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Page 1 of * 45

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. * SR 2023 - * 022

Amendment No. (req. for Amendments *)

Filing by The Nasdaq Stock Market LLC

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
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Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>
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Rule

<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)
<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)
<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010
Section 806(e)(1) *

Section 806(e)(2) *

Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 3C(b)(2) *

Exhibit 2 Sent As Paper Document

Exhibit 3 Sent As Paper Document

Description

Provide a brief description of the action (limit 250 characters, required when Initial is checked *).

A proposal to create a new, non-trading limited membership class and impose related requirements for principal underwriting activity.

Contact Information

Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name * Last Name *

Title *

E-mail *

Telephone * Fax

Signature

Pursuant to the requirements of the Securities Exchange of 1934, The Nasdaq Stock Market LLC has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date (Title *)

By
(Name *)

NOTE: Clicking the signature block at right will initiate digitally signing the form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

 Date: 2023.07.12
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Required fields are shown with yellow backgrounds and astericks.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information *

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SR-NASDAQ-2023-022 19b-4.doc

The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change *

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SR-NASDAQ-2023-022 Exhibit 1.doc

The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 1A - Notice of Proposed Rule Change, Security-Based Swap Submission, or Advanced Notice by Clearing Agencies *

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2- Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

Exhibit 3 - Form, Report, or Questionnaire

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SR-NASDAQ-2023-022 Exhibit 3.docx

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

SR-NASDAQ-2023-022 Exhibit 5.doc

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change

Partial Amendment

Add Remove View

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposal to create a new, non-trading limited membership class and impose related requirements for principal underwriting activity, as described further below.

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. A revised Membership Application is attached as Exhibit 3 and the text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on March 27, 2023. No other action is necessary for the filing of the rule change.

Questions and comments on the proposed rule change may be directed to:

Katie Hopkins
Associate General Counsel
Nasdaq, Inc.
301-232-4067

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

a. Purpose

The purpose of the proposed rule change is to amend the Exchange’s Rules to create a new, limited membership class for those underwriters seeking only to perform underwriting activity as the principal underwriter on the Exchange³ (and not seeking access to trade via the Nasdaq Market Center) and require a company applying for initial listing in connection with a transaction involving an underwriter to have a principal underwriter⁴ that is a member or limited member of Nasdaq.

Specifically, the Exchange proposes to amend its General Rules to: (i) add a definition of “Limited Underwriting Member” to General 1, Section 1; (ii) add a new, limited underwriting membership to General 3, Section 1031; and (iii) provide an exemption from registration for certain investment banking representatives associated solely with Limited Underwriting Members in General 4, Section 1230, as described below. Finally, the Exchange proposes to amend Equity 7, Section 10 to exempt Limited Underwriting Members from being assessed a trading rights fee. In addition, the Exchange proposes to amend Rule 5210 of the Listing Rules to impose a requirement that each Company applying for initial listing in connection with a transaction involving an

³ “Principal underwriter” will have the same definition used in Rule 405 promulgated under the Securities Act of 1933 (“Securities Act”): an underwriter in privity of contract with the issuer of the securities as to which he is underwriter. 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.

⁴ The Exchange proposes to apply the requirements herein to a principal underwriter (defined as an underwriter in privity of contract with the issuer of the securities as to which he is 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.

underwriter have a principal underwriter that is a Member or Limited Underwriting Member.

Background

In the fall of 2022, Nasdaq observed instances of unusually high price spikes immediately following the pricing of certain initial public offerings (IPOs) on the Exchange and other national securities exchanges, mostly with respect to small-cap companies whose offerings were less than \$25 million. In many instances, the IPO securities that were the subject of these extreme price spikes then experienced equally dramatic price declines to a level at or below the offering price. These extreme price spikes may occur in the opening trade on an exchange, or in continuous trading on the day of, or days immediately following, the listing.

Underwriters play a critical role as gatekeepers to the capital markets in connection with the trading of newly issued securities. Unusual price volatility following IPOs of certain small-cap issuers highlights the essential role underwriters play. Nasdaq 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 marketplace. In a recent Equity Regulatory Alert,⁵ Nasdaq highlighted the important role of underwriters as gatekeepers in the IPO process and the applicability of market rules and the federal securities laws. The Financial Industry Regulatory Authority (FINRA) and

⁵ <https://www.nasdaqtrader.com/MicroNews.aspx?id=ERA2022-9>.

the New York Stock Exchange (NYSE) published similar alerts at the same time.⁶ In Nasdaq's Equity Regulatory Alert, the Exchange also noted:

Nasdaq members, as well as the members of other self-regulatory organizations, that underwrite IPOs, and that play other roles in the offering process, should expect a heightened focus when an IPO experiences unusual price movements. Nasdaq Regulation will continue to investigate to determine whether such members have complied with applicable rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Areas of focus will include suspected manipulation and, beyond manipulation, whether the members are complying with their obligation to observe high standards of commercial honor and just and equitable principles of trade pursuant to Nasdaq Rule General 9, Section 1(a). That rule sets forth a standard intended to encompass a wide variety of conduct that may operate as an injustice to investors or other participants in the marketplace.⁷

Notwithstanding the important role of underwriters, Nasdaq does not currently require underwriters of companies that are going public on the Exchange to be Members of the Exchange. As such, Nasdaq does not have authority to require responses to investigative inquiries or to enforce its Rules directly against non-member underwriters.⁸

⁶ [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>.

⁷ Supra note 5.

⁸ Nasdaq does, however, have broad discretionary authority over the initial and continued listing of securities in Nasdaq 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

Nasdaq proposes creating a new, limited membership class and requiring underwriters involved in Nasdaq-listed IPOs to be Members or Limited Underwriting Members in order to serve as a principal underwriter of an IPO on the Exchange. By creating a new, limited membership class, Nasdaq would provide those firms seeking only to perform principal underwriting activity on the Exchange (and not seeking access to trade via the Nasdaq Market Center) the option of selecting a membership that is less burdensome (*i.e.*, to become a Limited Underwriting Member rather than a Member).⁹

Proposed Changes to Listing Rules

The proposed rule change primarily impacts membership rules and other non-listing rules, which would apply to the underwriters themselves. However, as part of the proposal, Nasdaq would impose a new requirement in its Listing Rules at 5210(l), requiring each Company applying for initial listing in connection with a transaction involving an underwriter to have a principal underwriter that is a Member or Limited Underwriting Member of Nasdaq. In proposed Rule 5210(l), the Exchange would also specify that “principal underwriter” shall have the same definition used in Rule 405 promulgated under the Securities Act.¹⁰ The rule would cross reference the definition of “Limited Underwriting Member,” which is proposed to be added at General 1, Section 1, and would define Limited Underwriting Member to mean a broker or dealer admitted to limited underwriting membership in Nasdaq.

trade, and to protect investors and the public interest. The Exchange may request information from companies that are going public on the Exchange. The Exchange may also request information from non-Member underwriters, but they are not required to respond to these requests. As described further below, this proposal would provide the Exchange with authority to directly obtain information from Limited Underwriting Members, whether pre or post-IPO.

⁹ A revised Membership Application is attached as Exhibit 3, in which Nasdaq 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.

¹⁰ Supra note 3.

Proposed Changes to General Rules

Within its General Rules, the Exchange proposes to amend General 1 (General Provisions), General 3 (Membership and Access), and General 4 (Registration Requirements).

The Exchange proposes to add the definition of “Limited Underwriting Member” to General 1, Section 1 (Definitions). As noted above, the Exchange proposes to define Limited Underwriting Member to mean a broker or dealer admitted to limited underwriting membership in Nasdaq.

The Exchange proposes to add the new category of membership to General 3, Section 1031, within which the Exchange proposes to include information about persons eligible to become Limited Underwriting Members, Limited Underwriting Member access to the Exchange, and rules applicable to Limited Underwriting Members.

The Exchange would specify in General 3, Section 1031(a), that (i) 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 paragraph (b) of Rule 1002;¹¹ and (ii) any person shall be eligible to become an Associated Person of a Limited Underwriting Member, except such persons as are excluded under paragraph (b) of Rule 1002.¹² Proposed Rule 1031(a) is consistent with the existing rules for persons eligible to become Members and Associated Persons in General 3, Rule 1002(a).

¹¹ In relevant part, General 3, Section 1002(b) provides 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 qualification requirements established by the 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.

¹² In relevant part, General 3, Section 1002(b) provides that, subject to such exceptions as may be explicitly provided elsewhere in the Rules, no person shall become associated with a Member, continue to be associated with a Member, or transfer association to another Member, if such

The Exchange proposes to state, in General 3, Section 1031(b) 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, pursuant to Rule 5210(l).

Nasdaq proposes applying a limited ruleset to this newly proposed limited membership class.¹³ Specifically, the Exchange proposes to apply only the following rules to Limited Underwriting Members: General 1 (General Provisions); General 2 (Organization and Administration), with the exception of Sections 6(a) and 22; General 3 (Membership and Access); General 4 (Registration Requirements); General 5 (Discipline), with the exception of Rules 8211 and 9557; General 9 (Regulation), Sections 1 and 20; and Equity 7, Section 10 (Pricing Schedule, Membership Fees). The Exchange would specify the aforementioned rules applicable to this new membership class in General 3, Section 1031(c)(1). With the proposal, the Exchange aims 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.

The Exchange proposes to apply General 1 to Limited Underwriting Members because General 1 provides defined terms that would be applicable to Limited Underwriting Members and, as explained above, the proposed rule change would also add a definition (“Limited Underwriting Member”) to General 1.

person fails or ceases to satisfy the qualification requirements established by the Rules, or if such person is or becomes subject to a statutory disqualification; and no broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if any person associated with it is ineligible to be an Associated Person under this subsection.

¹³ Members of the Exchange, unlike Limited Underwriting Members, are subject to all of the Exchange’s Rules (which includes the limited ruleset applicable to the newly proposed limited membership class).

The Exchange proposes to apply General 2 (with the exception of Sections 6(a) and 22) to Limited Underwriting Members because General 2 relates to organization and administration including requirements surrounding fees, limitations on affiliations, and a requirement for an executive representative, among other obligations. The Exchange proposes to specifically exclude General 2, Sections 6(a) and Section 22. 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 is not accurate in the case of Limited Underwriting Members. General 2, Section 22 relates to Sponsored Participants and client access to the Nasdaq Market Center via a Member, which is not applicable to underwriting activity.

The Exchange also proposes to subject Limited Underwriting Members to General 3 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. As described herein, the proposed rule change would also add additional details regarding the limited underwriting membership to General 3, Rule 1031.

The Exchange proposes to apply General 4 to Limited Underwriting Members, which includes registration requirements that are applicable to Limited Underwriting Members. The proposal would also add an exemption within General 4, as described below.

The Exchange believes it is critical to subject Limited Underwriting Members to General 5 (with the exception of Rules 8211 and 9557), which contains the Exchange's

disciplinary rules.¹⁴ Notably, General 5, Rule 8210 provides the Exchange with authority to require information from Exchange Members. The Exchange proposes to specifically exclude General 5, Rule 8211 and Rule 9557. Rule 8211 relates to members submission of trade data. Rule 9557 relates to procedures for regulating activities under General 9, Sections 40 and 41, which incorporate FINRA Rules 4110 and 4120, which relate to FINRA carrying or clearing members. Therefore, Rule 8211 and Rule 9557 are not relevant to underwriting activity.

The Exchange also believes it is important to subject Limited Underwriting Members to General 9, Section 1 which includes general standards by which Members must abide. Specifically, of importance, General 9, Section 1(a) requires Members to observe 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 that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules. The Exchange believes it is important to apply this provision 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.

Finally, the Exchange proposes to include Equity 7, Section 10 to Limited Underwriting Members because this section includes the membership and application fees applicable to Limited Underwriting Members. The Exchange proposes to avoid applying all those Exchange rules not specified in proposed General 3, Section

¹⁴ 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.

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. Furthermore, the Exchange believes that the Exchange's 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.

The Exchange proposes to include language in General 3, Section 1031(c)(1) providing that, for purposes of interpreting and applying the rules to Limited Underwriting Members, references to "Member," "Members," or "membership" shall be functionally equivalent to "Limited Underwriting Member," "Limited Underwriting Members," or "limited underwriting membership" respectively. The Exchange also proposes to include a requirement, in General 3, Section 1031(c)(2), that Limited Underwriting Members and their Associated Persons shall at all times be members of FINRA.¹⁵

Finally, the Exchange proposes to exempt persons associated solely with a Limited Underwriting Member whose functions are related solely and exclusively to underwriting and who are registered with FINRA as an Investment Banking Representative¹⁶ from the requirement to register with the Exchange. The Exchange proposes to add such exemption to General 4, Section 1230(4).

¹⁵ Limited Underwriting Members would, therefore, 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 (see supra note 9) 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 relies substantially upon FINRA's determination to approve the applicant for FINRA membership when the Exchange evaluates the applicant for Exchange membership.

¹⁶ In FINRA Rule 1220(b)(5), FINRA describes the requirement for representatives to register as an "Investment Banking Representative" if his or her activities in the investment banking or

Proposed Change to Equity Rules

The Exchange proposes 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 would not be eligible to trade on the Exchange.

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. Limited Underwriting Members would be subject to a \$2,000 application fee (per Equity 7, Section 10(b)) and a \$3,000 yearly membership fee (per Equity 7, Section 10(a)).

Implementation

The Exchange would designate the proposed changes to be operative 60 days after publication of the Commission's approval order of SR-NASDAQ-2023-022 in the Federal Register. 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.

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in particular,

securities business of a member involve: (i) advising on or facilitating debt or equity securities offerings through a private placement or a public offering, including but not limited to origination, underwriting, marketing, structuring, syndication, and pricing of such securities and managing the allocation and stabilization activities of such offerings, or (ii) advising on or facilitating mergers and acquisitions, tender offers, financial restructurings, asset sales, divestitures or other corporate reorganizations or business combination transactions, including but not limited to rendering a fairness, solvency or similar opinion.

¹⁷ 15 U.S.C. 78f(b).

in that it is designed to promote just and equitable principles of trade, 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, by strengthening Nasdaq's ability to carry out its oversight responsibilities. It is also consistent with Section 6(b)(7) of the Act in that it provides for a fair procedure for prohibiting or limiting any person with respect to access to services offered by the Exchange or a Member thereof.¹⁹ As discussed above, the proposal would create a new, limited membership class for those firms seeking only to perform activity as the principal underwriter of an IPO on the Exchange (and not seeking access to trade via the Nasdaq Market Center) 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 or limited member of Nasdaq. The Exchange would apply specified rules to Limited Underwriting Members, as explained above. Such rules include general provisions and standards, membership and access rules, organization and administration rules, registration requirements, disciplinary rules, and certain fees. Creating this new membership class and subjecting principal underwriters to such specified rules supports fair and orderly markets, which protects investors and the public interest, consistent with Section 6(b)(5) of the Act. Notably, the proposal would subject Limited Underwriting Members to Nasdaq's disciplinary rules, which provides Nasdaq authority to require information from such underwriters (per General 5, Rule 8210), as well as other general rules, including the requirement to observe just and equitable principles of trade (per General 9, Section 1(a)) and the requirement to establish and maintain a system to

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78f(b)(7).

supervise the activities of registered representatives and associated persons (per General 9, Section 20). Nasdaq believes that imposing these Nasdaq rules, as well as the other rules included in proposed Rule 1031(c)(1), on principal underwriters will strengthen Nasdaq's ability to carry out its oversight responsibilities and deter potential violative conduct, such as fraud or manipulation, thereby protecting investors and the public interest.

4. 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. The proposed changes to the Listing Rules will apply equally to all similarly situated companies applying for initial listing in connection with a transaction involving an underwriter on the Exchange. Likewise, the proposed changes to the General and Equity Rules, including to the membership rules, will apply equally to all similarly situated Applicants and Members and they will confer no relative advantage or disadvantage upon any category of Exchange Applicant or Member. Although the Exchange proposes to subject Limited Underwriting Members to a limited set of rules, the limited underwriting membership does not confer the same benefits as a standard Exchange membership. Namely, a Limited Underwriting Member would not be permitted to transact on the Nasdaq Market Center. Therefore, applying a limited ruleset to Limited Underwriting Members is justified. All Limited Underwriting Members would be subject to the same specified rules, as noted above. Moreover, the Exchange does not expect that its proposal will have an adverse impact on competition among exchanges for members. The Exchange believes the proposed rule changes, overall, will strengthen the Exchange's ability to carry out its role and responsibilities as a self-

regulatory organization and deter potential violative conduct. As such, 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.

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

No written comments were either solicited or received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period for Commission action.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Notice of Proposed Rule Change for publication in the Federal Register.
3. Membership Agreement.
5. Text of the proposed rule change.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2023-022)

July __, 2023

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change to Create a New, Non-Trading Limited Membership Class and Impose Related Requirements for Principal Underwriting Activity

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹, and Rule 19b-4 thereunder,² notice is hereby given that on July 12, 2023, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The Exchange proposes to create a new, non-trading limited membership class and impose related requirements for principal underwriting activity, as described further below. The text of the proposed rule change is available on the Exchange’s Website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Rules to create a new, limited membership class for those underwriters seeking only to perform underwriting activity as the principal underwriter on the Exchange³ (and not seeking access to trade via the Nasdaq Market Center) and require a company applying for initial listing in connection with a transaction involving an underwriter to have a principal underwriter⁴ that is a member or limited member of Nasdaq.

Specifically, the Exchange proposes to amend its General Rules to: (i) add a definition of "Limited Underwriting Member" to General 1, Section 1; (ii) add a new, limited underwriting membership to General 3, Section 1031; and (iii) provide an exemption from registration for certain investment banking representatives associated solely with Limited Underwriting Members in General 4, Section 1230, as described below. Finally, the Exchange proposes to amend Equity 7, Section 10 to exempt Limited

³ "Principal underwriter" will have the same definition used in Rule 405 promulgated under the Securities Act of 1933 ("Securities Act"): an underwriter in privity of contract with the issuer of the securities as to which he is underwriter. 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.

⁴ The Exchange proposes to apply the requirements herein to a principal underwriter (defined as an underwriter in privity of contract with the issuer of the securities as to which he is 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.

Underwriting Members from being assessed a trading rights fee. In addition, the Exchange proposes to amend Rule 5210 of the Listing Rules 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.

Background

In the fall of 2022, Nasdaq observed instances of unusually high price spikes immediately following the pricing of certain initial public offerings (IPOs) on the Exchange and other national securities exchanges, mostly with respect to small-cap companies whose offerings were less than \$25 million. In many instances, the IPO securities that were the subject of these extreme price spikes then experienced equally dramatic price declines to a level at or below the offering price. These extreme price spikes may occur in the opening trade on an exchange, or in continuous trading on the day of, or days immediately following, the listing.

Underwriters play a critical role as gatekeepers to the capital markets in connection with the trading of newly issued securities. Unusual price volatility following IPOs of certain small-cap issuers highlights the essential role underwriters play. Nasdaq 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 marketplace. In a recent Equity Regulatory Alert,⁵ Nasdaq highlighted the important role of underwriters as gatekeepers in the IPO process and the applicability of market rules and

⁵ <https://www.nasdaqtrader.com/MicroNews.aspx?id=ERA2022-9>.

the federal securities laws. The Financial Industry Regulatory Authority (FINRA) and the New York Stock Exchange (NYSE) published similar alerts at the same time.⁶ In Nasdaq's Equity Regulatory Alert, the Exchange also noted:

Nasdaq members, as well as the members of other self-regulatory organizations, that underwrite IPOs, and that play other roles in the offering process, should expect a heightened focus when an IPO experiences unusual price movements. Nasdaq Regulation will continue to investigate to determine whether such members have complied with applicable rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Areas of focus will include suspected manipulation and, beyond manipulation, whether the members are complying with their obligation to observe high standards of commercial honor and just and equitable principles of trade pursuant to Nasdaq Rule General 9, Section 1(a). That rule sets forth a standard intended to encompass a wide variety of conduct that may operate as an injustice to investors or other participants in the marketplace.⁷

Notwithstanding the important role of underwriters, Nasdaq does not currently require underwriters of companies that are going public on the Exchange to be Members

⁶ [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>.

⁷ Supra note 5.

of the Exchange. As such, Nasdaq does not have authority to require responses to investigative inquiries or to enforce its Rules directly against non-member underwriters.⁸

Nasdaq proposes creating a new, limited membership class and requiring underwriters involved in Nasdaq-listed IPOs to be Members or Limited Underwriting Members in order to serve as a principal underwriter of an IPO on the Exchange. By creating a new, limited membership class, Nasdaq would provide those firms seeking only to perform principal underwriting activity on the Exchange (and not seeking access to trade via the Nasdaq Market Center) the option of selecting a membership that is less burdensome (*i.e.*, to become a Limited Underwriting Member rather than a Member).⁹

Proposed Changes to Listing Rules

The proposed rule change primarily impacts membership rules and other non-listing rules, which would apply to the underwriters themselves. However, as part of the proposal, Nasdaq would impose a new requirement in its Listing Rules at 5210(l), requiring each Company applying for initial listing in connection with a transaction involving an underwriter to have a principal underwriter that is a Member or Limited Underwriting Member of Nasdaq. In proposed Rule 5210(l), the Exchange would also specify that “principal underwriter” shall have the same definition used in Rule 405

⁸ Nasdaq does, however, have broad discretionary authority over the initial and continued listing of securities in Nasdaq 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. The Exchange may request information from companies that are going public on the Exchange. The Exchange may also request information from non-Member underwriters, but they are not required to respond to these requests. As described further below, this proposal would provide the Exchange with authority to directly obtain information from Limited Underwriting Members, whether pre or post-IPO.

⁹ A revised Membership Application is attached as [Exhibit 3](#), in which Nasdaq 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.

promulgated under the Securities Act.¹⁰ The rule would cross reference the definition of “Limited Underwriting Member,” which is proposed to be added at General 1, Section 1, and would define Limited Underwriting Member to mean a broker or dealer admitted to limited underwriting membership in Nasdaq.

Proposed Changes to General Rules

Within its General Rules, the Exchange proposes to amend General 1 (General Provisions), General 3 (Membership and Access), and General 4 (Registration Requirements).

The Exchange proposes to add the definition of “Limited Underwriting Member” to General 1, Section 1 (Definitions). As noted above, the Exchange proposes to define Limited Underwriting Member to mean a broker or dealer admitted to limited underwriting membership in Nasdaq.

The Exchange proposes to add the new category of membership to General 3, Section 1031, within which the Exchange proposes to include information about persons eligible to become Limited Underwriting Members, Limited Underwriting Member access to the Exchange, and rules applicable to Limited Underwriting Members.

The Exchange would specify in General 3, Section 1031(a), that (i) 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 paragraph (b) of Rule 1002;¹¹ and (ii) any person shall be eligible to become an Associated Person of a Limited

¹⁰ Supra note 3.

¹¹ In relevant part, General 3, Section 1002(b) provides 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 qualification requirements established by the Rules, or if such broker, dealer, or Member is or becomes subject

Underwriting Member, except such persons as are excluded under paragraph (b) of Rule 1002.¹² Proposed Rule 1031(a) is consistent with the existing rules for persons eligible to become Members and Associated Persons in General 3, Rule 1002(a).

The Exchange proposes to state, in General 3, Section 1031(b) 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, pursuant to Rule 5210(l).

Nasdaq proposes applying a limited ruleset to this newly proposed limited membership class.¹³ Specifically, the Exchange proposes to apply only the following rules to Limited Underwriting Members: General 1 (General Provisions); General 2 (Organization and Administration), with the exception of Sections 6(a) and 22; General 3 (Membership and Access); General 4 (Registration Requirements); General 5 (Discipline), with the exception of Rules 8211 and 9557; General 9 (Regulation), Sections 1 and 20; and Equity 7, Section 10 (Pricing Schedule, Membership Fees). The Exchange would specify the aforementioned rules applicable to this new membership class in General 3, Section 1031(c)(1). With the proposal, the Exchange aims to apply

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.

¹² In relevant part, General 3, Section 1002(b) provides that, subject to such exceptions as may be explicitly provided elsewhere in the Rules, no person shall become associated with a Member, continue to be associated with a Member, or transfer association to another Member, if such person fails or ceases to satisfy the qualification requirements established by the Rules, or if such person is or becomes subject to a statutory disqualification; and no broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if any person associated with it is ineligible to be an Associated Person under this subsection.

¹³ Members of the Exchange, unlike Limited Underwriting Members, are subject to all of the Exchange's Rules (which includes the limited ruleset applicable to the newly proposed limited membership class).

only those rules it deems appropriate to a firm serving as a principal underwriter, including those rules it deems critical to such firms.

The Exchange proposes to apply General 1 to Limited Underwriting Members because General 1 provides defined terms that would be applicable to Limited Underwriting Members and, as explained above, the proposed rule change would also add a definition (“Limited Underwriting Member”) to General 1.

The Exchange proposes to apply General 2 (with the exception of Sections 6(a) and 22) to Limited Underwriting Members because General 2 relates to organization and administration including requirements surrounding fees, limitations on affiliations, and a requirement for an executive representative, among other obligations. The Exchange proposes to specifically exclude General 2, Sections 6(a) and Section 22. 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 is not accurate in the case of Limited Underwriting Members. General 2, Section 22 relates to Sponsored Participants and client access to the Nasdaq Market Center via a Member, which is not applicable to underwriting activity.

The Exchange also proposes to subject Limited Underwriting Members to General 3 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. As described herein, the proposed rule change would also add additional details regarding the limited underwriting membership to General 3, Rule 1031.

The Exchange proposes to apply General 4 to Limited Underwriting Members, which includes registration requirements that are applicable to Limited Underwriting Members. The proposal would also add an exemption within General 4, as described below.

The Exchange believes it is critical to subject Limited Underwriting Members to General 5 (with the exception of Rules 8211 and 9557), which contains the Exchange's disciplinary rules.¹⁴ Notably, General 5, Rule 8210 provides the Exchange with authority to require information from Exchange Members. The Exchange proposes to specifically exclude General 5, Rule 8211 and Rule 9557. Rule 8211 relates to members submission of trade data. Rule 9557 relates to procedures for regulating activities under General 9, Sections 40 and 41, which incorporate FINRA Rules 4110 and 4120, which relate to FINRA carrying or clearing members. Therefore, Rule 8211 and Rule 9557 are not relevant to underwriting activity.

The Exchange also believes it is important to subject Limited Underwriting Members to General 9, Section 1 which includes general standards by which Members must abide. Specifically, of importance, General 9, Section 1(a) requires Members to observe 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 that is reasonably designed to achieve compliance with applicable securities laws and regulations and with applicable Nasdaq rules. The Exchange believes it is important to apply this provision on supervision as it would

¹⁴ 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.

provide the Exchange with authority to assess whether a Limited Underwriting Member has an adequate supervisory system and written supervisory procedures in place.

Finally, the Exchange proposes to include Equity 7, Section 10 to Limited Underwriting Members because this section includes the membership and application fees applicable to Limited Underwriting Members. The Exchange 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. Furthermore, the Exchange believes that the Exchange's 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.

The Exchange proposes to include language in General 3, Section 1031(c)(1) providing that, for purposes of interpreting and applying the rules to Limited Underwriting Members, references to "Member," "Members," or "membership" shall be functionally equivalent to "Limited Underwriting Member," "Limited Underwriting Members," or "limited underwriting membership" respectively. The Exchange also proposes to include a requirement, in General 3, Section 1031(c)(2), that Limited Underwriting Members and their Associated Persons shall at all times be members of FINRA.¹⁵

¹⁵ Limited Underwriting Members would, therefore, 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 (see supra note 9) 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 relies substantially upon FINRA's determination to approve the applicant for FINRA membership when the Exchange evaluates the applicant for Exchange membership.

Finally, the Exchange proposes to exempt persons associated solely with a Limited Underwriting Member whose functions are related solely and exclusively to underwriting and who are registered with FINRA as an Investment Banking Representative¹⁶ from the requirement to register with the Exchange. The Exchange proposes to add such exemption to General 4, Section 1230(4).

Proposed Change to Equity Rules

The Exchange proposes 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 would not be eligible to trade on the Exchange. 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. Limited Underwriting Members would be subject to a \$2,000 application fee (per Equity 7, Section 10(b)) and a \$3,000 yearly membership fee (per Equity 7, Section 10(a)).

Implementation

The Exchange would designate the proposed changes to be operative 60 days after publication of the Commission's approval order of SR-NASDAQ-2023-022 in the Federal Register. This delay will allow time for firms involved with upcoming IPOs to become Limited Underwriting Members, if they choose, and for companies planning

¹⁶ In FINRA Rule 1220(b)(5), FINRA describes the requirement for representatives to register as an "Investment Banking Representative" if his or her activities in the investment banking or securities business of a member involve: (i) advising on or facilitating debt or equity securities offerings through a private placement or a public offering, including but not limited to origination, underwriting, marketing, structuring, syndication, and pricing of such securities and managing the allocation and stabilization activities of such offerings, or (ii) advising on or facilitating mergers and acquisitions, tender offers, financial restructurings, asset sales, divestitures or other corporate reorganizations or business combination transactions, including but not limited to rendering a fairness, solvency or similar opinion.

IPOs to select alternative underwriters if their current firm is not, and does not intend to become, a Member or Limited Underwriting Member.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁷ in general, and furthers the objectives of Section 6(b)(5) of the Act,¹⁸ in particular, in that it is designed to promote just and equitable principles of trade, 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, by strengthening Nasdaq's ability to carry out its oversight responsibilities. It is also consistent with Section 6(b)(7) of the Act in that it provides for a fair procedure for prohibiting or limiting any person with respect to access to services offered by the Exchange or a Member thereof.¹⁹ As discussed above, the proposal would create a new, limited membership class for those firms seeking only to perform activity as the principal underwriter of an IPO on the Exchange (and not seeking access to trade via the Nasdaq Market Center) 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 or limited member of Nasdaq. The Exchange would apply specified rules to Limited Underwriting Members, as explained above. Such rules include general provisions and standards, membership and access rules, organization and administration rules, registration requirements, disciplinary rules, and certain fees. Creating this new membership class and subjecting principal underwriters to such specified rules supports

¹⁷ 15 U.S.C. 78f(b).

¹⁸ 15 U.S.C. 78f(b)(5).

¹⁹ 15 U.S.C. 78f(b)(7).

fair and orderly markets, which protects investors and the public interest, consistent with Section 6(b)(5) of the Act. Notably, the proposal would subject Limited Underwriting Members to Nasdaq's disciplinary rules, which provides Nasdaq authority to require information from such underwriters (per General 5, Rule 8210), as well as other general rules, including the requirement to observe just and equitable principles of trade (per General 9, Section 1(a)) and the requirement to establish and maintain a system to supervise the activities of registered representatives and associated persons (per General 9, Section 20). Nasdaq believes that imposing these Nasdaq rules, as well as the other rules included in proposed Rule 1031(c)(1), on principal underwriters will strengthen Nasdaq's ability to carry out its oversight responsibilities and deter potential violative conduct, such as fraud or manipulation, thereby 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. The proposed changes to the Listing Rules will apply equally to all similarly situated companies applying for initial listing in connection with a transaction involving an underwriter on the Exchange. Likewise, the proposed changes to the General and Equity Rules, including to the membership rules, will apply equally to all similarly situated Applicants and Members and they will confer no relative advantage or disadvantage upon any category of Exchange Applicant or Member. Although the Exchange proposes to subject Limited Underwriting Members to a limited set of rules, the limited underwriting membership does not confer the same benefits as a standard Exchange membership. Namely, a Limited Underwriting Member would not be

permitted to transact on the Nasdaq Market Center. Therefore, applying a limited ruleset to Limited Underwriting Members is justified. All Limited Underwriting Members would be subject to the same specified rules, as noted above. Moreover, the Exchange does not expect that its proposal will have an adverse impact on competition among exchanges for members. The Exchange believes the proposed rule changes, overall, will strengthen the Exchange's ability to carry out its role and responsibilities as a self-regulatory organization and deter potential violative conduct. As such, 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.

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

No written comments were either solicited or received.

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

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-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 email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or

subject to copyright protection. All submissions should refer to file number SR-NASDAQ-2023-022 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

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

Sherry R. Haywood,

Assistant Secretary.

²⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 3

Changes to the Broker-dealer Membership Application

Text is marked to show changes to current Broker-dealer Membership Application. Additions to the application are double underlined; deletions from the application are stricken through.



BROKER-DEALER MEMBERSHIP APPLICATION
The Nasdaq Stock Market ("NQX"), Nasdaq BX ("BX"), Nasdaq PHLX ("PHLX"), Nasdaq ISE ("ISE"), Nasdaq GEMX ("GEMX"), Nasdaq MRX ("MRX")
 (Collectively "Nasdaq")

A. Applicant Profile		
Full legal name of Applicant Organization (must be a registered broker dealer with the Securities and Exchange Commission):		
Date:	CRD No.	SEC No. 8-
Main office address:		
Main phone:	Type of Organization	Corporation Partnership LLC
Name of individual completing application:		
Email Address:	Phone:	
Application Type		
Initial Nasdaq Application	Amendment Add Nasdaq affiliated exchange/trading platform Change in business activity	
Full Membership - Applicant is seeking membership to a Nasdaq affiliated exchange for the first time. Refer to required supplemental material in Section <u>M</u>	Waive-In Membership - Applicant must be approved on at least one Nasdaq affiliated exchange or FINRA <i>NOTE: FINRA members applying to Nasdaq for the first time are eligible to waive-in on NQX, BX, ISE, GEMX and MRX. Approved members of NQX, BX, PHLX, ISE, GEMX or MRX may be eligible for waive-in on additional Nasdaq affiliated exchanges.</i>	
Indicate which Nasdaq SRO(s) Applicant is seeking membership on (check all that apply):		

The Nasdaq Stock Market Equity Options	Nasdaq BX Equity Options	Nasdaq PHLX Equity Options	ISE GEMX MRX
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Indicate Nasdaq SRO(s) on which Applicant is an **approved** member, if applicable:

The Nasdaq Stock Market Equity Options	Nasdaq BX Equity Options	Nasdaq PHLX Equity Options	ISE GEMX MRX
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If Applicant is applying to PHLX, will PHLX be the Designated Examining Authority (“DEA”)?
 Yes ~ Must provide **ALL** required supplemental material with this application as outlined in Sections **M** and **N**
 No ~ Provide the SRO assigned as DEA for Applicant Organization _____

B. Nature of Intended Activity (Check all that apply)

<p>OPTIONS</p> <p>Phlx Floor Participants Lead Market Maker Registered Options Trader Streaming Quote Trader Floor Broker</p> <p>Electronic Participants Order Entry/Electronic Access Market Maker¹ Lead Market Maker²</p>	<p>EQUITY</p> <p>Market Maker Order Entry <u>Limited Underwriting Member on NOX</u></p>
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C. Supervision

Provide the name and CRD number of the associated person who will be responsible for the proposed trading-activity on Nasdaq.

Name:	CRD No.
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D. Clearing Information

National Securities Clearing Corporation (“NSCC”) Clearing	The Options Clearing Corporation (“OCC”) Clearing
Nasdaq requires all Members, <u>other than Limited Underwriting Members</u> , to provide an NSCC account number for purposes of direct debit pursuant to exchange rules. Provide an NSCC account number which can be utilized for purposes of this requirement.	All options participants must provide an executed clearing letter of guarantee. (found in document library)

¹ See Phlx Options 1, Section 1(b)(49), Remote Streaming Quote Trader; Nasdaq Options 1, Section 1(a)(27), Nasdaq Options Market Maker, BX Options 1, Section 1(a)(10), BX Options Market Maker; and ISE, GEMX and MRX Options 1, Section 1(a)(12), Competitive Market Maker

² See Phlx, Options 1, Section 1(a)(27), Lead Market Maker; BX Options 2, Section 3, Lead Market Maker; ISE, Options 1, Section 1(a)36, Primary Market Maker; and GEMX and MRX, Options 1, Section 1(a)(35), Primary Market Maker

Self-Clearing NSCC Account No.: _____ Agreement with clearing agent NSCC Account No.: _____ Name of broker dealer acting as clearing agent: _____	Self-Clearing OCC Account No.: _____ Agreement with clearing agent OCC Account No.: _____ Name of broker dealer acting as clearing agent: _____
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E. Executive Representative Designation

All Nasdaq members are required to designate an executive representative who will be the sole person entitled to exercise such member’s voting and designation rights set forth in exchange rules. Therefore, Applicant organization certifies that the below-named individual is qualified to act as its executive representative.

Executive Representative:	Title:
Email:	Phone:

F. Compliance Officer

Provide the name of the individual within your organization that is responsible for compliance.

Compliance Officer:	Title:
Email:	Phone:

G. Billing Information

Provide a billing contact to be designated for receipt of monthly invoices via email.

Billing Contact:	Title:
Email:	Phone:

H. Emergency Management

At least two individuals must be designated who would serve as 24/7 contacts in the event that an emergency arises outside of normal business hours. Please provide all information requested for both individuals.

Primary Contact:	Secondary Contact:
Title:	Title:
Email:	Email:
Business Phone:	Business Phone:

Cell:	Cell:
I. Statutory Disqualification Disclosure	
Pursuant to the Securities Exchange Act of 1934, Nasdaq may deny or condition trading privileges or bar an individual from becoming associated with a member, who is subject to a statutory disqualification. The term, statutory disqualification, is defined under section 3(a)(39)(F) of the Act.	
The Applicant organization does NOT have any person(s) associated with or employed by the Applicant organization that may be subject to statutory disqualification.	
The Applicant organization DOES have person(s) associated with or employed by the Applicant organization that may be subject to statutory disqualification. Attach the following information for each individual: <ul style="list-style-type: none"> a. Name and individual CRD number b. Description of responsibilities within the organization c. All documents relating to the disqualification d. Explanation of action taken or approval by another SRO regarding the individual 	
J. Affiliates	
Does Applicant have any affiliates conducting securities transactions that are not registered with the Securities and Exchange Commission?	
Yes	No
If yes, has this arrangement been reviewed in relation to a previously filed Nasdaq member application?	
Yes	No - Provide additional information with respect to unregistered affiliate
K. Qualifying Permit Holder Designation (PHLX Applicants Only See PHLX Rules 908 and 921)	
PHLX applicants must designate a qualifying permit holder who must be an officer or partner associated with the organization. Applicant certifies that the below named individual will act as its qualifying permit holder. Please also provide a PHLX Individual Membership Application for the qualifying permit holder.	
Qualifying Permit Holder:	Title:
Date of Birth:	Individual CRD No.
Phone:	Email:
L. Supplemental Material	
All applicants (waive-in and full) must provide the following documents with this application:	
Executed Nasdaq Exchange Membership Agreement	
Fully-executed Nasdaq U.S. Services Agreement, unless previously provided (found in document library)	
A copy of the Applicant's most recent FOCUS Report	
If applicant is seeking options market maker status <ul style="list-style-type: none"> Information barrier procedures, if applicable List identifying all accounts to be used for market maker activity ISE, MRX and GEMX market makers must submit the DTR Authorization and Guarantee Form ISE market maker applicants must also provide a copy of a purchase and/or lease agreement confirming acquisition of required trading rights 	
Non-refundable application fee as follows:	

PHLX \$350 – Application fee does not apply to Applicants applying to PHLX for PSX only participation			
NQX \$2,000			
BX \$2,000 - Application fee does not apply to Applicants applying to BX for BX Options only participation			
ISE	PMM \$7,500	CMM \$5,500	EAM \$3,500 (check all that apply)
GEMX	PMM \$3,000	CMM \$2,000	EAM \$1,500 (check all that apply)
MRX – No Application fees			
<p>WAIVE-IN ATTESTATION: An applicant that is an approved member of FINRA or one or more Nasdaq Affiliated Exchange(s) shall have the option to apply for membership through an expedited process pursuant to NQX and BX Rule 1013(a)(5) and PHLX Rule 910(f)(3). Applicants who are eligible for this expedited review must execute the below attestation and submit the relevant supplemental material requested in Section L above.</p> <p>I hereby certify that _____ (Applicant) is operating as an approved member of FINRA NQX BX PHLX ISE GEMX MRX and that there have been no material changes of business since that application that have not been approved by the appropriate SRO and that the information provided remains complete and accurate with no substantial change to the business operations of Applicant.</p>			
Authorized Applicant Signature:			Date:
Print Name:			Title:

M. Required Supplemental Material
Applicants not eligible for the waive-in expedited review process pursuant to Nasdaq Rules must also include the following with this application:
A copy of Applicant's current Form BD, if not otherwise available to the Exchange electronically through the Central Registration Depository (CRD)
An original Exchange approved fingerprint card for each Associated Person who will be subject to SEC Rule 17f-2 and for whom a fingerprint card has not been filed with another SRO, if such fingerprints are not otherwise available electronically to the Exchange through CRD
Summary of Applicant's business plan addressing type of business intended to be conducted on Nasdaq
Evidence of established clearing arrangement
Most recent audited financial statement and a description of any material changes in the Applicant's financial condition since the date of the statement
Organizational chart identifying the Applicant's supervisory structure by associated person. This chart must identify all of Applicant's associated persons and should include names, titles, licenses/registrations and CRD numbers
Letters of attestation for any officer/director that will not be involved in the day to day management of the business and affairs of the firm
Branch Office Disclosure Form (Non-FINRA member applicants only) (found in document library)
If applicant shares office space, provide a description of business operations conducted, blueprints, identification of common areas, communication lines and information barriers specific to shared space
Applicant's Written Supervisory Procedures ("WSP") Manual including Anti-Money Laundering, Business Continuity Plan and Risk procedures pursuant to SEC 15c3-5
Completed WSP Checklist for NOX and BX full applicants only (found in document library)
Copy of any decision or order by a federal or state authority or SRO taking permanent or temporary adverse action with respect to a registration or licensing determination regarding the Applicant or an Associated Person
A statement indicating whether the Applicant or any person on Schedule A or B of the Applicant's Form BD is currently, or has been in the last ten years, the subject of any investigation or disciplinary proceeding conducted by any self-regulatory organization, the foreign equivalent of a self-regulatory organization, a foreign or international securities exchange, a contract market designated pursuant to the Commodity Exchange Act (the "Act") or any substantially equivalent foreign statute or regulation, a futures association registered under the Act or any equivalent foreign statute or regulation, the Commission or any other "appropriate regulatory agency" (as defined in the Act), the Commodity Futures Trading Commission, or any state financial regulatory agency regarding the Applicant or any person on Schedule A or B of the Applicant's Form BD and activity that has not been reported to the CRD, together with all relevant details, including any sanctions imposed
A copy of any contract or agreement with another broker-dealer, a bank, a clearing entity, a service bureau or a similar entity to provide the Applicant with Services regarding the execution or clearance and settlement of transactions effected on the Exchange
All examination reports and corresponding responses regarding the Applicant for the previous two years
A copy of the Exchange's Membership Agreement, duly executed by the Applicant
Certificate of Insurance (Rule 652) (PHLX Trading Floor Only)
Additionally, if application is seeking market maker status:
A description of the source and amount of capital to support its market making activities and the source of any additional capital that may become necessary
A list of persons conducting the Applicant's market making activities, a list of the persons responsible for supervising these persons along with CRD numbers

- ISE/GEMX/MRX - please use the Designated Trading Representative Authorization and Guarantee Form

Appropriate formation documents as follows:

Corporation; executed Corporate Exhibits

Partnership; executed copy of the firm's Partnership Agreement

Limited Liability Company; Operating Agreement and Articles of Organization or Certificate of Formation

N. Additional Supplemental Material (PHLX DEA Applicants)

Applicants for which PHLX will be the **Designated Examining Authority** must also submit the following:

Designation of Accountant Form and Auditor Engagement Letter pursuant to SEC Rule 17a-5(f)

Confirmation of required funds into a verifiable account of the firm, or if an existing firm, a FOCUS Filing or net capital computation with supporting documents for Allowable Assets

Verification of error account, Floor Broker Error Account Notification Form, if applicable (Form available upon request)

Evidence of Fidelity Bond coverage pursuant to PHLX Rule 705

Confirmation of U4 registrations for all off-floor traders, director / owner of the firm

If the firm has a Joint Back Office ("JBO") Arrangement with its clearing firm, provide a copy of the agreement. The firm must employ or have access to a qualified Series 27 Financial and Operations Principal ("FINOP")

Notification of Applicant's intent to use Electronic Storage Media ("ESM") for maintenance and archiving records pursuant to SEA Rule 17a-4(f), if applicable

O. Application Filing Instructions

Please be sure to include all relevant supplemental material with your application. Failure to include information may result in processing delays. Applications are deemed confidential and handled in a secure environment. Applicants should be prepared to provide such other reasonable information with respect to this application as Nasdaq may require. Questions may be directed to Nasdaq Membership at +1 215 496 5159 or +1 215 496 5322.

Applications and supplemental material should be submitted by email to: membership@nasdaq.com.

Nasdaq¹ Membership Agreement

Broker Dealer:	CRD Number:
Check all markets relevant to this Application:	
The Nasdaq Stock Market LLC ("NQX")	The Nasdaq Options Market LLC ("NOM")
Nasdaq BX, Inc. ("BX")	BX Options Market
Nasdaq Phlx LLC	Nasdaq PSX
Nasdaq ISE, LLC	Nasdaq GEMX, LLC
Nasdaq MRX, LLC	

In connection with this, Nasdaq membership application, and in the event that this application is approved, the Applicant hereby agrees to abide by the terms and conditions set forth below.

The Applicant undertakes to (1) engage only in those business activities permissible pursuant to its membership agreement(s) with FINRA, respecting a FINRA member, and the rules of Nasdaq and any other Self-Regulatory Organization of which the Applicant is a member; (2) obtain the prior approval of Nasdaq pursuant to Nasdaq Rules before removing or modifying any restrictions imposed on permissible business activities or before effecting any material change in business operations; and (3) file a written notice and application with Nasdaq for a change in the ownership or control of the Applicant in circumstances where required by Nasdaq Rules.

The Applicant also agrees:

1. To comply with the federal securities laws, the rules and regulations thereunder, the Nasdaq By-Laws and Rules and all rulings, orders, directions and decisions issued and sanctions imposed under the Nasdaq Rules;
2. To pay such dues, assessments and other charges in the manner and amount as from time to time shall be fixed pursuant to the Nasdaq Rules;
3. That this Agreement has been executed on behalf of, and with the authority of, the above-named Applicant. The Undersigned and Applicant represent that the information and statements contained within the application and other information filed are current, true and complete.

The Undersigned and the Applicant further represent that to the extent that any information submitted is not amended, such information is currently accurate and complete and that all information contained in the Applicant's Uniform Application for Broker-Dealer Registration (Form BD) will be kept current and accurate by proper amendment of the Form BD as changes occur. Applicant further represents that the registrations for Associated Persons registered with Nasdaq will be kept current by proper amendment of Form U4 & Form U5.

By:

Print name _____

¹ The Nasdaq Stock Market LLC ("NQX"), The Nasdaq Options Market ("NOM"), Nasdaq BX, Inc. ("BX"), BX Options Market ("BX Options"), Nasdaq Phlx LLC ("PHLX"), Nasdaq PSX ("PSX"), Nasdaq ISE, LLC ("ISE"), Nasdaq GEMX, LLC ("GEMX"), and Nasdaq MRX, LLC ("MRX") are collectively referred to as Nasdaq for purposes of this Agreement.

Title _____

Signature _____

Date _____

EXHIBIT 5

Deleted text is [bracketed]. New text is underlined. The proposed changes are operative 60 days after publication of the Commission’s approval order of SR-NASDAQ-2023-022 in the Federal Register.

THE NASDAQ STOCK MARKET LLC RULES

* * * * *

The Qualification, Listing and Delisting of Companies**5000. NASDAQ LISTING RULES**

* * * * *

5200. GENERAL PROCEDURES AND PREREQUISITES FOR INITIAL AND CONTINUED LISTING ON THE NASDAQ STOCK MARKET

* * * * *

5210. Prerequisites for Applying to List on The Nasdaq Stock Market

All Companies applying to list on The Nasdaq Stock Market must meet the following prerequisites:

(a) – (k) No change.

(l) Principal Underwriter

(i) “Principal underwriter” shall have the same definition used in Rule 405 promulgated under the Securities Act of 1933.

(ii) Each Company applying for initial listing in connection with a transaction involving an underwriter must have a principal underwriter that is a Member or Limited Underwriting Member, as defined in General 1, Section 1 of the Nasdaq Rules.

* * * * *

General Equity and Options Rules

* * * * *

General 1: General Provisions

Section 1 Definitions

(a) No change.

(b) Unless the context otherwise requires:

(1) – (19) No change.

(20) The term “Limited Underwriting Member” means a broker or dealer admitted to limited underwriting membership in Nasdaq.

* * * * *

General 3: Membership and Access

* * * * *

1031. [Registration Requirements]Limited Underwriting Membership

[f) Reserved]

(a) Persons Eligible to Become Limited Underwriting Members

(1) 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).

(2) Any person shall be eligible to become an Associated Person of a Limited Underwriting Member, except such persons as are excluded under General 3, Rule 1002(b).

(b) Limited Underwriting Member Access to the Exchange

A limited underwriting membership provides no rights to transact on the Exchange. A limited underwriting membership is solely to allow a firm that is not otherwise a Member to serve as a principal underwriter, pursuant to the requirement in Rule 5210(l), for a Company applying to list on the Exchange.

(c) Rules Applicable to Limited Underwriting Members

(1) Limited Underwriting Members and their associated persons shall only be subject to the following rules:

- General 1
- General 2, with the exception of Sections 6(a) and 22
- General 3

- General 4
- General 5, with the exception of Rules 8211 and 9557
- General 9, Sections 1 and 20
- Equity 7, Section 10

For purposes of interpreting and applying the above rules to Limited Underwriting Members, references to “Member,” “Members,” or “membership” shall be functionally equivalent to “Limited Underwriting Member,” “Limited Underwriting Members,” or “limited underwriting membership” respectively.

(2) Limited Underwriting Members and their Associated Persons shall at all times be members of FINRA.

* * * * *

General 4: Registration Requirements

* * * * *

1230. Associated Persons Exempt from Registration

The following persons associated with a member are not required to be registered with the Exchange:

(1) – (3) No change.

(4) Persons associated solely with a Limited Underwriting Member whose functions are related solely and exclusively to underwriting and who are registered with FINRA as an Investment Banking Representative.

* * * * *

Equity Rules

* * * * *

Equity 7: Pricing Schedule

Section 1. Charges for Membership, Services, and Equipment

Section 10. Membership Fees

(a) Each Nasdaq member will be assessed a membership fee of \$3,000 per year and a trading rights fee of \$1,250 per month, except for Limited Underwriting Members, who will not be charged a trading rights fee. The membership fee will be imposed on all persons that are Nasdaq members as of a date determined by Nasdaq in December of

each year, and the trading rights fee will be assessed on all persons that are Nasdaq members as of a date determined by Nasdaq in each month. The fees are not refundable in the event that a person ceases to be a Nasdaq member following the date on which the fees are assessed.

(b) – (c) No change.

* * * * *