the original proposal to include General 4 (Registration Requirements), which includes registration, qualification, and continuing education requirements, to the list of rules applicable to Limited Underwriting Members in General 3, Section 1031(c)(1); and (iii) excluding General 5, Rule 9400 from the list of rules applicable to Limited Underwriting Members in General 3, Section 1031(c)(1) for the reasons described below. Amendment No. 3 also updated the purpose section to reflect the changes described above, made other clarifying changes, and added a statutory basis explanation for consistency with section 6(b)(2) of the Act.

<sup>13</sup> The Exchange defines the term “member” or “Nasdaq Member” (hereinafter referred to as “Member”) to mean any registered broker or dealer that has been admitted to membership in the Exchange. See Nasdaq General 1, Section 1(b)(11). See also Nasdaq Listing Rule 5005(a)(24) (defining “Member” to mean a broker or dealer admitted to membership in Nasdaq).

<sup>14</sup> See infra note 23. The Exchange states that “principal underwriter” will have the same definition used in Rule 405 promulgated under the Securities Act of 1933 (“Securities Act”), which is an underwriter in privity of contract with the issuer of the securities as to which he is underwriter, and that such definition provides that the term “issuer” in the definition of “principal underwriter” has the meaning given in Sections 2(4) and 2(11) of the Securities Act. 17 CFR 230.405. The Exchange states it proposes to apply the proposed requirements to a principal underwriter because the definition of principal underwriter points to the lead underwriter, who is generally responsible for organizing the offering, including tasks such as determining allocation of shares and the offering price, in conjunction with the issuer. Although offerings may require more than one underwriter, or a group of underwriters known as an underwriting syndicate, the Exchange proposes to focus on the lead underwriters given the substantial role they typically play in the offering process. See Amendment No. 2, supra note 11, at 13780 n.11.

Exchange states that underwriters play a critical role as gatekeepers to the capital markets in connection with the trading of newly issued securities and that it relies on underwriters to select the selling syndicate and ensure that the shares are placed in a way that is reasonably designed to allow liquid trading, consistent with Nasdaq's listing requirements, and the successful introduction of the company to the market place.<sup>15</sup> According to the Exchange, notwithstanding the important role of underwriters, it does not currently require underwriters of companies that are going public on the Exchange to be Members of the Exchange, and as such, does not have authority to require responses to investigative inquiries or to enforce its rules directly against non-Member underwriters.<sup>16</sup> The Exchange states that this proposal would provide the Exchange with authority to directly obtain information from Limited Underwriting Members,<sup>17</sup> whether pre- or post-initial public offering.<sup>18</sup> The Exchange states that by creating a new,

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<sup>15</sup> See Amendment No. 2, *supra* note 11, at 13780. The Exchange states that it highlighted the important role of underwriters as gatekeepers in the initial public offering (“IPO”) process and the applicability of market rules and the federal securities laws in its recent Equity Regulatory Alert (“Nasdaq Alert”), available at <https://www.nasdaqtrader.com/MicroNews.aspx?id=ERA2022-9>. In the Nasdaq Alert, among other things, the Exchange highlighted that “Nasdaq members, as well as members of other self-regulatory organizations, that underwrite IPOs, and that play other roles in the offering process, should expect heightened focus when an IPO experiences unusual price movements.” See also [https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-interpretations/2022/NYSER\\_Reg\\_Memo\\_-\\_Regulatory\\_Scrutiny\\_in\\_Connection\\_with\\_IPOs\\_\(2022.11.17\\_final\).pdf](https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-interpretations/2022/NYSER_Reg_Memo_-_Regulatory_Scrutiny_in_Connection_with_IPOs_(2022.11.17_final).pdf); <https://www.finra.org/rules-guidance/notices/22-25> (similar regulatory alerts issued by the New York Stock Exchange and FINRA, respectively).

<sup>16</sup> See Amendment No. 2, *supra* note 11, at 13781. The Exchange states, however, that it has broad discretionary authority over the initial and continued listing of securities in the Exchange and over its Members in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. According to the Exchange, it may request information from companies that are going public on the Exchange and from Members who are permitted to trade on the Exchange, who are required to respond to those requests. The Exchange also states it may request information from non-Members, including non-Member underwriters, but they are not required to respond to these requests. See *id.* at 13781 n.17.

<sup>17</sup> See *infra* note 23 and accompanying text.

<sup>18</sup> See Amendment No. 2, *supra* note 11, at 13781 n.17. The Exchange explains in its proposal that in the fall of 2022 it observed, immediately following the pricing of certain

limited underwriting membership class, it will provide firms seeking only to perform principal underwriting activity on the Exchange (and not seeking access to trade via the Nasdaq Market Center)<sup>19</sup> with the option of selecting a membership that is less burdensome (i.e., to become a Limited Underwriting Member rather than a Member).<sup>20</sup>

The Exchange proposes to amend several of its rules in conjunction with the adoption of the new limited underwriting membership class. First, the Exchange proposes to amend its Listing Rule 5210 (Prerequisites for Applying to List on the Nasdaq Stock Market) to impose a requirement that each company applying for initial listing in connection with a transaction involving an underwriter have a principal underwriter that is a Member or Limited Underwriting Member.<sup>21</sup> In proposed Listing Rule 5210(m), the Exchange will also specify that “principal underwriter” shall have the same definition used in Rule 405 promulgated under the Securities Act.<sup>22</sup> Second, the Exchange proposes to add a definition of “Limited Underwriting Member” to General 1 (General Provisions), Section 1 to mean a broker or dealer admitted to limited underwriting membership in Nasdaq.<sup>23</sup> Third, as discussed in more detail below, the Exchange

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IPOs on the Exchange, instances of unusually high price spikes immediately followed by dramatic price declines to at or below the offering price. This occurred mostly with respect to small cap companies with offerings of less than \$25 million. According to the Exchange, these extreme spikes may occur “in the opening trade on an exchange or in continuous trading on the day of, or days immediately following the listing.” Id. at 13780.

<sup>19</sup> The Exchange defines “Nasdaq Market Center” to mean the automated system for order execution and trade reporting owned and operated by Nasdaq. See Nasdaq Equity 1, Section 1(a)(3).

<sup>20</sup> The Exchange submitted a revised Membership Application as Exhibit 3, in which the Exchange proposes to add a category for Limited Underwriting Members and clarify that Limited Underwriting Members are not subject to the requirement to provide an NSCC account number.

<sup>21</sup> See Amendment No. 2, supra note 11, at 13781. The Exchange states that this rule would cross reference the definition of “Limited Underwriting Member” in General 1, Section 1. The Exchange further states that this proposed rule change primarily impacts membership rules and other non-listing rules, which would apply to the underwriters themselves. See id.

<sup>22</sup> See id.

<sup>23</sup> See id. at 13781-82.

also proposes to add a new, limited underwriting membership rule, proposed Section 1031 to General 3 (Membership and Access), within which, the Exchange proposes to set forth the rules that will be applicable to Limited Underwriting Members and their associated persons, the requirements for persons eligible to become Limited Underwriting Members, and rules on Limited Underwriting Member access to the Exchange.<sup>24</sup> Finally, the Exchange proposes to amend Equity 7, Section 10 to exempt Limited Underwriting Members from being assessed a trading rights fee.<sup>25</sup> The Exchange states that Limited Underwriting Members would not be eligible to trade on the Exchange, and accordingly, the Exchange proposes to add language to Equity 7, Section 10(a) to specify that Limited Underwriting Members would not be charged the monthly trading rights fee.<sup>26</sup> Under the proposal, Limited Underwriting Members would be subject to a \$2,000 application fee (per Equity 7, Section 10(b)) and a \$4,000 yearly membership fee (per Equity 7, Section 10(a)).<sup>27</sup>

Specifically, as to proposed General 3, Section 1031 requirements on eligibility for membership, the Exchange proposes to state in General 3, Section 1031(a)(1) that any registered broker or dealer shall be eligible for limited underwriting membership in the Exchange, except such registered brokers or dealers as are excluded under General 3, Rule 1002(b) and in General 3, Section 1031(a)(2) that any person shall be eligible to become an associated persons of a Limited Underwriting Member, except such persons as are excluded under General 3, Rule 1002(b).<sup>28</sup> The Exchange states that proposed General 3, Section 1031(a) is consistent with the

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<sup>24</sup> See id.

<sup>25</sup> See id. at 13782-83. Specifically, the Exchange proposes to exempt Limited Underwriting Members from the trading rights fee of \$1,250 per month that is charged to Members. See id.

<sup>26</sup> See id.

<sup>27</sup> See id. These are the application and yearly membership fees that currently apply to Members.

<sup>28</sup> See id.; Amendment No. 3, supra note 12, at 3-4 and 7-8. According to the Exchange, General 3, Rule 1002(b) provides, in relevant part, that subject to certain exceptions, no registered broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if such broker, dealer, or Member fails or ceases to satisfy the

existing rules for persons eligible to become Members and associated persons of Members in General 3, Rule 1002(a).<sup>29</sup> Further, under the proposal to be eligible for membership, Limited Underwriting Members shall at all times be members of FINRA and associated persons of Limited Underwriting Members shall at all times be properly qualified and registered under FINRA rules.<sup>30</sup>

Proposed General 3, Section 1031(b) will also provide that (i) a limited underwriting membership provides no rights to transact on the Exchange and (ii) a limited underwriting membership is solely to allow a firm that is not otherwise a Member to serve as a principal underwriter for a company seeking to list on the Exchange, as set forth in proposed Listing Rule 5210(m).<sup>31</sup> Proposed General 3, Section 1031(c)(1) also states that, for purposes of interpreting and applying the rules applicable to Limited Underwriting Members (as described below), references to “Member,” “Members,” or “membership” shall be functionally equivalent to “Limited Underwriting Member,” “Limited Underwriting Members,” or “limited underwriting membership,” respectively.<sup>32</sup>

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qualification requirements established by the Exchange rules, or if such broker, dealer, or Member is or becomes subject to a statutory disqualification, or if such broker, dealer, or Member fails to file such forms as may be required in accordance with such process as the Exchange may prescribe. See id. at 13781 n.20; Amendment No. 3, supra note 12, at 3-4 and 7-8.

<sup>29</sup> See Amendment No. 3, supra note 12, at 8.

<sup>30</sup> See Amendment No. 2, supra note 11, at 13782. According to the Exchange, Limited Underwriting Members would be eligible to waive-in to Exchange membership, as provided for in General 3, Section 1013(b). Prospective Limited Underwriting Members would need to submit a membership application in which they would select “Waive-In Membership” for the application type and “Limited Underwriting Member of NQX” for the nature of intended activity. For “waive-in” applicants, the Exchange states it relies substantially upon FINRA’s determination to approve the applicant for FINRA membership when the Exchange evaluates the applicant for Exchange membership. See id. at 13782 n.23.

<sup>31</sup> See id. Proposed Listing Rule 5210(m) applies to companies seeking to initially list on the Exchange in connection with a transaction involving an underwriter. See also supra notes 21-22 and accompanying text.

<sup>32</sup> See Amendment No. 2, supra note 11, at 13782.

The Exchange proposes to apply a limited ruleset to its newly proposed limited underwriting membership class.<sup>33</sup> Specifically, the Exchange proposes to provide in new General 3, Section 1031(c)(1) that Limited Underwriting Members and their associated persons are subject only to the following rules:<sup>34</sup> General 1 (General Provisions); General 2 (Organization and Administration), with the exception of Sections 6(a) and 22; General 3 (Membership and Access), with the exception of Section 1032; General 4 (Registration Requirements); General 5 (Discipline), with the exception of Rules 8211, 9400, and 9557; General 9 (Regulation), Sections 1, 20, and 21; and Equity 7, Section 10 (Pricing Schedule, Membership Fees).<sup>35</sup> The Exchange states that it proposes to apply only those rules it deems appropriate to a firm serving as a principal underwriter, including those rules it deems critical to such firms.<sup>36</sup> The Exchange further states that a firm registering as a Limited Underwriting Member on the Exchange would remain subject to all applicable rules of the Commission and any other self-regulatory organization (“SRO”) of which it is a member, including the FINRA.<sup>37</sup>

In its proposal, the Exchange set forth its reasons for including the specified rules in General 3, Section 1031(c)(1) that apply to Limited Underwriting Members. As to its proposal to apply General 1 to Limited Underwriting Members and their associated persons,<sup>38</sup> the Exchange states that General 1 provides defined terms that would be applicable to Limited Underwriting Members and will also add a definition of “Limited Underwriting Member” to

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<sup>33</sup> See id. at 13781. The Exchange states that Members, unlike Limited Underwriting Members, are subject to all of the Exchange’s rules (which includes the limited ruleset applicable to the newly proposed limited underwriting membership class). See id. at 13781 n.21.

<sup>34</sup> There are multiple sections and rules under the various “General Rules” numerical provisions. References to “rules” herein generally include all the sections and rules within the applicable General numerical provisions that would apply to Limited Underwriter Members with the exceptions noted.

<sup>35</sup> See id. at 13781; Amendment No. 3, supra note 12, at 4-5.

<sup>36</sup> See Amendment No. 2, supra note 11, at 13781.

<sup>37</sup> See id.

<sup>38</sup> See id. at 13782.

General 1.<sup>39</sup> The Exchange also proposes to apply General 2 (with the exception of Sections 6(a) and 22) to Limited Underwriting Members and their associated persons.<sup>40</sup> The Exchange states that the rules in General 2 relate to organization and administration including requirements surrounding fees, limitations on affiliations, and a requirement for an executive representative, among other obligations.<sup>41</sup> The Exchange proposes to specifically exclude General 2, Sections 6(a) and Section 22, as General 2, Section 6(a) states that General Equity and Options Rules and Equity Rules shall apply to all members and persons associated with a member, which, according to the Exchange, is not accurate in the case of Limited Underwriting Members, and General 2, Section 22 relates to sponsored participants<sup>42</sup> and client access to the Nasdaq Market Center via a Member, which, according to the Exchange, is not applicable to underwriting activity.<sup>43</sup>

The Exchange also proposes to subject Limited Underwriting Members and their associated persons to General 3 with the exception of Section 1032.<sup>44</sup> The Exchange states that General 3 contains membership rules, including an obligation to follow specified procedures for applying to be a member, making changes to membership, or terminating membership.<sup>45</sup> In addition, the Exchange states that General 4 specifies registration, qualification, and continuing education requirements, including requirements for persons engaged in the securities business of a Member, and proposed to apply General 4 to Limited Underwriting Members and their

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<sup>39</sup> See id.

<sup>40</sup> See id.

<sup>41</sup> See id.

<sup>42</sup> See Nasdaq General 2, Section 22.

<sup>43</sup> See Amendment No. 2, supra note 11, at 13782.

<sup>44</sup> The proposed rule change would also add new Section 1031 to General 3, as described above, that is applicable to limited underwriting memberships. See supra note 24 and accompanying text. The Exchange states that it proposes to specifically exclude General 3, Section 1032 because such section includes requirements related to Nasdaq Market Center Participant registration, which, according to the Exchange, is inapplicable to Limited Underwriting Members because they are not permitted to transact on the Nasdaq Market Center. See Amendment No. 2, supra note 11, at 13782.

<sup>45</sup> See Amendment No. 2, supra note 11, at 13781.

associated persons.<sup>46</sup> The Exchange states these requirements apply in the same manner as such registration, qualification, and continuing education requirements that apply to current Members.<sup>47</sup> Limited Underwriting Members and their associated persons would also be subject to FINRA’s registration and qualification rules, including, for example, requirements regarding relevant examinations for underwriting (Series 79, Investment Banking, IB) and supervision of underwriting (Series 79 plus Series 24, Investment Banking Principal).<sup>48</sup>

Limited Underwriting Members and their associated persons would also have to comply with General 5 (with the exception of Rules 8211, 9400, and 9557), which, according to the Exchange, is critical to subject Limited Underwriting Members to, as it contains the Exchange’s disciplinary rules.<sup>49</sup> In particular, the Exchange notes General 5, Rule 8210 that provides the Exchange with authority to require information from its Members.<sup>50</sup> The Exchange is proposing to specifically exclude General 5, Rules 8211, 9400, and 9557, which the Exchange represents are not relevant to underwriting activity because these rules relate, respectively, to trading data, expedited client suspension proceedings for violations of General 9, Section 53 (concerning disruptive quoting and trading), and FINRA carrying or clearing members.<sup>51</sup> The Exchange also

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<sup>46</sup> See Amendment No. 3, supra note 12, at 4-5 and 9-10.

<sup>47</sup> See id. at 10.

<sup>48</sup> See Amendment No. 2, supra note 11, at 13783. See also FINRA Rules 1210 (Registration Requirements) and 1220 (Registration Categories).

<sup>49</sup> See Amendment No. 2, supra note 11, at 13783. According to the Exchange, General 5, Rule 8001 provides that the Exchange and FINRA are parties to the FINRA Regulatory Contract (often referred to as a Regulatory Services Agreement (“RSA”)) pursuant to which FINRA has agreed to perform certain functions described in the Exchange’s rules on behalf of the Exchange. The Exchange does not anticipate that the proposed rule change would have any material impact on the current RSA. See id. at 13782 n.22.

<sup>50</sup> See id. at 13782. Nasdaq General 5, Rule 8210 states information must be provided by a member or persons associated with a member or subject to Nasdaq’s jurisdiction “[f]or the purpose of an investigation, complaint, examination or proceeding authorized by the Nasdaq By-Laws or Rules, Nasdaq Regulation Department, including FINRA staff.” Nasdaq General 5, Rule 8210(a).

<sup>51</sup> See id. at 13782; Amendment No. 3, supra note 12, at 10-11.

states that the excluded rules from General 5 are inapplicable to Limited Underwriting Members because such members are not permitted to transact on the Exchange.<sup>52</sup>

Further, the Exchange proposes to subject Limited Underwriting Members and their associated persons to General 9, Sections 1, 20, and 21.<sup>53</sup> The Exchange states that it believes it is important to subject Limited Underwriting Members to General 9, Section 1, which includes general standards by which Members must abide, including the requirement to observe just and equitable principles of trade.<sup>54</sup> The Exchange further states that General 9, Sections 20 and 21 require Members to establish and maintain a system to supervise the activities of each registered representative and associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules, to identify principals who must establish, maintain, and enforce a system of supervisory control policies and procedures that, among other things, test that the member's supervisory procedures are reasonably designed with respect to the activities of the member and its associated persons, and to achieve compliance with applicable securities laws and regulations, and with applicable Nasdaq rules.<sup>55</sup> The Exchange states its belief that it is important to apply these provisions on supervision, as it would provide the Exchange with authority to assess whether a Limited Underwriting Member has an adequate supervisory system and written supervisory procedures in place.<sup>56</sup> The Exchange states that it does not propose to apply other sections of General 9, except for Sections 1, 20, and 21, to Limited Underwriting Members at this time.<sup>57</sup> The Exchange states that although it acknowledges certain other sections of General 9 could be applied to

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<sup>52</sup> See Amendment No. 3, *supra* note 12, at 11.

<sup>53</sup> See Amendment No. 2, *supra* note 11, at 13782.

<sup>54</sup> See *id.*

<sup>55</sup> See *id.*

<sup>56</sup> See *id.*

<sup>57</sup> See *id.*

underwriters, it is targeting limited inclusion of rules that it deems critical.<sup>58</sup> Finally, the Exchange proposes to include Equity 7, Section 10 in General 3, Section 1031(c)(1).<sup>59</sup> The Exchange states that Equity 7, Section 10 includes the membership and application fees applicable to Limited Underwriting Members.<sup>60</sup>

The Exchange states that it proposes to avoid applying all those Exchange rules not specified in proposed General 3, Section 1031(c)(1) to Limited Underwriting Members in an effort to impose minimal burden on Limited Underwriting Members, while still allowing the Exchange to have regulatory authority over such Members.<sup>61</sup> The Exchange states that the Exchange rules that Limited Underwriting Members would not be subject to under the proposal primarily relate to trading activity and are, therefore, not relevant to the activities of Limited Underwriting Members.<sup>62</sup> The Exchange states that it proposes to apply a limited ruleset, primarily to provide the Exchange with the authority to require information directly from the Limited Underwriting Members and enhance its tools for oversight with respect to the role the underwriter plays in connection with a company listing on the Exchange.<sup>63</sup>

The Exchange, in addition to the excluded rules described above, has not proposed to apply the following rules to Limited Underwriting Members at this time: General 6; General 7;

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<sup>58</sup> See id. The Exchange further states that many of the standards in General 9 are FINRA rules that are incorporated by reference into the Exchange's rules; therefore, Limited Underwriting Members would be subject to such FINRA rules by virtue of their FINRA membership. See id. See, e.g., Nasdaq General 9, Section 30 (incorporating by reference FINRA Rule 4511).

<sup>59</sup> See Amendment No. 2, supra note 11, at 13782.

<sup>60</sup> See id. The Exchange acknowledges that there are additional, existing rules that it could propose to apply to Limited Underwriting Members but it is proposing to apply only a narrow ruleset, as it does not intend to create comprehensive rules to regulate underwriting activity. See id. at 13781-82.

<sup>61</sup> See id. at 13782.

<sup>62</sup> See id.

<sup>63</sup> See id. at 13781. The Exchange represents that it will consider whether additional existing rules that are not proposed in the limited ruleset for Limited Underwriting Members or new rules are warranted as the Exchange gains more experience in applying the rules proposed. See id. at 13781-82.

General 8; Equity Rules (with the exception of Equity 7, Section 10); and Options Rules.<sup>64</sup>

Specifically, the Exchange states that General 6 relates generally to FINRA arbitration rules to which the Limited Underwriting Members would be subject to directly by virtue of their FINRA membership and that the Exchange does not propose to apply General 7 to Limited Underwriting Members because it governs consolidated audit trail compliance and would not apply to underwriting activity.<sup>65</sup> The Exchange also states that General 8 governs connectivity to the Exchange and would not be relevant to Limited Underwriting Members given their lack of access to trade on the Exchange, and similarly, the Equities Rules and the Options Rules are generally not relevant to the activities of Limited Underwriting Members due to their lack of access to trade on the Exchange.<sup>66</sup>

Finally, the Exchange is proposing to make the proposed rule change described herein operative 60 days after publication of the Commission's approval order of SR-NASDAQ-2023-022 in the Federal Register, as this delay will allow time for firms involved with upcoming IPOs to become Limited Underwriting Members, if they choose, and for companies planning IPOs to select alternative underwriters if their current firm is not, and does not intend to become, a Member or Limited Underwriting Member.<sup>67</sup>

### III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>68</sup> Specifically, the

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<sup>64</sup> See id. at 13783.

<sup>65</sup> See id.

<sup>66</sup> See id. The Exchange states that although Limited Underwriting Members could access the Exchange via other means, such as trading through another Member, Limited Underwriting Members would have no direct access to trade on the Exchange. See id.

<sup>67</sup> See id.

<sup>68</sup> In approving this proposed rule change, as modified by Amendment Nos. 2 and 3, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with section 6 of the Act. In particular, the Commission finds that the proposal, as modified by Amendment Nos. 2 and 3, is consistent with section 6(b)(5)<sup>69</sup> of the Act, which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, 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; and are not designed to permit unfair discrimination between customers, issuers and brokers, or dealers.<sup>70</sup> Further, the Commission finds that the proposed rule change, as amended, is consistent with (i) section 6(b)(1) of the Act,<sup>71</sup> which requires, among other things, that a national securities exchange be able to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the exchange, (ii) section 6(b)(2) of the Act<sup>72</sup> which requires that exchange rules provide that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of such exchange and any person may become associated with a member thereof, and (iii) sections 6(b)(6)<sup>73</sup> and 6(b)(7)<sup>74</sup> of the Act, which require, among other things, that a national securities exchange provide appropriate discipline for violations of the Act, rules and regulations thereunder and exchange rules and fair procedures for the disciplining of members and persons

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<sup>69</sup> 15 U.S.C. 78f(b)(5).

<sup>70</sup> See id. In addition, the Commission finds that the proposed rule change as to the applicable fees is consistent with section 6(b)(4) of the Act that requires the Exchange's rules to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. 15 U.S.C. 78f(b)(4).

<sup>71</sup> 15 U.S.C. 78f(b)(1).

<sup>72</sup> 15 U.S.C. 78f(b)(2).

<sup>73</sup> 15 U.S.C. 78f(b)(6).

<sup>74</sup> 15 U.S.C. 78f(b)(7).

associated with its members and the prohibition or limitation by the exchange of any person with respect to access to services offered by the exchange or a member thereof.<sup>75</sup>

The proposal, as modified by Amendment Nos. 2 and 3, amends the rules of the Exchange to provide for a new limited underwriting membership class and would require companies applying to initially list on the Exchange in connection with a transaction involving an underwriter to use a principal underwriter that is either a Member or Limited Underwriting Member of the Exchange.<sup>76</sup> The Exchange has proposed to add Section 1031 to General 3 (Membership and Access) that sets forth the requirements applicable to Limited Underwriting Members including certain limitations on Limited Underwriting Members.<sup>77</sup> In particular, a limited underwriting membership provides no rights to trade on the Exchange and such limited underwriting membership is solely for the purpose of allowing a firm that is not otherwise a Member to serve as a principal underwriter for a company seeking to initially list on the Exchange.<sup>78</sup> A Limited Underwriting Member is defined to mean a broker or dealer admitted to limiting underwriting membership in the Exchange.<sup>79</sup> As described above, similar to the existing

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<sup>75</sup> The Commission previously found that the provisions on Nasdaq Member voting for the Exchange Board of Directors “including that twenty percent of the directors be ‘Member Representative Directors’ and the means by which they are elected by members provides for the fair representation of members in the selection of directors and the administration of the Exchange consistent with the requirement of section 6(b)(3) of the Act.” See Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550, 3553 (Jan. 23, 2006) (Commission order approving Nasdaq for registration as a national securities exchange) (“Nasdaq Exchange Registration Order”). The By-Laws of Nasdaq apply to Limited Underwriting Members as they do to current Members. See, e.g., Nasdaq By-Laws Article 1(t) (defining “Nasdaq Member” as “any registered broker or dealer that has been admitted to membership in the national security exchange operated by the Company”). Limited Underwriting Members would therefore also have the right to nominate, and vote for, candidates for election as Member Representative Directors under the By-Laws, as do current Members. See id. Article II (Annual Election of Member Representative Directors and Other Actions by Nasdaq Members). Given that the existing By-Law provisions apply equally to Limited Underwriting Members, the proposal is similarly consistent with section 6(b)(3) of the Act.

<sup>76</sup> See supra notes 13 and 14 and accompanying text.

<sup>77</sup> See supra note 24.

<sup>78</sup> See supra note 31.

<sup>79</sup> See supra note 23.

eligibility requirements for Members and their associated persons, General 3, Section 1031(a) provides that any registered broker or dealer is eligible for a limited underwriting membership and any person shall be eligible to become an associated person of a Limited Underwriting Member, except for those registered broker or dealers or persons that are excluded under General 3, Rule 1002(b).<sup>80</sup> These provisions on eligibility are consistent with the Act, including section 6(b)(2) of the Act, which requires the rules of an exchange to provide that any registered broker or dealer or natural person associated with a broker or dealer may become a member of such exchange or associated with a member thereof subject to the provisions of section 6(c) of the Act.<sup>81</sup>

In its proposal, as modified by Amendment Nos. 2 and 3, the Exchange seeks to apply certain of its rules as set forth in General 1 through General 9 to Limited Underwriting Members while excluding the application of others.<sup>82</sup> The Exchange seeks to apply only specific rules to Limited Underwriter Members that fall under areas related to general provision definitions and standards, organization and administration, membership and access, registration requirements, discipline, regulation, and membership fees.<sup>83</sup> As stated by the Exchange, it proposes to apply only those rules it believes are appropriate to a firm serving as a principal underwriter, and will, among other things, provide the Exchange with authority to require information from such underwriters thereby aiding in its oversight of its market and helping to ensure fair and orderly markets.<sup>84</sup> The Exchange has also stated that firms registering as a Limited Underwriting

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<sup>80</sup> See supra note 28.

<sup>81</sup> 15 U.S.C. 78f(b)(2) and 15 U.S.C. 78f(c).

<sup>82</sup> See proposed Nasdaq General 3, Section 1031(c)(1).

<sup>83</sup> See supra notes 33-35.

<sup>84</sup> See supra note 63.

Members would still be subject to all applicable rules of the Commission and any other SRO of which it is a member, including FINRA.<sup>85</sup>

Specifically, among others, the Exchange has proposed to apply General 1 to Limited Underwriting Members because it contains defined terms and standards that currently apply to Members that are equally applicable to Limited Underwriting Members as well.<sup>86</sup> The Exchange also proposes to subject Limited Underwriting Members to General 2 (with the exception of sections 6(a) and 22) because it relates to organization and administration including, among others, limitations on affiliations<sup>87</sup> and requirements to have an exchange representative.<sup>88</sup> The Exchange is applying General 3 (with the exception of Section 1032 that applies to members who trade on Nasdaq's Market Center) because General 3 contains membership rules, including an obligation to follow specified procedures for applying to be a member, making changes to membership, or terminating membership.<sup>89</sup>

General 4, which includes registration, qualification, and continuing education requirements for Members and persons engaged in the securities business of a Member, would also apply to Limited Underwriting Members and their associated persons.<sup>90</sup> General 4 would apply in the same manner as it applies to current Members and their associated persons.<sup>91</sup> Under

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<sup>85</sup> See supra note 37. Proposed General 3, Section 1031(c)(2) would require a Limited Underwriting Member to, at all times, be a member of FINRA. See supra note 30.

<sup>86</sup> See supra notes 38-39 and accompanying text.

<sup>87</sup> General 2, Section 4 states that no member or person associated with a member shall be the beneficial owner of greater than twenty percent (20%) of the then-outstanding voting securities of the Nasdaq Stock Market, Inc. The Commission previously has stated that ownership and voting restrictions are consistent with the Act and that these ownership limitations should minimize the potential that a person could improperly interfere with or restrict the ability of the Commission or the Exchange to effectively carry out their regulatory oversight responsibilities under the Act. See Nasdaq Exchange Registration Order, supra note 75, at 3551-52. For the same reasons, the Commission believes it is appropriate to apply General 2, Section 4 to the limited underwriting membership class.

<sup>88</sup> See supra notes 40-41 and accompanying text.

<sup>89</sup> See supra notes 44-45.

<sup>90</sup> See supra note 46.

<sup>91</sup> See Amendment No. 3, supra note 12, at 10.

the proposal, Limited Underwriting Members must at all times be members of FINRA and their associated persons shall at all times be properly qualified and registered under FINRA rules.<sup>92</sup> Associated persons of Limited Underwriting Members would therefore also be subject to FINRA's registration and qualification requirements that includes examination requirements for persons involved in underwriting and supervision of underwriting as well as FINRA continuing education requirements.<sup>93</sup>

The Exchange has additionally proposed to subject Limited Underwriting Members to General 5 which contains the Exchange's disciplinary rules,<sup>94</sup> with the exception of Rules 8211 (submission of trading data), 9400 (expedited client suspension proceedings for violations of General 9, Section 53 concerning disruptive quoting and trading activity), and 9557 (procedures for regulating activities on FINRA carrying and clearing members).<sup>95</sup> General 5, Rule 8210 provides, among other things, the Exchange with authority to require information from Exchange Members, persons associated with Exchange Members, and persons subject to the Exchange's jurisdiction for "the purpose of an investigation, complaint, examination or proceeding authorized by the Nasdaq By-Laws or Rules, Nasdaq Regulation Department including FINRA staff."<sup>96</sup> General 5, Rule 9000 Series also provides, among other things, the process and procedural requirements for review of disciplinary matters including the opportunity for a hearing.

The disciplinary rules that will be applicable to Limited Underwriting Members and their associated persons (with the exception of Rules 8211, 9400, and 9557 that are not relevant to the

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<sup>92</sup> See proposed General 3, Section 1031(c).

<sup>93</sup> See supra note 48 and accompanying text.

<sup>94</sup> See supra notes 49-52.

<sup>95</sup> See supra note 51.

<sup>96</sup> See supra note 50. In its filing, the Exchange states that while it may request information from non-Members, including non-Member underwriters, they are not required to respond to these requests unlike companies going public on the Exchange and Members. See supra note 16 and accompanying text.

new membership type as described above)<sup>97</sup> are the same as those that apply to existing Members of the Exchange and associated persons of such Members. The Commission previously found that the Exchange's disciplinary rules are consistent with the requirements of sections 6(b)(6) and 6(b)(7) of the Act in that they provide a fair procedure for the disciplining of members and persons associated with members.<sup>98</sup> For similar reasons, the Commission believes that, consistent with the requirements of sections 6(b)(6) and 6(b)(7),<sup>99</sup> the Exchange's disciplinary rules and procedures should provide a fair procedure for the disciplining of Limited Underwriting Members and persons associated with such members, and for prohibiting or limiting access with respect to services offered by the Exchange. The Commission also believes for similar reasons as previously found, consistent with the requirements of section 6(b)(1) of the Act,<sup>100</sup> that the proposed rules should provide the Exchange with the ability to enforce compliance as to Limited Underwriting Members and their associated persons with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange.<sup>101</sup>

The Exchange has also proposed to subject Limited Underwriting Members to General 9, Sections 1, 20, and 21. General 9, Section 1 includes general standards by which Members must abide, such as requiring Members to observe high standards of commercial honor and just and equitable principles of trade. General 9, Section 20 requires Members to establish and maintain a system to supervise the activities of each registered representative and associated person. General 9, Section 21 requires, among other things, for Members to test that their supervisory procedures are reasonably designed to achieve compliance with applicable securities laws and

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<sup>97</sup> See supra notes 49-52 and accompanying text.

<sup>98</sup> See Nasdaq Exchange Registration Order, supra note 75, at 3558. Any changes to the disciplinary rules since the original approval would have had to be submitted to the Commission under section 19(b) of the Act and be consistent with the Act, in particular with Section 6.

<sup>99</sup> See 15 U.S.C. 78(b)(6) and (7).

<sup>100</sup> See 15 U.S.C. 78(b)(1).

<sup>101</sup> See Nasdaq Exchange Registration Order, supra note 75, at 3558.

regulations and applicable Exchange rules and requires an annual certification as to those procedures and processes.<sup>102</sup> As the Exchange states, applying provisions related to supervision would provide the Exchange with authority to assess whether a Limited Underwriting Member has an adequate supervisory system and written supervisory procedures in place as to its activities.<sup>103</sup> Further, applying standards of just and equitable principles of trade to Limited Underwriting Members is consistent with the requirements in section 6(b)(5) of the Act which states rules of the exchange must be designed to promote such principles.<sup>104</sup>

The Exchange has also proposed to exclude certain rules in addition to the ones discussed above.<sup>105</sup> As the Exchange described in its proposal and above, many of the excluded rules are not relevant to underwriting activities of Limited Underwriting Members because these rules apply to those Members that have trading rights on the Exchange in Nasdaq's Market Center<sup>106</sup> and Limited Underwriting Members would have no rights to directly transact on the Exchange.<sup>107</sup> As to the exclusion of General 6, as the Exchanges states, these rules generally

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<sup>102</sup> See supra note 55. The Exchange's General 9, Sections 20 and 21 incorporate by reference several FINRA rules on these matters. Although the Exchange acknowledges that certain other sections of General 9 could apply to underwriters, the Exchange states it has excluded the other rules in General 9 because it is targeting limited inclusion of the rules it deems critical. The Exchange further noted that many of the standards in General 9 are FINRA rules that are incorporated by reference into the Exchanges rules and therefore Limited Underwriting Members would be subject to such FINRA rules as a result of their FINRA membership. See supra note 58.

<sup>103</sup> See supra note 56.

<sup>104</sup> 15 U.S.C. 78f(b)(5).

<sup>105</sup> See supra note 66 and accompanying text.

<sup>106</sup> See Nasdaq General 7 and General 8 (governing consolidated audit trail and connectivity requirements, respectively); Equity Rules and Options Rules (with the exception of Equity 7, Section 10). See also supra notes 64-66 and accompanying text.

<sup>107</sup> See supra note 62. See also Amendment No. 2, supra note 11, at 13784. Limited Underwriting Members could access the Exchange via other means, such as trading through another Member but have no direct access to trade on the Exchange. See supra note 66.

relate to FINRA arbitration rules and Limited Underwriting Member activities would be subject to such arbitration rules by virtue of being FINRA members.<sup>108</sup>

The Exchange states it is proposing a limited ruleset to apply the rules it believes are most critical, including providing the Exchange authority to require information directly from Limited Underwriting Members, to enhance its oversight and deter potential violative conduct.<sup>109</sup> The Commission believes that the application of only specific Exchange rules to Limited Underwriting Members and the exclusion of certain other rules, as proposed by the Exchange, are reasonable and strikes the appropriate balance between regulating Limited Underwriting Members and not imposing a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>110</sup> The limited ruleset is consistent with the purpose of a limited underwriting membership that does not confer any access to trading on the Exchange and only permits such member to act as a principal underwriter for a company applying to initially list on the Exchange.<sup>111</sup>

Further, as described above, in conjunction with the new limited underwriting membership class, proposed Listing Rule 5210(m) will require a company to use, as a prerequisite for applying for initial listing on the Exchange with an underwriter, a principal underwriter that is either a Member or Limited Underwriting Member. The Commission has previously stated that listing standards provide the means for an exchange to screen issuers that

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<sup>108</sup> See supra note 65.

<sup>109</sup> See supra note 63. See also Amendment No. 2, supra note 11, at 13783. The Exchange represented that as it adopts new rules over time, it also would consider whether to apply such rules to Limited Underwriting Members. See supra note 63.

<sup>110</sup> 15 U.S.C. 78f(b)(8).

<sup>111</sup> See proposed General 3, Section 1031(b). The Exchange has represented that it would consider whether additional existing rules that are not proposed in the limited ruleset for Limited Underwriting Members or new rules are warranted as the Exchange gains more experience in applying the rules proposed. The Exchange acknowledged that there are other existing rules that it could propose to apply to the new class of limited underwriting membership, but stated it is only proposing a narrow rule set to enhance its oversight with respect to the role the underwriter plays in connection with a company listing on the Exchange. See supra note 63.

seek to become listed, and to provide listed status only to those that are bona fide companies with sufficient public float, investor base, and trading interest to provide the depth and liquidity necessary to promote fair and orderly markets.<sup>112</sup> As the Exchange states, it relies on underwriters to ensure shares are placed in a way that is reasonably designed to allow liquid trading,<sup>113</sup> and the proposal will allow it to require responses from underwriters that currently are not Members of the Exchange in response to investigative inquiries.<sup>114</sup> The requirement in Listing Rule 5210(m) can help to support the Exchange in determining a company's suitability for listing in order to, among other things, prevent fraudulent and manipulative acts and practices and maintain fair and orderly markets.

As described above, the proposal should provide greater transparency and certainty with respect to the ability of, and the manner in which, the Exchange is able to obtain information necessary to meet its regulatory obligations and ensure fair and orderly markets in connection with the listing of securities of a company applying for initial listing on the Exchange with a transaction involving an underwriter. Based on the above, the Commission finds that the proposed rule change is reasonably designed, consistent with section 6(b)(5) of the Act, among others, to prevent fraudulent and manipulative and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest.<sup>115</sup>

Finally, as is described above, the Exchange has proposed to apply Equity 7, Section 10 to Limited Underwriting Members, as this section includes the membership and application fees

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<sup>112</sup> See, e.g., Securities Exchange Act Release Nos. 95220 (July 7, 2022), 87 FR 41780, 41785 (July 13, 2022) (SR-NASDAQ-2022-027) (order approving direct listing with a capital raise); 86314 (July 5, 2019), 84 FR 33102, 33110 (July 11, 2019) (SR-NASDAQ-2019-009) (order approving revisions to initial listing standard calculations related to liquidity).

<sup>113</sup> See supra note 15. See also Securities Exchange Act Release No. 86314 (July 5, 2019) 84 FR 33102, 33111 (July 11, 2019) (stating that the proposal “should allow the Exchange to more accurately determine whether a security has adequate distribution and liquidity and is thus suitable for listing and trading on the Exchange”).

<sup>114</sup> See supra notes 16-18.

<sup>115</sup> 15 U.S.C. 78f(b)(5).

applicable to Limited Underwriting Members.<sup>116</sup> The Exchange has proposed to exempt Limited Underwriting Members from the trading rights fee of \$1,250 per month that is normally charged to Members because such Limited Underwriting Members have no direct trading rights on the Exchange.<sup>117</sup> Limited Underwriting Members would be subject to same \$2,000 application fee (per Equity 7, Section 10(b)) and \$4,000 yearly membership fee (per Equity 7, Section 10(a)) as other Members are currently charged.<sup>118</sup> The Commission believes that the proposed fees applicable to Limited Underwriting Members, in addition to the exclusion of the member trading fee, is consistent with Section 6(b)(4) in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.<sup>119</sup>

For the forgoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 2 and 3, is consistent with the Act.

#### IV. Solicitation of Comments on Amendment No. 3 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 to 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](mailto:rule-comments@sec.gov). Please include file number

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<sup>116</sup> See supra note 25.

<sup>117</sup> See supra notes 25-26.

<sup>118</sup> See supra note 27.

<sup>119</sup> 15 U.S.C. 78f(b)(4). The Exchange has also proposed to delay implementation of its proposal until sixty days after publication of the Commission's approval order of the filing discussed herein. See supra note 67. This appears to be reasonable to allow underwriters representing companies that have applied, or about to apply, to list to become a Limited Underwriting Member or Member if not already a Member or in the alternative allow a company to select an alternative underwriter if such underwriter firm chooses not to become a Limited Underwriting Member or Member.

SR-NASDAQ-2023-022 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-2023-022. 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 (<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 10:00 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. 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-NASDAQ-2023-022 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment Nos. 2 and 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment Nos. 2 and 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment Nos. 2 and 3 in the Federal Register. In Amendment No. 2, the Exchange amended the proposal to, among other things, (i) exclude Section 1032 of General 3, a new

provision, from the rules the Exchange proposes to apply to Limited Underwriting Members under General 3, Section 1031(c); (ii) add General 9, Section 21 to the rules the Exchange proposes to apply to Limited Underwriting Members under General 3, Section 1031(c); (iii) update existing rule language in Equity 7, Section 10 to reflect changes in current text; (iv) remove a proposed exemption from registration for certain banking representatives associated with Limited Underwriting Members; and (v) add language to General 3, Section 1031(c)(2) to clarify that associated persons of Limited Underwriting Members shall at all times be properly qualified and registered under FINRA rules.<sup>120</sup> Amendment No. 2 also made some numbering updates, provided additional rationale for the inclusion and exclusion of certain rules, and provided additional language in the statutory basis.<sup>121</sup> Amendment No. 2 was published for comment in the Federal Register and no comments were received.<sup>122</sup>

In its Amendment No. 3, the Exchange added back proposed rule language to General 3, Section 1032(a)(2) that was in the original proposal about the eligibility of any person to become an associated person of a Limited Underwriting Member, except such persons as are excluded under General 3, Rule 1002(b).<sup>123</sup> In Amendment No. 3, the Exchange also provided additional language on the consistency of General 3, Section 1032(a)(1) and (a)(2) with the requirements of section 6(b)(2) of the Act.<sup>124</sup> In Amendment No. 3, the Exchange also amended the proposal to add General 4 (Registration Requirements) back into the list of rules that a Limited Underwriting

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<sup>120</sup> See supra note 9.

<sup>121</sup> See id. Amendment No. 2 also removed proposed rule language from proposed General 3, Section 1032(a), which provided that any person shall be eligible to become an associated persons of a Limited Underwriting Member, and removed General 4 from the list of rules applicable to Limited Underwriting Members in proposed General 3, General 1031(c)(1). As discussed below, these provisions were put back into the proposal in Amendment No. 3. Additionally, some of the changes described in Amendment No. 2 were originally proposed in Amendment No. 1 but included in Amendment No. 2 since Amendment No. 2 superseded Amendment No. 1. See supra notes 8 and 11.

<sup>122</sup> See supra note 11. The Commission notes that the full 21-day comment period has already ended.

<sup>123</sup> See supra note 28.

<sup>124</sup> See Amendment No. 3, supra note 12, at 12-13.

Member and their associated persons must comply with, as originally proposed.<sup>125</sup> The proposed rule language changes to the proposal, as described above, are identical to provisions that were in the original proposal and published for comment.<sup>126</sup> No comments were received in response to that Notice. Amendment No. 3 also excluded General 5, Rule 9400 from the list of rules that Limited Underwriting Members must comply with because that rule relates to expedited procedures for certain trading activity and Limited Underwriting Members have no trading rights on the Exchange.<sup>127</sup> Amendment No. 3 also provided updates and other clarifying changes to, and justification for, the proposed rule change in addition to adding the provisions described above.<sup>128</sup>

The Commission believes Amendment Nos. 2 and 3 will help to strengthen the Exchange proposal and support its consistency with the Act. Amendment Nos. 2 and 3 assist the Commission in evaluating the Exchange's proposal and in determining that it is consistent with the Act. Amendment Nos. 2 and 3 also have raised no new or novel issues. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,<sup>129</sup> to approve the proposed rule change, as modified by Amendment Nos. 2 and 3, on an accelerated basis.

#### VI. Conclusion

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act,<sup>130</sup> that the proposed rule change (SR-NASDAQ-2023-022), as modified by Amendment Nos. 2 and 3, be, and hereby is, approved on an accelerated basis.

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<sup>125</sup> See supra notes 35 and 46.

<sup>126</sup> See Notice, supra note 3. As noted above, these provisions were removed from the proposal in Amendment No. 2. See Amendment No. 2, supra note 11.

<sup>127</sup> See supra note 51.

<sup>128</sup> See Amendment No. 3, supra note 12.

<sup>129</sup> 15 U.S.C. 78s(b)(2).

<sup>130</sup> Id.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>131</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024-06579 Filed: 3/27/2024 8:45 am; Publication Date: 3/28/2024]

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<sup>131</sup> 17 CFR 200.30-3(a)(12).