

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of * 88	SECURITIES AND EXCHANGE COMMISSION WASHINGTON, D.C. 20549 Form 19b-4	File No.* SR - 2018 - * 066	Amendment No. (req. for Amendments *)
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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 type="checkbox"/>	Section 19(b)(3)(A) * <input checked="" type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	<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 checked="" type="checkbox"/> 19b-4(f)(6)	

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
Section 3C(b)(2) * <input type="checkbox"/>	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description

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

Proposal to align Nasdaq existing investigatory and disciplinary processes and related rules with the investigatory and disciplinary processes and related rules of Nasdaq PHLX LLC.

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 * Erik Last Name * Wittman

Title * Senior Associate General Counsel

E-mail * Erik.Wittman@nasdaq.com

Telephone * (202) 912-3070 Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

(Title *)

Date 08/07/2018

By Edward S. Knight

Executive Vice President and General Counsel

edward.knight@nasdaq.com

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

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information *

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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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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 Advance 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, security-based swap submission, or advance notice 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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Exhibit Sent As Paper Document

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 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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 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

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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

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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 align its existing investigatory and disciplinary processes and related rules with the investigatory and disciplinary processes and related rules of Nasdaq PHLX LLC (“Phlx”).

The Exchange requests that the Commission waive the 30-day operative delay period contained in Exchange Act Rule 19b-4(f)(6)(iii).³

A notice of the proposed rule change for publication in the Federal Register is attached as Exhibit 1. 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 senior management of the Exchange pursuant to authority delegated by the Board of Directors of the Exchange (the “Board”) on September 19, 2017. Exchange staff will advise the Board of any action taken pursuant to delegated authority. No other action is necessary for the filing of the rule change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6)(iii).

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

David Strandberg
Associate Vice President
Nasdaq, Inc.
(301) 978-8073

Erik Wittman
Senior Associate General Counsel
Nasdaq, Inc.
(202) 912-3070

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

a. Purpose

Nasdaq proposes to amend certain of its rules to align its existing investigatory and disciplinary processes and related rules with the investigatory and disciplinary processes and related rules of Phlx. Nasdaq notes that Phlx amended its rules recently to adopt an investigatory and disciplinary process identical in all material respects to the investigatory and disciplinary processes of Nasdaq BX, Inc. ("BX") and Nasdaq.⁴ The amendment also vested the Phlx Regulation Department with the same authority proposed herein. The Exchange therefore proposes the below changes to the 8000 and 9000 Series of the Nasdaq Rules in order to conform its rules to those of Phlx 8000 and 9000 Series rules in all respects.

⁴ See Securities Exchange Act Release No. 82143 (November 22, 2017), 82 FR 56672 (November 29, 2017) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Investigatory and Disciplinary Processes Substantially Similar to Nasdaq BX, Inc. and The Nasdaq Stock Market LLC for Phlx, which, among other things, similarly enabled Phlx to retain discretion to perform these functions).

Definition of Nasdaq Regulation

The Exchange proposes to revise the definition of Nasdaq Current Rule 9120(w) (“Nasdaq Regulation”) to expressly include the Exchange’s Enforcement Department. The Exchange’s Enforcement Department is specifically charged with pursuing disciplinary action against members, persons associated with a member, and persons subject to the Exchange’s jurisdiction, in addition to FINRA’s departments of Enforcement and Market Regulation.

Similarly, the Exchange proposes to add references to the “Nasdaq Regulation Department” in Nasdaq Current Rule 9120(aa) (definition of the term “Party”). The Exchange also proposes to add a definition for the term “Party” as used in the Nasdaq Rule 9400 series,⁵ and to add references to “FINRA” in Nasdaq Current Rule 9120(aa)(4) to clarify that FINRA falls under the definition of “Party” as used in the Rule 9550 series. In addition, the Exchange is adding references to the Nasdaq Regulation Department throughout the Nasdaq Rule 8000 and 9000 series.⁶ These amendments will conform the text of Nasdaq 8000 and 9000 rules with those of Phlx.

⁵ The Exchange notes that, like Phlx, it is likewise including the Department of Enforcement and the Department of Market Regulation as potential parties to a matter under the Rule 9400 Series. The Exchange believes that including these departments in Rule 9400 Series is appropriate because they may be involved in the initiation of such a matter for Nasdaq currently. The Exchange is also adding FINRA to other parts of Rule 9400 where it is appropriate to show that FINRA may be the entity that initiated an action under the rule.

⁶ See Nasdaq Current Rules 8001, 8210, 8211, IM-8310-3, 9120, 9131, 9133, 9143, 9146, 9211, 9212, 9213, 9215, 9216, 9251, 9252, 9253, 9264, 9269, 9270, 9311, 9400, 9522, 9523, 9524, 9552, 9553, 9554, 9555, 9556, 9557, 9558, 9559, 9610, 9630, 9810, 9820, 9830, and 9840.

Role of FINRA

The Exchange proposes to add rule text to certain rules to clarify that FINRA may act on behalf of the Exchange. Today, FINRA is empowered to act on behalf of the Exchange.⁷ The revisions to these rules will therefore clarify FINRA's authority as it currently exists today.⁸

Jurisdiction

The Exchange proposes to replace the current rule text related to jurisdiction of Nasdaq to initiate disciplinary actions with Phlx's jurisdiction rule text. Current Nasdaq Rules 1012(h)⁹ and 1031(f)¹⁰ permit a disciplinary action to be brought within two years

⁷ See Nasdaq Current Rule 8001 ("Nasdaq and FINRA are parties to the Regulatory Contract pursuant to which FINRA has agreed to perform certain functions described in these rules on behalf of Nasdaq. Nasdaq rules that refer to Nasdaq Regulation, Nasdaq Regulation staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the Regulatory Contract.").

⁸ See Nasdaq Current Rules 9400, 9522, 9552, 9553, 9554, 9555, 9556, 9557, and 9558. The Exchange notes that FINRA currently performs the functions described in these rules. The proposed changes further clarify that in the rule text.

⁹ A resigned Nasdaq member or a Nasdaq member that has had its membership canceled or revoked shall continue to be subject to the filing of a complaint under the Nasdaq Rules based upon conduct that commenced prior to the effective date of the Nasdaq member's resignation from Nasdaq or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within two years after the effective date of resignation, cancellation, or revocation.

¹⁰ A person whose association with a Nasdaq member has been terminated and who is no longer associated with any member of Nasdaq or a person whose registration has been revoked or canceled shall continue to be subject to the filing of a complaint under Nasdaq Rules based upon conduct which commenced prior to the termination, revocation, or cancellation or upon such person's failure, while subject to Nasdaq's jurisdiction as provided herein, to provide information requested by Nasdaq pursuant to the Nasdaq Rules, but any such complaint shall be filed within: (A) two years after the effective date of termination of registration pursuant to subsection (c); provided, however, that any amendment to a notice of termination filed pursuant to paragraph (c)(2) that is filed within two years of the

after the effective date of resignation, cancellation, or revocation of a member or associated person. The current Nasdaq provisions are more limited than Phlx's jurisdictional language. Phlx Rule 9110(d) does not contain a time limit on when a matter may be brought against a member or associated person following its termination or deregistration, so long as the Exchange serves written notice within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member or associated person.¹¹ Phlx Rule 9110(d) also makes clear

original notice that discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the two-year period under this subsection; (B) two years after the effective date of revocation or cancellation of registration pursuant to the Nasdaq Rules; or (C) in the case of an unregistered person, within two years after the date upon which such person ceased to be associated with the Nasdaq member.

A person whose association with a member has been terminated and is no longer associated with any Nasdaq member shall continue to be subject to a proceeding to suspend, consistent with Article IX, Section 2 of the Nasdaq By-Laws, his or her ability to associate with a member based on such person's failure to comply with an arbitration award or a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to Nasdaq Rules, provided that such proceeding is instituted within two years after the date of entry of such award or settlement.

¹¹ Any member or any partner, officer, director or person employed by or associated with any member (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities Exchange Act of 1934 (Exchange Act), the rules and regulations thereunder, the By-Laws and Rules of the Exchange or any interpretation thereof, and the Rules, Regulations, resolutions and stated policies of the Board of Directors or any Committee of the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a member organization, or any other fitting sanction in accordance with the provisions of these disciplinary Rules.

that a member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or employees or by a member or other person who is associated with such member, as though such violation were its own.

While today, Nasdaq may bring an action against officers, directors, or employees or by a member or other person who is associated with such member,¹² the proposed rule makes this clear. The substantive amendment with respect to jurisdiction is with the timeframe

An individual member, or a partner, officer, director or person employed by or associated with a member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by employees under his supervision or by the member with which he is associated, as though such violations were his own. A member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or employees or by a member or other person who is associated with such member, as though such violation were its own.

Any member, or any partner, officer, director, or person employed by or associated with a member organization, and any member organization shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such person's permit or the termination of the employment by or the association with a member organization of such member or partner, officer, director or person, or following the deregistration of a member organization from the Exchange; provided, that the Exchange serves written notice to such former member, partner, officer, director, employee, associated person or member organization within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member, or as a partner, officer, director or person employed by or associated with a member organization, or prior to the deregistration of such member organization.

¹² The term "Associated Person" means any partner, officer, director, or branch manager of a Nasdaq member or Applicant (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such Nasdaq member or Applicant, or any employee of such Nasdaq member or Applicant, except that any person associated with a Nasdaq member or Applicant whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of the Nasdaq Rules. See Nasdaq Current Rule 1011(b).

for bringing a disciplinary action against a member or associated person. The proposed rule expands the timeframe.

The amendment to expand jurisdiction will not apply retroactively and any complaints not filed within the existing two year time-period will be time-barred. The new jurisdiction rule will only apply to the applicable individuals or entities who terminate or deregister with the Exchange on or after September 1, 2018.

The Exchange also proposes to eliminate the rule text contained within Nasdaq Current Rules 1012(h) and 1031(f) and reserve those sections.

Interested Staff Definition

The definition of Interested Staff is being conformed to Phlx's definition and includes references to Exchange and FINRA employees as those terms are proposed to be defined. The proposed Nasdaq definition better defines who falls within the category of Interested Staff without substantively amending the definition. At this time, Nasdaq's proposal mirrors the Phlx definition.¹³ The Exchange also notes that it is removing the words "a district director or" from Nasdaq Current Rules 9120(t)(1)(D), 9120(t)(2)(D), and 9120(t)(3)(D) because there is no such position at the Exchange. The use of those words in the current definition refers to the individual to whom a FINRA employee may report. Those words are therefore being preserved as they relate to FINRA in Proposed New Rules 9120(t)(1)(H), 9120(t)(2)(E), and 9120(t)(3)(E).

¹³ The Exchange notes that it is adopting a more comprehensive definition of "Interested Staff" under Nasdaq Current Rule 9120(t) to align it with the definition used by Phlx. Specifically, the Exchange is adopting new text that accounts for the role of the Nasdaq Regulation Department, including the involvement of employees thereof. Thus, the proposed new definition will include all individuals that should be considered as "Interested Staff" for purposes of the Nasdaq Rule 9000 Series.

Special Panelist

The Exchange is removing the definition of Special Panelist and re-lettering the remainder of the Section. Phlx and BX do not use or otherwise define a Special Panelist. Nasdaq Current Rule 9001(u) defines a Special Panelist.¹⁴ The Exchange notes that related rules, Nasdaq Current Rules 9212(a)(2)(B) and 9231(b)(1)(E), are not mandatory today and permit, but do not require, a Chief Hearing Officer to utilize a Special Panelist. Nasdaq has automated its system throughout the years so that most disciplinary actions today involve issues which pertain to quotations of securities, execution of transactions, reporting of transactions and trading practices, including rules, for example, that prohibit manipulation and insider trading, among other Rules as described in Nasdaq Current Rules 9120(u)(1) – (4). Further, FINRA has skilled panelists who, like the Special Panelists, are trained to handle matters involving the subject matters described in the Special Panelist definition. The Exchange believes that the notion of a Special Panelist is not necessary because today FINRA panelists are equipped to handle matters related to the subject matter of Current Nasdaq Rules 9120(u)(1) – (4) with respect to any type of hearing. The concept of a Special Panelist is not extraordinary, rather it is a presumed skill set for today's FINRA panelists. The Exchange therefore proposes to remove all

¹⁴ The term “Special Panelist” means an individual approved by the Nasdaq Board of Directors at least annually who may be selected by the Chief Hearing Officer to serve on a Hearing Panel pursuant to Rules 9212, 9221, 9231, and 9232. A Special Panelist may be drawn from FINRA’s Market Regulation Committee, or any other source the Nasdaq Board of Directors deems appropriate given the responsibilities of Special Panelists. Special Panelists may participate in disciplinary proceedings in which issues arise regarding: (1) the quotations of securities; (2) the execution of transactions; (3) the reporting of transactions; and (4) trading practices, including rules prohibiting manipulation and insider trading, and those Rules designated as Trading Rules (Rule 3300 Series), The Nasdaq Stock Market Rules (Rule 4000 Series), and Other Systems and Programs Rules (Rule 6000 Series).

references to the term “Special Panelist” from its rules because the reality of current panelist selection and disciplinary processes obviate the need for this rule.¹⁵

Hearing Panelists

The Exchange is removing a category of individuals that may serve on a Hearing Panel and re-lettering the remainder of the section.¹⁶ Phlx and BX rules do not include that category of individuals from among those whom the Chief Hearing Officer may select as a Panelist. The Exchange originally proposed Current Rule 9231(b)(1)(D) as a transitional rule when the Exchange sought to become registered as a national securities exchange. The Rule allowed “persons who served on the NASD National Adjudicatory Council, or a disciplinary subcommittee thereof, prior to the date that Nasdaq commenced operating as a national securities exchange to sit on Hearing Panels.”¹⁷ This enabled the Exchange to pull from a larger pool of candidates. The Exchange has now been a national securities exchange for nearly 12 years, and believes that there is a sufficient pool of panelists from which the Chief Hearing Officer may now pull. This is evidenced by the Hearing Panels both Phlx and BX are able to assemble. Given the passage of time, the need for Current Rule 9231(b)(1)(D) no longer exists.

¹⁵ See Nasdaq Current Rules 9120(u), 9212(a)(2)(B), 9221(a)(3), 9231(b)(2), and 9231(c)(2).

¹⁶ Specifically, the Exchange is removing Nasdaq Current Rule 9231(b)(1)(D) (“served on the FINRA National Adjudicatory Council or on a disciplinary subcommittee of the FINRA National Adjudicatory Council prior to the date that Nasdaq commenced operating as a national securities exchange; or”).

¹⁷ See Securities Exchange Act Release No. 34-53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) (order granting application of NASDAQ Stock Market LLC for registration as a national securities exchange).

Other Non-Substantive and Technical Amendments

The Exchange proposes to add a sentence within Nasdaq Current Rule 9270(e)(2), similar to Phlx, to add more specificity to this rule and make clear that the Office of Disciplinary Affairs may accept an offer of settlement and order of acceptance or refer them to the Exchange Review Council. The Exchange notes that today the Office of Disciplinary Affairs may accept an offer of settlement and order of acceptance or refer them to the Exchange Review Council, so this language is intended to clarify current practice under the rule.

The Exchange also proposes to make certain technical amendments throughout these rules to: (i) add “FINRA” before “Regulatory Contract”¹⁸; (ii) amend “NASD” to the updated name “FINRA”¹⁹; (iii) replace “Association” with “FINRA”²⁰; (iv) update certain incorrect cross-references to both FINRA and Nasdaq rule citations²¹; (v) add rule text in certain rules to conform the rule text of Nasdaq to Phlx²²; (vi) include the phrase “or person” in various places throughout the rule to make it clear that inclusion of the person associated with a member is applicable²³; and (vii) relocate and/or renumber

¹⁸ See Nasdaq Current Rules 8001, 9001, 9120(f)-(g), and Proposed New Rules 9120(w)-(x).

¹⁹ See Nasdaq Current Rule 8110.

²⁰ See Nasdaq Current Rules 8210(a)(1), 9558(a)(2), and 9610(a).

²¹ See Nasdaq Current Rules 9231(c), 9268(e)(2), 9269(d)(2), 9270(e), 9270(e)(2), 9270(f)(1)-(2), 9311(a), 9312(a)(3), 9331(a)(2), 9351(a), 9524(a)(1), 9524(b)(3), and 9559(q)(1).

²² See Nasdaq Current Rules IM-8310-3, 9211(a)(1)-(2), 9221(a)(1), 9231(b)(1), 9521(b)(3), and 9270(e)(2).

²³ See Nasdaq Current Rules 9552(b), 9553(b), 9554(b), 9555(b), and 9556(b).

certain rules for ease of reference given other amendments described herein.²⁴

b. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁵ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁶ 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. In addition, the Exchange believes that the proposed rule changes further the objectives of Section 6(b)(7) of the Act,²⁷ in particular, in that these changes provide for fair procedures for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, 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.

In addition, the Exchange believes that the proposed rule changes are consistent with Section 6(b)(6) of the Act,²⁸ which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and

²⁴ See Nasdaq Current Rule 9212(a)(2), which relocates language from Former Rule 9212(a)(2)(A); and Nasdaq Current Rule 9231(c), which relocates language from Former Rule 9231(c)(1).

²⁵ 15 U.S.C. 78f(b).

²⁶ 15 U.S.C. 78f(b)(5).

²⁷ 15 U.S.C. 78f(b)(7).

²⁸ 15 U.S.C. 78f(b)(6).

regulations thereunder, or the rules of the Exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

The Exchange believes that the proposed changes are consistent with these requirements because the changes further harmonize Nasdaq's investigative and adjudicatory processes with similar processes used by Phlx. The new processes are well-established as fair and designed to protect investors and the public interest. Because the Exchange is conforming the Nasdaq rule text to the Phlx rule text to eliminate any differences, the Exchange believes that the proposed changes should facilitate prompt, appropriate, and effective discipline of members and their associated persons consistent with the Act. The Exchange believes that adding references to the Nasdaq Regulation Department within the 8000 and 9000 Nasdaq Series rules as described in this proposal clarifies the involvement that Nasdaq Regulation plays in the investigation and enforcement of Nasdaq's disciplinary rules. In addition, the Exchange believes that adding references to FINRA within the 8000 and 9000 Nasdaq Series rules as described in this proposal brings greater transparency to its rules and clarifies the process as it exists today. Today, FINRA is empowered to act on behalf of the Exchange.²⁹

The Exchange believes that harmonizing the rule text of the investigative and adjudicatory processes with those of Phlx will reduce the burden on members and their associated persons as they only will need to be familiar with a single rule set going forward. Because the substance of the rules would remain unchanged, the Exchange believes that the proposed change would continue to provide fair procedures for the

²⁹ See Nasdaq Rule 8001.

suspending and disciplining of members and associated persons, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, 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.

The Exchange's proposal to replace the current rule text related to jurisdiction of Nasdaq to initiate disciplinary actions with Phlx's jurisdiction rule text will permit the Exchange to initiate a disciplinary action beyond two years after the effective date of resignation, cancellation, or revocation of a member. This provision would not apply retroactively, but would permit the Exchange to bring actions after the effective date of termination or registration, so long as the Exchange serves written notice within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member or associated person. The Exchange believes that this provision will provide the Exchange with the same latitude as Phlx to bring actions against its members and associated persons for violations of its rule. The Exchange believes that it is consistent with the Act to provide the Exchange with the ability to initiate violations for members and their associated persons for violations which took place while these members and associated persons were members of the Exchange. The rule change will better protect investors and the public interest by allowing actions to proceed that may otherwise have been time barred under the old rule.

The Exchange's proposal to amend the definition of Interested Staff will conform Nasdaq's definition to Phlx's definition. The Exchange believes that it is consistent with

the Act because the definition better defines who falls within the category of Interested Staff without substantively amending the definition.

Removing the definition of Special Panelist is consistent with the Act because today Nasdaq Current Rules 9212(a)(2)(B) and 9231(b)(1)(E) do not require a Chief Hearing Officer to utilize a Special Panelist. Further, FINRA has skilled panelists who, like the Special Panelists, are trained to handle matters involving the subject matters described in the Special Panelist definition, thus the reality of the panel selection and disciplinary processes today obviate the need for this rule.

Removing from the pool of panelists persons that served on the FINRA National Adjudicatory Council or on a disciplinary subcommittee of the FINRA National Adjudicatory Council prior to the date that Nasdaq commenced operating as a national securities exchange is consistent with the act because there currently exists a sufficient number of persons from whom a Chief Hearing Officer may select as a Panelist. This change is also consistent with the Act because it creates a uniform pool from which Panelists may be selected across the Nasdaq, BX, and Phlx, thus removing confusion that may result from having different pools of Panelists depending on the exchange.

Finally, making technical amendments in Nasdaq Rules 8001, 8110, 8210, IM-8310-3, 9001, 9120, 9211, 9212, 9221, 9231, 9268, 9269, 9270, 9311, 9312, 9331, 9351, 9521, 9524, 9552, 9553, 9554, 9555, 9556, 9558, 9559, and 9610 removes impediments to and perfects the mechanism of a free and open market by removing confusion that may result from having incorrect or incomplete material in the Exchange's rulebook.

The Exchange believes that its proposal furthers the objectives of Section 6(b)(7)

of the Act,³⁰ in that it is designed to provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, 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. Specifically, the Exchange believes that the proposed investigatory and disciplinary process is consistent with Section 6(b)(7) of the Act³¹ because it is based on the existing processes used by Phlx.

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 rule change is intended to more clearly align the text of Phlx's and the Exchange's rules. Specifically and as described in detail above, the Exchange believes that this change will bring efficiency and consistency to the investigative and adjudicatory processes, thereby reducing the burden on members and their associated persons who are also members of Phlx.

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

Not applicable.

³⁰ 15 U.S.C. 78f(b)(7).

³¹ Id.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii)³² of the Act and Rule 19b-4(f)(6) thereunder³³ in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

The Exchange believes that, because the proposed rule change does not change the investigative and adjudicatory processes that are well-established as fair and designed to protect investors and the public interest, and because the proposed changes are based on the current rules of Phlx which vests its regulation department with certain investigation and enforcement authority, the proposed rule change does not affect the protection of investors or the public interest. In addition, because substantially similar authority is vested with the Phlx Regulation Department, the Exchange does not believe that the changes will be impactful to competition whatsoever but will reduce the burden on members and persons associated with members. The Exchange also believes that the proposed changes to the Exchange's rules are non-controversial. The proposed New Rule 8000 and 9000 Series are materially unchanged from the related Phlx rules. The Phlx rules have already been deemed to be consistent with the Act, and thus adoption of the materially identical rules proposed herein does not affect the protection of investors

³² 15 U.S.C. 78s(b)(3)(A)(iii).

³³ 17 CFR 240.19b-4(f)(6).

or the public interest, nor does it raise new or novel issues. To the extent the proposed rules differ from Phlx, the differences are technical and conforming in nature to reflect the unique attributes of the Exchange. As such, the proposed rule change should have minimal impact on market participants and should be considered non-controversial. Accordingly, the Exchange believes that the proposed rule change does not affect the protection of investors or the public interest, and does not impose any significant burden on competition.

Furthermore, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

For the foregoing reasons, this rule filing qualifies for immediate effectiveness as a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved. The Exchange requests that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) so that it may amend its disciplinary rules immediately to conform to Phlx’s disciplinary process. The Exchange believes that the immediate effectiveness is reasonable because members will be unaffected by the amendments with the exception of the jurisdiction. The amendment

to expand jurisdiction will not apply retroactively and any complaints not filed within the existing two year time-period will be time-barred. The new jurisdiction rule will only apply to the applicable individuals or entities who terminate or deregister with the Exchange on September 1, 2018 or thereafter. The remaining changes to the rules amend the text, but not the investigatory or disciplinary processes themselves.

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

The proposed rule change are similar to the 8000 and 9000 Series of Phlx Rules.³⁴

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.

5. Text of the proposed rule change.

³⁴ To the extent the proposed rules differ from Phlx, the differences are technical and conforming in nature to reflect the unique attributes of the Exchange. For example, Phlx uses the terms “member” and “member organization” which are comparable to the terms Nasdaq uses, such as “member” and “associated person.”

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. _____ ; File No. SR-NASDAQ-2018-066)

August __, 2018

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Align the Exchange’s Investigatory and Disciplinary Processes with those of Nasdaq PHLX

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 August 7, 2018, 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 align its existing investigatory and disciplinary processes and related rules with the investigatory and disciplinary processes and related rules of Nasdaq PHLX LLC (“Phlx”).

The text of the proposed rule change is available on the Exchange’s Website at <http://nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Nasdaq proposes to amend certain of its rules to align its existing investigatory and disciplinary processes and related rules with the investigatory and disciplinary processes and related rules of Phlx. Nasdaq notes that Phlx amended its rules recently to adopt an investigatory and disciplinary process identical in all material respects to the investigatory and disciplinary processes of Nasdaq BX, Inc. ("BX") and Nasdaq.³ The amendment also vested the Phlx Regulation Department with the same authority proposed herein. The Exchange therefore proposes the below changes to the 8000 and 9000 Series of the Nasdaq Rules in order to conform its rules to those of Phlx 8000 and 9000 Series rules in all respects.

³ See Securities Exchange Act Release No. 82143 (November 22, 2017), 82 FR 56672 (November 29, 2017) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Investigatory and Disciplinary Processes Substantially Similar to Nasdaq BX, Inc. and The Nasdaq Stock Market LLC for Phlx, which, among other things, similarly enabled Phlx to retain discretion to perform these functions).

Definition of Nasdaq Regulation

The Exchange proposes to revise the definition of Nasdaq Current Rule 9120(w) (“Nasdaq Regulation”) to expressly include the Exchange’s Enforcement Department. The Exchange’s Enforcement Department is specifically charged with pursuing disciplinary action against members, persons associated with a member, and persons subject to the Exchange’s jurisdiction, in addition to FINRA’s departments of Enforcement and Market Regulation.

Similarly, the Exchange proposes to add references to the “Nasdaq Regulation Department” in Nasdaq Current Rule 9120(aa) (definition of the term “Party”). The Exchange also proposes to add a definition for the term “Party” as used in the Nasdaq Rule 9400 series,⁴ and to add references to “FINRA” in Nasdaq Current Rule 9120(aa)(4) to clarify that FINRA falls under the definition of “Party” as used in the Rule 9550 series. In addition, the Exchange is adding references to the Nasdaq Regulation Department throughout the Nasdaq Rule 8000 and 9000 series.⁵ These amendments will conform the text of Nasdaq 8000 and 9000 rules with those of Phlx.

⁴ The Exchange notes that, like Phlx, it is likewise including the Department of Enforcement and the Department of Market Regulation as potential parties to a matter under the Rule 9400 Series. The Exchange believes that including these departments in Rule 9400 Series is appropriate because they may be involved in the initiation of such a matter for Nasdaq currently. The Exchange is also adding FINRA to other parts of Rule 9400 where it is appropriate to show that FINRA may be the entity that initiated an action under the rule.

⁵ See Nasdaq Current Rules 8001, 8210, 8211, IM-8310-3, 9120, 9131, 9133, 9143, 9146, 9211, 9212, 9213, 9215, 9216, 9251, 9252, 9253, 9264, 9269, 9270, 9311, 9400, 9522, 9523, 9524, 9552, 9553, 9554, 9555, 9556, 9557, 9558, 9559, 9610, 9630, 9810, 9820, 9830, and 9840.

Role of FINRA

The Exchange proposes to add rule text to certain rules to clarify that FINRA may act on behalf of the Exchange. Today, FINRA is empowered to act on behalf of the Exchange.⁶ The revisions to these rules will therefore clarify FINRA's authority as it currently exists today.⁷

Jurisdiction

The Exchange proposes to replace the current rule text related to jurisdiction of Nasdaq to initiate disciplinary actions with Phlx's jurisdiction rule text. Current Nasdaq Rules 1012(h)⁸ and 1031(f)⁹ permit a disciplinary action to be brought within two years

⁶ See Nasdaq Current Rule 8001 ("Nasdaq and FINRA are parties to the Regulatory Contract pursuant to which FINRA has agreed to perform certain functions described in these rules on behalf of Nasdaq. Nasdaq rules that refer to Nasdaq Regulation, Nasdaq Regulation staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the Regulatory Contract.").

⁷ See Nasdaq Current Rules 9400, 9522, 9552, 9553, 9554, 9555, 9556, 9557, and 9558. The Exchange notes that FINRA currently performs the functions described in these rules. The proposed changes further clarify that in the rule text.

⁸ A resigned Nasdaq member or a Nasdaq member that has had its membership canceled or revoked shall continue to be subject to the filing of a complaint under the Nasdaq Rules based upon conduct that commenced prior to the effective date of the Nasdaq member's resignation from Nasdaq or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within two years after the effective date of resignation, cancellation, or revocation.

⁹ A person whose association with a Nasdaq member has been terminated and who is no longer associated with any member of Nasdaq or a person whose registration has been revoked or canceled shall continue to be subject to the filing of a complaint under Nasdaq Rules based upon conduct which commenced prior to the termination, revocation, or cancellation or upon such person's failure, while subject to Nasdaq's jurisdiction as provided herein, to provide information requested by Nasdaq pursuant to the Nasdaq Rules, but any such complaint shall be filed within: (A) two years after the effective date of termination of registration pursuant to subsection (c); provided, however, that any amendment to a notice of termination filed pursuant to paragraph (c)(2) that is filed within two years of the

after the effective date of resignation, cancellation, or revocation of a member or associated person. The current Nasdaq provisions are more limited than Phlx's jurisdictional language. Phlx Rule 9110(d) does not contain a time limit on when a matter may be brought against a member or associated person following its termination or deregistration, so long as the Exchange serves written notice within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member or associated person.¹⁰ Phlx Rule 9110(d) also makes clear

original notice that discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the two-year period under this subsection; (B) two years after the effective date of revocation or cancellation of registration pursuant to the Nasdaq Rules; or (C) in the case of an unregistered person, within two years after the date upon which such person ceased to be associated with the Nasdaq member.

A person whose association with a member has been terminated and is no longer associated with any Nasdaq member shall continue to be subject to a proceeding to suspend, consistent with Article IX, Section 2 of the Nasdaq By-Laws, his or her ability to associate with a member based on such person's failure to comply with an arbitration award or a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to Nasdaq Rules, provided that such proceeding is instituted within two years after the date of entry of such award or settlement.

¹⁰ Any member or any partner, officer, director or person employed by or associated with any member (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities Exchange Act of 1934 (Exchange Act), the rules and regulations thereunder, the By-Laws and Rules of the Exchange or any interpretation thereof, and the Rules, Regulations, resolutions and stated policies of the Board of Directors or any Committee of the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a member organization, or any other fitting sanction in accordance with the provisions of these disciplinary Rules.

that a member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or employees or by a member or other person who is associated with such member, as though such violation were its own.

While today, Nasdaq may bring an action against officers, directors, or employees or by a member or other person who is associated with such member,¹¹ the proposed rule makes this clear. The substantive amendment with respect to jurisdiction is with the timeframe

An individual member, or a partner, officer, director or person employed by or associated with a member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by employees under his supervision or by the member with which he is associated, as though such violations were his own. A member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or employees or by a member or other person who is associated with such member, as though such violation were its own.

Any member, or any partner, officer, director, or person employed by or associated with a member organization, and any member organization shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such person's permit or the termination of the employment by or the association with a member organization of such member or partner, officer, director or person, or following the deregistration of a member organization from the Exchange; provided, that the Exchange serves written notice to such former member, partner, officer, director, employee, associated person or member organization within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member, or as a partner, officer, director or person employed by or associated with a member organization, or prior to the deregistration of such member organization.

¹¹ The term "Associated Person" means any partner, officer, director, or branch manager of a Nasdaq member or Applicant (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such Nasdaq member or Applicant, or any employee of such Nasdaq member or Applicant, except that any person associated with a Nasdaq member or Applicant whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of the Nasdaq Rules. See Nasdaq Current Rule 1011(b).

for bringing a disciplinary action against a member or associated person. The proposed rule expands the timeframe.

The amendment to expand jurisdiction will not apply retroactively and any complaints not filed within the existing two year time-period will be time-barred. The new jurisdiction rule will only apply to the applicable individuals or entities who terminate or deregister with the Exchange on or after September 1, 2018.

The Exchange also proposes to eliminate the rule text contained within Nasdaq Current Rules 1012(h) and 1031(f) and reserve those sections.

Interested Staff Definition

The definition of Interested Staff is being conformed to Phlx's definition and includes references to Exchange and FINRA employees as those terms are proposed to be defined. The proposed Nasdaq definition better defines who falls within the category of Interested Staff without substantively amending the definition. At this time, Nasdaq's proposal mirrors the Phlx definition.¹² The Exchange also notes that it is removing the words "a district director or" from Nasdaq Current Rules 9120(t)(1)(D), 9120(t)(2)(D), and 9120(t)(3)(D) because there is no such position at the Exchange. The use of those words in the current definition refers to the individual to whom a FINRA employee may report. Those words are therefore being preserved as they relate to FINRA in Proposed New Rules 9120(t)(1)(H), 9120(t)(2)(E), and 9120(t)(3)(E).

¹² The Exchange notes that it is adopting a more comprehensive definition of "Interested Staff" under Nasdaq Current Rule 9120(t) to align it with the definition used by Phlx. Specifically, the Exchange is adopting new text that accounts for the role of the Nasdaq Regulation Department, including the involvement of employees thereof. Thus, the proposed new definition will include all individuals that should be considered as "Interested Staff" for purposes of the Nasdaq Rule 9000 Series.

Special Panelist

The Exchange is removing the definition of Special Panelist and re-lettering the remainder of the Section. Phlx and BX do not use or otherwise define a Special Panelist. Nasdaq Current Rule 9001(u) defines a Special Panelist.¹³ The Exchange notes that related rules, Nasdaq Current Rules 9212(a)(2)(B) and 9231(b)(1)(E), are not mandatory today and permit, but do not require, a Chief Hearing Officer to utilize a Special Panelist. Nasdaq has automated its system throughout the years so that most disciplinary actions today involve issues which pertain to quotations of securities, execution of transactions, reporting of transactions and trading practices, including rules, for example, that prohibit manipulation and insider trading, among other Rules as described in Nasdaq Current Rules 9120(u)(1) – (4). Further, FINRA has skilled panelists who, like the Special Panelists, are trained to handle matters involving the subject matters described in the Special Panelist definition. The Exchange believes that the notion of a Special Panelist is not necessary because today FINRA panelists are equipped to handle matters related to the subject matter of Current Nasdaq Rules 9120(u)(1) – (4) with respect to any type of hearing. The concept of a Special Panelist is not extraordinary, rather it is a presumed skill set for today’s FINRA panelists. The Exchange therefore proposes to remove all

¹³ The term “Special Panelist” means an individual approved by the Nasdaq Board of Directors at least annually who may be selected by the Chief Hearing Officer to serve on a Hearing Panel pursuant to Rules 9212, 9221, 9231, and 9232. A Special Panelist may be drawn from FINRA’s Market Regulation Committee, or any other source the Nasdaq Board of Directors deems appropriate given the responsibilities of Special Panelists. Special Panelists may participate in disciplinary proceedings in which issues arise regarding: (1) the quotations of securities; (2) the execution of transactions; (3) the reporting of transactions; and (4) trading practices, including rules prohibiting manipulation and insider trading, and those Rules designated as Trading Rules (Rule 3300 Series), The Nasdaq Stock Market Rules (Rule 4000 Series), and Other Systems and Programs Rules (Rule 6000 Series).

references to the term “Special Panelist” from its rules because the reality of current panelist selection and disciplinary processes obviate the need for this rule.¹⁴

Hearing Panelists

The Exchange is removing a category of individuals that may serve on a Hearing Panel and re-lettering the remainder of the section.¹⁵ Phlx and BX rules do not include that category of individuals from among those whom the Chief Hearing Officer may select as a Panelist. The Exchange originally proposed Current Rule 9231(b)(1)(D) as a transitional rule when the Exchange sought to become registered as a national securities exchange. The Rule allowed “persons who served on the NASD National Adjudicatory Council, or a disciplinary subcommittee thereof, prior to the date that Nasdaq commenced operating as a national securities exchange to sit on Hearing Panels.”¹⁶ This enabled the Exchange to pull from a larger pool of candidates. The Exchange has now been a national securities exchange for nearly 12 years, and believes that there is a sufficient pool of panelists from which the Chief Hearing Officer may now pull. This is evidenced by the Hearing Panels both Phlx and BX are able to assemble. Given the passage of time, the need for Current Rule 9231(b)(1)(D) no longer exists.

¹⁴ See Nasdaq Current Rules 9120(u), 9212(a)(2)(B), 9221(a)(3), 9231(b)(2), and 9231(c)(2).

¹⁵ Specifically, the Exchange is removing Nasdaq Current Rule 9231(b)(1)(D) (“served on the FINRA National Adjudicatory Council or on a disciplinary subcommittee of the FINRA National Adjudicatory Council prior to the date that Nasdaq commenced operating as a national securities exchange; or”).

¹⁶ See Securities Exchange Act Release No. 34-53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) (order granting application of NASDAQ Stock Market LLC for registration as a national securities exchange).

Other Non-Substantive and Technical Amendments

The Exchange proposes to add a sentence within Nasdaq Current Rule 9270(e)(2), similar to Phlx, to add more specificity to this rule and make clear that the Office of Disciplinary Affairs may accept an offer of settlement and order of acceptance or refer them to the Exchange Review Council. The Exchange notes that today the Office of Disciplinary Affairs may accept an offer of settlement and order of acceptance or refer them to the Exchange Review Council, so this language is intended to clarify current practice under the rule.

The Exchange also proposes to make certain technical amendments throughout these rules to: (i) add “FINRA” before “Regulatory Contract”¹⁷; (ii) amend “NASD” to the updated name “FINRA”¹⁸; (iii) replace “Association” with “FINRA”¹⁹; (iv) update certain incorrect cross-references to both FINRA and Nasdaq rule citations²⁰; (v) add rule text in certain rules to conform the rule text of Nasdaq to Phlx²¹; (vi) include the phrase “or person” in various places throughout the rule to make it clear that inclusion of

¹⁷ See Nasdaq Current Rules 8001, 9001, 9120(f)-(g), and Proposed New Rules 9120(w)-(x).

¹⁸ See Nasdaq Current Rule 8110.

¹⁹ See Nasdaq Current Rules 8210(a)(1), 9558(a)(2), and 9610(a).

²⁰ See Nasdaq Current Rules 9231(c), 9268(e)(2), 9269(d)(2), 9270(e), 9270(e)(2), 9270(f)(1)-(2), 9311(a), 9312(a)(3), 9331(a)(2), 9351(a), 9524(a)(1), 9524(b)(3), and 9559(q)(1).

²¹ See Nasdaq Current Rules IM-8310-3, 9211(a)(1)-(2), 9221(a)(1), 9231(b)(1), 9521(b)(3), and 9270(e)(2).

the person associated with a member is applicable²²; and (vii) relocate and/or renumber certain rules for ease of reference given other amendments described herein.²³

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,²⁴ in general, and furthers the objectives of Section 6(b)(5) of the Act,²⁵ 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. In addition, the Exchange believes that the proposed rule changes further the objectives of Section 6(b)(7) of the Act,²⁶ in particular, in that these changes provide for fair procedures for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, 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.

In addition, the Exchange believes that the proposed rule changes are consistent

²² See Nasdaq Current Rules 9552(b), 9553(b), 9554(b), 9555(b), and 9556(b).

²³ See Nasdaq Current Rule 9212(a)(2), which relocates language from Former Rule 9212(a)(2)(A); and Nasdaq Current Rule 9231(c), which relocates language from Former Rule 9231(c)(1).

²⁴ 15 U.S.C. 78f(b).

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ 15 U.S.C. 78f(b)(7).

with Section 6(b)(6) of the Act,²⁷ which requires the rules of an exchange provide that its members be appropriately disciplined for violations of the Act as well as the rules and regulations thereunder, or the rules of the Exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction.

The Exchange believes that the proposed changes are consistent with these requirements because the changes further harmonize Nasdaq's investigative and adjudicatory processes with similar processes used by Phlx. The new processes are well-established as fair and designed to protect investors and the public interest. Because the Exchange is conforming the Nasdaq rule text to the Phlx rule text to eliminate any differences, the Exchange believes that the proposed changes should facilitate prompt, appropriate, and effective discipline of members and their associated persons consistent with the Act. The Exchange believes that adding references to the Nasdaq Regulation Department within the 8000 and 9000 Nasdaq Series rules as described in this proposal clarifies the involvement that Nasdaq Regulation plays in the investigation and enforcement of Nasdaq's disciplinary rules. In addition, the Exchange believes that adding references to FINRA within the 8000 and 9000 Nasdaq Series rules as described in this proposal brings greater transparency to its rules and clarifies the process as it exists today. Today, FINRA is empowered to act on behalf of the Exchange.²⁸

The Exchange believes that harmonizing the rule text of the investigative and adjudicatory processes with those of Phlx will reduce the burden on members and their

²⁷ 15 U.S.C. 78f(b)(6).

²⁸ See Nasdaq Rule 8001.

associated persons as they only will need to be familiar with a single rule set going forward. Because the substance of the rules would remain unchanged, the Exchange believes that the proposed change would continue to provide fair procedures for the suspending and disciplining of members and associated persons, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, 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.

The Exchange's proposal to replace the current rule text related to jurisdiction of Nasdaq to initiate disciplinary actions with Phlx's jurisdiction rule text will permit the Exchange to initiate a disciplinary action beyond two years after the effective date of resignation, cancellation, or revocation of a member. This provision would not apply retroactively, but would permit the Exchange to bring actions after the effective date of termination or registration, so long as the Exchange serves written notice within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member or associated person. The Exchange believes that this provision will provide the Exchange with the same latitude as Phlx to bring actions against its members and associated persons for violations of its rule. The Exchange believes that it is consistent with the Act to provide the Exchange with the ability to initiate violations for members and their associated persons for violations which took place while these members and associated persons were members of the Exchange.

The rule change will better protect investors and the public interest by allowing actions to proceed that may otherwise have been time barred under the old rule.

The Exchange's proposal to amend the definition of Interested Staff will conform Nasdaq's definition to Phlx's definition. The Exchange believes that it is consistent with the Act because the definition better defines who falls within the category of Interested Staff without substantively amending the definition.

Removing the definition of Special Panelist is consistent with the Act because today Nasdaq Current Rules 9212(a)(2)(B) and 9231(b)(1)(E) do not require a Chief Hearing Officer to utilize a Special Panelist. Further, FINRA has skilled panelists who, like the Special Panelists, are trained to handle matters involving the subject matters described in the Special Panelist definition, thus the reality of the panel selection and disciplinary processes today obviate the need for this rule.

Removing from the pool of panelists persons that served on the FINRA National Adjudicatory Council or on a disciplinary subcommittee of the FINRA National Adjudicatory Council prior to the date that Nasdaq commenced operating as a national securities exchange is consistent with the act because there currently exists a sufficient number of persons from whom a Chief Hearing Officer may select as a Panelist. This change is also consistent with the Act because it creates a uniform pool from which Panelists may be selected across the Nasdaq, BX, and Phlx, thus removing confusion that may result from having different pools of Panelists depending on the exchange.

Finally, making technical amendments in Nasdaq Rules 8001, 8110, 8210, IM-8310-3, 9001, 9120, 9211, 9212, 9221, 9231, 9268, 9269, 9270, 9311, 9312, 9331, 9351, 9521, 9524, 9552, 9553, 9554, 9555, 9556, 9558, 9559, and 9610 removes impediments

to and perfects the mechanism of a free and open market by removing confusion that may result from having incorrect or incomplete material in the Exchange's rulebook.

The Exchange believes that its proposal furthers the objectives of Section 6(b)(7) of the Act,²⁹ in that it is designed to provide a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the barring of any person from becoming associated with a member thereof, 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. Specifically, the Exchange believes that the proposed investigatory and disciplinary process is consistent with Section 6(b)(7) of the Act³⁰ because it is based on the existing processes used by Phlx.

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 rule change is intended to more clearly align the text of Phlx's and the Exchange's rules. Specifically and as described in detail above, the Exchange believes that this change will bring efficiency and consistency to the investigative and adjudicatory processes, thereby reducing the burden on members and their associated persons who are also members of Phlx.

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.

²⁹ 15 U.S.C. 78f(b)(7).

³⁰ Id.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act³¹ and subparagraph (f)(6) of Rule 19b-4 thereunder.³²

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

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

³¹ 15 U.S.C. 78s(b)(3)(A)(iii).

³² 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2018-066 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-2018-066. 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 Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2018-066 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Eduardo A. Aleman
Assistant Secretary

³³ 17 CFR 200.30-3(a)(12).

EXHIBIT 5**The Nasdaq Stock Market Rules**

* * * * *

1012. General Provisions**(a) – (g)** No change.**(h) Reserved. [Retention of Jurisdiction**

A resigned Nasdaq member or a Nasdaq member that has had its membership canceled or revoked shall continue to be subject to the filing of a complaint under the Nasdaq Rules based upon conduct that commenced prior to the effective date of the Nasdaq member's resignation from Nasdaq or the cancellation or revocation of its membership. Any such complaint, however, shall be filed within two years after the effective date of resignation, cancellation, or revocation.]

* * * * *

1031. Registration Requirements**(a) – (e)** No change.**(f) Reserved. [Retention of Jurisdiction**

(1) A person whose association with a Nasdaq member has been terminated and who is no longer associated with any member of Nasdaq or a person whose registration has been revoked or canceled shall continue to be subject to the filing of a complaint under Nasdaq Rules based upon conduct which commenced prior to the termination, revocation, or cancellation or upon such person's failure, while subject to Nasdaq's jurisdiction as provided herein, to provide information requested by Nasdaq pursuant to the Nasdaq Rules, but any such complaint shall be filed within:

(A) two years after the effective date of termination of registration pursuant to subsection (c); provided, however, that any amendment to a notice of termination filed pursuant to paragraph (c)(2) that is filed within two years of the original notice that discloses that such person may have engaged in conduct actionable under any applicable statute, rule, or regulation shall operate to recommence the running of the two-year period under this subsection;

(B) two years after the effective date of revocation or cancellation of registration pursuant to the Nasdaq Rules; or

(C) in the case of an unregistered person, within two years after the date upon which such person ceased to be associated with the Nasdaq member.

(2) A person whose association with a member has been terminated and is no longer associated with any Nasdaq member shall continue to be subject to a proceeding to

suspend, consistent with Article IX, Section 2 of the Nasdaq By-Laws, his or her ability to associate with a member based on such person's failure to comply with an arbitration award or a written and executed settlement agreement obtained in connection with an arbitration or mediation submitted for disposition pursuant to Nasdaq Rules, provided that such proceeding is instituted within two years after the date of entry of such award or settlement.]

* * * * *

8000. Investigations and Sanctions

* * * * *

8001. Regulation of Nasdaq and its Members

Nasdaq and FINRA are parties to the FINRA Regulatory Contract pursuant to which FINRA has agreed to perform certain functions described in these rules on behalf of Nasdaq. Nasdaq rules that refer to Nasdaq Regulation Department, Nasdaq Regulation staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

Notwithstanding the fact that Nasdaq has entered into the Regulatory Contract with FINRA to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions.

8100. General Provisions

8110. Availability of Manual to Customers

Members shall keep and maintain current paper or electronic copies of the [NASD]FINRA and Nasdaq Manuals in a readily accessible place and shall make them available for examination by customers upon request.

* * * * *

8200. Investigations

8210. Provision of Information and Testimony and Inspection and Copying of Books

(a) Authority of the Nasdaq Regulation Department, Including FINRA Staff

For the purpose of an investigation, complaint, examination, or proceeding authorized by the Nasdaq By-Laws or Rules, Nasdaq Regulation Department, including FINRA staff shall have the right to:

(1) require a member, person associated with a member, or person subject to Nasdaq's jurisdiction to provide information orally, in writing, or electronically (if the requested information is, or is required to be, maintained in electronic form) and to testify at a location specified by Nasdaq Regulation Department, including FINRA[Association] staff, under oath or affirmation administered by a court reporter or a notary public if

requested, with respect to any matter involved in the investigation, complaint, examination, or proceeding; and

(2) No change.

(b) Other SROs and Regulators

Nasdaq Regulation Department, including FINRA staff, also may exercise the authority set forth in paragraph (a) for the purpose of an investigation, complaint, examination, or proceeding conducted by another domestic or foreign self-regulatory organization, association, securities or contract market, or regulator of such markets with which Nasdaq has entered into an agreement providing for the exchange of information and other forms of material assistance solely for market surveillance, investigative, enforcement, or other regulatory purposes.

(c) No change.

(d) Notice

A notice under this Rule shall be deemed received by the member or person to whom it is directed by mailing or otherwise transmitting the notice to the last known business address of the member or the last known residential address of the person as reflected in the Central Registration Depository. If Nasdaq Regulation Department staff, including FINRA staff, responsible for mailing or otherwise transmitting the notice to the member or person has actual knowledge that the address in the Central Registration Depository is out of date or inaccurate, then a copy of the notice shall be mailed or otherwise transmitted to:

(1) No change.

(2) any other more current address of the member or the person known to the Adjudicator or Nasdaq Regulation Department, including FINRA staff who is responsible for mailing or otherwise transmitting the notice.

(e) No change.

(f) Inspection and Copying

A witness, upon proper identification, may inspect the official transcript of the witness' own testimony. Upon written request, a person who has submitted documentary evidence or testimony in an investigation may procure a copy of the person's documentary evidence or the transcript of the person's testimony upon payment of the appropriate fees, except that prior to the issuance of a complaint arising from the investigation, Nasdaq Regulation Department, including FINRA staff, may for good cause deny such request.

8211. Automated Submission of Trading Data

(a) A member shall submit the trade data specified below in automated format as may be prescribed by the Nasdaq Regulation Department, including FINRA staff, from time to

time. This information shall be supplied with respect to any transaction or transactions that are the subject of a request for information made by Nasdaq Regulation Department, including FINRA staff.

(b) and (c) No change.

(d) In addition to the above trade data, a member shall submit such other information in such automated format as may from time to time be required by Nasdaq Regulation Department.

(e) Pursuant to the Rule 9600 Series, Nasdaq may exempt a member from the requirement that the data prescribed in paragraphs (b) through (d) above be submitted to Nasdaq Regulation Department, including FINRA staff, in an automated format for good cause shown.

* * * * *

IM-8310-3. Release of Disciplinary Complaints, Decisions and Other Information

(a) Nasdaq Regulation Department shall, in response to a request, release to the requesting party a copy of any identified disciplinary complaint or disciplinary decision issued by Nasdaq or any committee thereof; provided, however, that each copy of:

(1) - (4) No change.

(b) (1) Nasdaq Regulation Department shall release to the public information with respect to any disciplinary complaint initiated by the Department of Enforcement or the Department of Market Regulation of FINRA, as defined in Rules 9120(f) and (g) respectively, containing an allegation of a violation of a designated statute, rule or regulation of the Commission or Nasdaq, as determined by the Chief Regulatory Officer of Nasdaq (a "Designated Rule"); and may also release such information with respect to any disciplinary complaint or group of disciplinary complaints that involve a significant policy or enforcement determination where the release of information is deemed by the Chief Regulatory Officer to be in the public interest.

(2) No change.

(c) (1) Nasdaq Regulation Department shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the Chief Regulatory Officer to be in the public interest. Nasdaq Regulation Department also may release to the public information with respect to

any decision issued pursuant to the Rule 9550 Series imposing a suspension or cancellation of the member or a suspension or bar of the association of a person with a member, unless Nasdaq Regulation Department determines otherwise. Nasdaq Regulation Department may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary or other decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice. Nasdaq Regulation Department also shall release to the public information with respect to any temporary cease and desist order issued pursuant to the Rule 9800 Series. Nasdaq Regulation Department may release to the public information on any disciplinary or other decision issued pursuant to the Rule 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

(A) Nasdaq Regulation Department shall release to the public, in unredacted form, information with respect to any disciplinary decision issued pursuant to the Rule 9300 Series that does not meet one or more of the criteria in IM-8310-3(c)(1) for the release of information to the public, provided that the underlying decision issued pursuant to the Rule 9200 Series meets one or more of the criteria in IM-8310-3(c)(1) for the release of information to the public, and information regarding such decision has been released to the public in unredacted form.

(B) In the event there is more than one respondent in a disciplinary decision issued pursuant to the Rule 9000 Series, and sanctions imposed on one or more, but not all, of the respondents meet one or more of the criteria in IM-8310-3(c)(1) for the release of information to the public, Nasdaq Regulation Department shall release to the public, in unredacted form, information with respect to the respondent(s) who meet such criteria, and may release to the public, in redacted form, information with respect to the respondent(s) who do not meet such criteria. Notwithstanding the foregoing, Nasdaq Regulation Department shall release to the public, in unredacted form, information with respect to any respondent in a disciplinary decision issued pursuant to the Rule 9300 Series if the sanctions imposed on such respondent in the underlying decision issued pursuant to the Rule 9200 Series meet one or more of the criteria for release of information to the public, and information with respect to that respondent has been released in unredacted form.

(2) No change.

(d) If a decision issued pursuant to the Rule 9000 Series other than by the Nasdaq Review Council is not appealed to or called for review by the Nasdaq Review Council, the decision shall become effective on a date set by Nasdaq Regulation Department but not before the expiration of 45 days after the date of decision.

(e) - (j) No change.

(k) Releases to the public referred to in paragraphs (b) and (c) above shall identify the Nasdaq Rules or SEC Rules violated, and shall describe the conduct constituting such violation. Releases may also identify the member with which an individual was associated at the time the violations occurred if such identification is determined by Nasdaq Regulation Department to be in the public interest.

(l) Nasdaq Regulation Department shall release to the public, in the form issued by the Nasdaq Review Council, information with respect to any decision issued by the Nasdaq Review Council pursuant to Rule 1015. In its discretion, the Nasdaq Review Council may have redacted certain information from such decisions prior to their issuance.

* * * * *

9000. Code of Procedure[(9000)]

9001. Nasdaq Regulatory Contract with FINRA

Nasdaq and FINRA are parties to the FINRA Regulatory Contract, pursuant to which FINRA has agreed to perform certain functions described in the Rule 9000 Series on behalf of Nasdaq. Nasdaq Rules that refer to the Nasdaq Regulation Department, Nasdaq Regulation Department staff, Nasdaq staff, and Nasdaq departments should be understood as also referring to FINRA, FINRA staff and FINRA departments acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

Notwithstanding the fact that Nasdaq has entered into the FINRA Regulatory Contract with FINRA to perform some of Nasdaq's functions, Nasdaq shall retain ultimate legal responsibility for, and control of, such functions.

9100. Application and Purpose

9110. Application

(a) Proceedings

The Rule 9000 Series is the Code of Procedure and includes proceedings for disciplining a member or person associated with a member; proceedings for regulating the activities of a member experiencing financial or operational difficulties; proceedings for summary or non-summary suspensions, cancellations, bars, prohibitions, or limitations; and proceedings for obtaining relief from the eligibility requirements of the Nasdaq By-Laws and the Rules of Nasdaq. The Rule 9100 Series is of general applicability to all proceedings set forth in the Rule 9000 Series, unless a Rule specifically provides otherwise.

(b) and (c) No change.

(d) Jurisdiction

Any member or any partner, officer, director or person employed by or associated with any member (the Respondent) who is alleged to have violated or aided and abetted a violation of the Securities Exchange Act of 1934 (Exchange Act), the rules and

regulations thereunder, the By-Laws and Rules of the Exchange or any interpretation thereof, and the Rules, Regulations, resolutions and stated policies of the Board of Directors or any Committee of the Exchange, shall be subject to the disciplinary jurisdiction of the Exchange, and after notice and opportunity for a hearing may be appropriately disciplined by expulsion, suspension, fine, censure, limitation or termination as to activities, functions, operations, or association with a member organization, or any other fitting sanction in accordance with the provisions of these disciplinary Rules.

An individual member, or a partner, officer, director or person employed by or associated with a member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by employees under his supervision or by the member with which he is associated, as though such violations were his own. A member may be charged with any violation within the disciplinary jurisdiction of the Exchange committed by its officers, directors, or employees or by a member or other person who is associated with such member, as though such violation were its own.

Any member, or any partner, officer, director, or person employed by or associated with a member, and any member shall continue to be subject to the disciplinary jurisdiction of the Exchange following the termination of such person's permit or the termination of the employment by or the association with a member of such member or partner, officer, director or person, or following the deregistration of a member from the Exchange; provided, that the Exchange serves written notice to such former member, partner, officer, director, employee, associated person or member within one year of receipt by the Exchange of notice of such termination or deregistration that the Exchange is making inquiry into a matter or matters which occurred prior to the termination of such person's status as a member, or as a partner, officer, director or person employed by or associated with a member, or prior to the deregistration of such member.

9120. Definitions

(a) – (e) No change

(f) “Department of Enforcement”

The term “Department of Enforcement” means the Department of Enforcement of FINRA Regulation, acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

(g) “Department of Market Regulation”

The term “Department of Market Regulation” means the Department of Market Regulation of FINRA, acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

(h) “Department of Member Regulation”

The term “Department of Member Regulation” means the Department of Member Regulation of FINRA, acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

(i) – (s) No change.

(t) “Interested Staff”

The term “Interested Staff” means, in the context of:

(1) a disciplinary proceeding under the Rule 9200 Series and the Rule 9300 Series:

(A) the Head of the Nasdaq Regulation Department[Enforcement];

(B) an Exchange employee of the Nasdaq Regulation Department[or FINRA employee of the Department of Enforcement] who reports, directly or indirectly, to the Head of the Nasdaq Regulation Department[Enforcement];

(C) an Exchange employee[Nasdaq Regulation or FINRA employee] who directly participated in the authorization of the complaint;

(D) an Exchange employee[Nasdaq Regulation or FINRA employee] who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and [a district director or] department head to whom such employee reports;

(E) the Head of the Department of Enforcement;

(F) a FINRA employee of the Department of Enforcement who reports, directly or indirectly, to the Head of Enforcement;

(G) a FINRA employee who directly participated in the authorization of the complaint;

(H) a FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific disciplinary proceeding, and a district director or department head to whom such employee reports;

(I)[(E)] the Head of the Department of Market Regulation; or

(J)[(F)] an employee of the Department of Market Regulation who reports, directly or indirectly, to the Head of the Department of Market Regulation;

(2) a proceeding under the Rule 9520 Series or Rule 9550 Series:

(A) the head of the Exchange or FINRA department or office that issues the notice or petition or is designated as a Party;

(B) an Exchange employee[Nasdaq Regulation] or FINRA employee who reports, directly or indirectly, to such person;

(C) an Exchange employee[Nasdaq Regulation] or FINRA employee who directly participated in the authorization or initiation of the proceeding; [or]

(D) an Exchange employee[Nasdaq Regulation or FINRA employee] who directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and [a district director] or department head to whom such employee reports; or

(E) a FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific proceeding, and a district director or department head to whom such employee reports; or

(3) a proceeding under the Rule 9600 Series:

(A) the head of the Exchange or FINRA department or office that issues the decision granting or denying an exemption or is designated as a Party;

(B) an Exchange employee[Nasdaq Regulation] or FINRA employee who reports, directly or indirectly, to such person;

(C) an Exchange employee[Nasdaq Regulation] or FINRA employee who directly participated in the exemption proceeding; [or]

(D) an Exchange employee[Nasdaq Regulation or FINRA employee] who directly participated in an examination, investigation, prosecution, or litigation related to a specific exemption proceeding, and [a district director or] department head to whom such employee reports; or

(E) a FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific exemption proceeding, and a district director or department head to whom such employee reports; or

(4) a proceeding under the Rule 9800 Series:

(A) the Head of the Nasdaq Regulation Department[Enforcement];

(B) an employee of the Nasdaq Regulation Department[Department of Enforcement] who reports, directly or indirectly, to the Head of the Nasdaq Regulation Department[Enforcement];

(C) the Head of Enforcement;

(D) a FINRA employee who reports, directly or indirectly, to the Head of Enforcement;

(E)~~(C)~~ an Exchange employee~~[Nasdaq Regulation]~~ or FINRA employee who directly participated in the authorization of the notice that initiates a temporary cease and desist proceeding;

(F)~~(D)~~ an Exchange employee~~[Nasdaq Regulation]~~ or FINRA employee who directly participated in an examination, investigation, prosecution, or litigation related to a specific temporary cease and desist proceeding, and a district director or department head to whom such employee reports;

(G)~~(E)~~ the Head of the Department of Market Regulation; or

(H)~~(F)~~ a[n] FINRA employee~~[of the Department of Market Regulation]~~ who reports, directly or indirectly, to the Head of the Department of Market Regulation.

(u) “Special Panelist”

The term “Special Panelist” means an individual approved by the Nasdaq Board of Directors at least annually who may be selected by the Chief Hearing Officer to serve on a Hearing Panel pursuant to Rules 9212, 9221, 9231, and 9232. A Special Panelist may be drawn from FINRA’s Market Regulation Committee, or any other source the Nasdaq Board of Directors deems appropriate given the responsibilities of Special Panelists. Special Panelists may participate in disciplinary proceedings in which issues arise regarding:

- (1) the quotations of securities;
- (2) the execution of transactions;
- (3) the reporting of transactions; and
- (4) trading practices, including rules prohibiting manipulation and insider trading, and those Rules designated as Trading Rules (Rule 3300 Series), The Nasdaq Stock Market Rules (Rule 4000 Series), and Other Systems and Programs Rules (Rule 6000 Series).]

(v)~~u~~ “Nasdaq Board”

The term “Nasdaq Board” means the Board of Directors of the Nasdaq.

(w)~~v~~ “Nasdaq Regulation” or “Nasdaq Regulation Department”

The term “Nasdaq Regulation” or “Nasdaq Regulation Department” means the ~~[D]~~department of Nasdaq that administers the Code, and includes the Nasdaq Enforcement Department.

(x)~~w~~ “Office of Disciplinary Affairs”

The term “Office of Disciplinary Affairs” means the Office of Disciplinary Affairs for FINRA, acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

([y]x) “Office of Hearing Officers”

The term “Office of Hearing Officers” means the Office of Hearing Officers of FINRA, acting on behalf of Nasdaq pursuant to the FINRA Regulatory Contract.

([z]y) “Panelist”

The term “Panelist,” as used in the Rule 9200 Series, the Rule 9550 Series, and the Rule 9800 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer. As used in the Rule 9300 Series, the term means a current or former member of the Nasdaq Review Council or a former Director who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.

([aa]z) “Party”

With respect to a particular proceeding, the term “Party” means:

(1) in the Rule 9200 Series, the Rule 9300 Series, and the Rule 9800 Series, the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation or a Respondent;

(2) in the Rule 9400 Series, the Nasdaq Regulation Department, Department of Enforcement or the Department of Market Regulation, or a Member or associated person of a Member that is the subject of a notice under Rule 9400(a)(2);

(3)[(2)] in the Rule 9520 Series, the Department of Member Regulation or a member that is the subject of a notice or files an application under Rule 9522;

(4)[(3)] in the Rule 9550 Series, the Nasdaq or FINRA department or office that issued the notice or, if another Nasdaq or FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, the Nasdaq or FINRA department or office that is so designated or a member or person that is the subject of a notice under the Rule 9550 Series; or

(5)[(4)] in the Rule 9600 Series, the department or office designated under Rule 9620 to issue the decision granting or denying an exemption or a member that seeks the exemption under Rule 9610.

([bb]aa) “Respondent”

The term “Respondent” means, in a disciplinary proceeding governed by the Rule 9200 Series and in an appeal or review governed by the Rule 9300 Series, a Nasdaq member or associated person against whom a complaint is issued. In a proceeding governed by the Rule 9800 Series, the term “Respondent” means a Nasdaq member or associated person that has been served a notice initiating a cease and desist proceeding.

([cc]bb) “Review Subcommittee”

The term “Review Subcommittee” means a body appointed by the Nasdaq Review Council pursuant to the Nasdaq By-Laws.

(dd)cc “Statutory Disqualification Committee”

The term “Statutory Disqualification Committee” means a Subcommittee of the Nasdaq Review Council that makes a recommended decision to grant or deny an application for relief from the eligibility requirements of Nasdaq to the Nasdaq Review Council pursuant to the Rule 9520 Series.

(ee)dd “Subcommittee”

The term “Subcommittee” means an Adjudicator that is:

(1) constituted under Rule 9331(a) to participate in the Nasdaq Review Council’s consideration of an appeal or a review of a disciplinary proceeding pursuant to the Rule 9300 Series;

(2) constituted under Rule 9559(q) or Rule 9630 to conduct a review proceeding.

* * * * *

9131. Service of Complaint and Document Initiating a Proceeding

(a) and (b) No change.

(c) Filing Requirement

A complaint that is served upon a Respondent and each document initiating a proceeding that is served upon a Party, along with the certificate of service executed in connection with the service upon such Respondent or Party, shall be filed with the Nasdaq Regulation Department pursuant to Rule 9135.

* * * * *

9133. Service of Papers Other Than Complaints, Orders, Notices, or Decisions

(a) and (b) No change.

(c) Filing Requirement

The paper that is served upon a Party, along with the certificate of service executed in connection with the service upon such Party, shall be filed with the Nasdaq Regulation Department pursuant to Rule 9135.

(d) No change.

* * * * *

9143. Ex Parte Communications

(a) and (b) No change.

(c) Remedies

Upon receipt of a communication made or knowingly caused to be made by any Party, any counsel or representative to a Party, or any Interested Staff in violation of subparagraph (a)(1), the Nasdaq Regulation Department or an Adjudicator may, to the extent consistent with the interests of justice, the policies underlying the Act, and Nasdaq's Rules, order the Party responsible for the communication, or the Party who may benefit from the ex parte communication made, to show cause why the Party's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected by reason of such ex parte communication. All participants to a proceeding may respond to any allegations or contentions contained in a prohibited ex parte communication placed in the record. Such responses shall be placed in the record.

(d) - (e) No change.

* * * * *

9146. Motions

(a) – (j) No change.

(k) Motion For Protective Order

(1) A Party, a person who is the owner, subject, or creator of a Document subject to production under Rule 8210 or any other Rule which may be introduced as evidence in a disciplinary proceeding, or a witness who testifies at a hearing in a disciplinary proceeding may file a motion requesting a protective order to limit disclosure or prohibit from disclosure to other Parties, witnesses or other persons, except the Department of Enforcement and the Department of Market Regulation and Nasdaq Regulation Department staff, Documents or testimony that contain confidential information. The motion shall include a general summary or extract of the Documents or testimony without revealing confidential details. If the movant seeks a protective order against disclosure to other Parties, copies of the Documents shall not be served on the other Parties. Unless the Documents are unavailable, the movant shall file for in camera inspection a sealed copy of the Documents for which the order is sought. If the movant is not a Party, the motion shall be served on each Party by the movant using a method in Rule 9134(a) and filed with the Adjudicator. A motion for a protective order shall be granted only upon a finding that disclosure of the Document or testimony would have a demonstrated adverse business effect on the movant or would involve an unreasonable breach of the movant's personal privacy.

(2) If a protective order is granted, the order shall set forth the restrictions on use and disclosure of such Document or testimony. An Adjudicator does not have the authority to issue a protective order that would limit in any manner the use by the staff of Nasdaq

Regulation Department of such Documents or testimony in the Nasdaq Regulation Department staff's performance of their regulatory and self-regulatory responsibilities and functions, including the transmittal, without restriction to the recipient, of such Documents or testimony to state, federal, or foreign regulatory authorities or other self-regulatory organizations. An Adjudicator does not have the authority to issue a protective order that purports to protect from production such Documents or testimony in the event that Nasdaq is subject to a subpoena requiring that the Documents or testimony be produced.

(1) No change.

* * * * *

9211. Authorization of Complaint

(a) Complaint

(1) If the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation believes that any Nasdaq member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which Nasdaq has jurisdiction to enforce, the Nasdaq Regulation Department, [including] the Department of Enforcement, or the Department of Market Regulation may request authorization from the FINRA Office of Disciplinary Affairs to issue a complaint.

(2) The Nasdaq Board shall have the authority to direct the Nasdaq Regulation Department, including the FINRA Office of Disciplinary Affairs, to authorize and the Department of Enforcement or the Department of Market Regulation to issue a complaint when, on the basis of information and belief, the Nasdaq Board is of the opinion that any Nasdaq member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which Nasdaq has jurisdiction to enforce.

(b) No change.

9212. Complaint Issuance — Requirements, Service, Amendment, Withdrawal, and Docketing

(a) Form, Content, Notice, Docketing, and Service

(1) If a complaint is authorized, the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation shall issue the complaint. Each complaint shall be in writing and signed by the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation. The complaint shall specify in reasonable detail the conduct alleged to constitute the violative activity and the rule, regulation, or statutory provision the Respondent is alleged to be violating or to have violated. If the complaint consists of several causes of action, each cause shall be stated separately. Complaints shall be served by the Nasdaq Regulation Department, the

Department of Enforcement or the Department of Market Regulation on each Party pursuant to Rules 9131 and 9134, and filed at the time of service with the Office of Hearing Officers pursuant to Rules 9135, 9136, and 9137.

(2) At the time of issuance of a complaint, the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation may propose an appropriate location for the hearing.[:

(A) an appropriate location for the hearing; and

(B) if the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120(u), that the Chief Hearing Officer select a Special Panelist for the Hearing Panel, or, if applicable, the Extended Hearing Panel as described in Rule 9231.]

(b) Amendments to Complaint

The Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation may file and serve an amended complaint once as a matter of course at any time before the Respondent answers the complaint. Otherwise, upon motion by the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation, the Hearing Officer may permit the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation to amend the complaint, including amendments so as to make the complaint conform to the evidence presented, after considering whether the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation has shown good cause for the amendment and whether any Respondent will suffer any unfair prejudice if the amendment is allowed. Amendments to complaints will be freely granted when justice so requires.

(c) Withdrawal of Complaint

With prior leave of the Hearing Officer, the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation may withdraw a complaint. If the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation withdraws the complaint before the earlier of (1) the Hearing Panel's or, if applicable, the Extended Hearing Panel's, issuance of a ruling on a motion for summary disposition, or (2) the start of the hearing on the merits, the withdrawal of the complaint by the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation shall be without prejudice and the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation shall be permitted to refile a case based on allegations concerning the same facts and circumstances that are set forth in the withdrawn complaint. If the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation requests to withdraw such complaint after the occurrence of either of the two events set forth in (1) and (2) in this paragraph, the Hearing Panel or, if applicable, the

Extended Hearing Panel, after considering the facts and circumstances of the request, shall determine whether the withdrawal shall be granted with prejudice.

(d) No change.

9213. Assignment of Hearing Officer and Appointment of Panelists to Hearing Panel or Extended Hearing Panel

(a) Assignment of Hearing Officer

As soon as practicable after the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation has filed a complaint with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the disciplinary proceeding and shall serve the Parties with notice of the Hearing Officer's assignment pursuant to Rule 9132.

(b) No change.

* * * * *

9215. Answer to Complaint

(a) – (e) No change.

(f) Failure to Answer, Default

If a Respondent does not file an answer or make any other filing or request related to the complaint with the Office of Hearing Officers within the time required, the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation shall send a second notice to such Respondent requiring an answer within 14 days after service of the second notice. The second notice shall state that failure of the Respondent to reply within the period specified shall allow the Hearing Officer, in the exercise of his or her discretion, pursuant to Rule 9269 to: (1) treat as admitted by the Respondent the allegations in the complaint; and (2) issue a default decision against the Respondent. If the Respondent fails to file an answer with the Office of Hearing Officers within the time required, the Hearing Officer may issue, a default decision against the Respondent pursuant to Rule 9269.

9216. Acceptance, Waiver, and Consent; Plan Pursuant to SEC Rule 19d-1(c)(2)

(a) Acceptance, Waiver, and Consent Procedures

(1) Notwithstanding Rule 9211, if the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation has reason to believe a violation has occurred and the member or associated person does not dispute the violation, the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation may prepare and request that the member or associated person execute a letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Nasdaq Review Council, the Commission, and the courts, or to otherwise challenge the

validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by Nasdaq Regulation Department staff.

(2) and (3) No change.

(4) If the letter is accepted by the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs, it shall be deemed final and shall constitute the complaint, answer, and decision in the matter. If the letter is rejected by the Review Subcommittee or the Nasdaq Review Council, the Nasdaq Regulation Department may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the execution of the letter of acceptance, waiver, and consent under subparagraph (a)(1) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

(b) Procedure for Violation Under Plan Pursuant to SEC Rule 19d-1(c)(2)

(1) Notwithstanding Rule 9211, the Nasdaq Review Council may, subject to the requirements set forth in subparagraphs (b)(2) through (b)(4) and in SEC Rule 19d-1(c)(2), impose a fine (not to exceed \$2,500) and/or a censure on any member or associated person with respect to any rule listed in IM-9216. If the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation has reason to believe a violation has occurred and if the member or associated person does not dispute the violation, the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation may prepare and request that the member or associated person execute a minor rule violation plan letter accepting a finding of violation, consenting to the imposition of sanctions, and agreeing to waive such member's or associated person's right to a hearing before a Hearing Panel or, if applicable, an Extended Hearing Panel, and any right of appeal to the Nasdaq Review Council, the Commission, and the courts, or to otherwise challenge the validity of the letter, if the letter is accepted. The letter shall describe the act or practice engaged in or omitted, the rule, regulation, or statutory provision violated, and the sanction or sanctions to be imposed. Unless the letter states otherwise, the effective date of any sanction(s) imposed will be a date to be determined by Nasdaq Regulation Department staff.

(2) and (3) No change.

(4) If the letter is accepted by the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs, it shall be deemed final and Nasdaq shall report the violation to the Commission as required by the Commission pursuant to a plan approved under SEC Rule 19d-1(c)(2). If the letter is rejected by the Review Subcommittee or the Nasdaq Review Council, the Nasdaq Regulation Department may take any other appropriate disciplinary action with respect to the alleged violation or violations. If the letter is rejected, the member or associated person shall not be prejudiced by the

execution of the minor rule violation plan letter under subparagraph (b)(1)(A) and the letter may not be introduced into evidence in connection with the determination of the issues set forth in any complaint or in any other proceeding.

* * * * *

9221. Request for Hearing

(a) Respondent Request for Hearing

With the filing of any Respondent's answer, such Respondent may:

(1) request a hearing; and

(2) No change.; and

(3) propose, if the complaint alleges at least one cause of action involving a violation of a statute or rule described in Rule 9120(u), that the Chief Hearing Officer select a Special Panelist for a Hearing Panel or, if applicable, an Extended Hearing Panel as described in Rule 9231.]

(b) – (d) No change.

* * * * *

9231. Appointment by the Chief Hearing Officer of Hearing Panel or Extended Hearing Panel or Replacement Hearing Officer

(a) No change.

(b) Hearing Panel

The Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in paragraph (e) and in Rule 9234(a), (c), (d), or (e). The Hearing Officer shall serve as the chair of the Hearing Panel. Each Panelist shall be associated with a member of Nasdaq or retired therefrom.

(1) [Except as provided in (2), t]The Chief Hearing Officer shall select as a Panelist a person who:

(A) and **(B)** No change.

(C) previously served as a Director, but does not serve currently in that position; or

(D)[served on the FINRA National Adjudicatory Council or on a disciplinary subcommittee of the FINRA National Adjudicatory Council prior to the date that Nasdaq commenced operating as a national securities exchange; or

(E)] is a FINRA Panelist approved by the Nasdaq Board at least annually, including a member of FINRA’s Market Regulation Committee or a person who previously served on the Market Regulation Committee not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed, or from other sources the Board deems appropriate given the responsibilities of Panelists[or is drawn from other sources the Board deems appropriate given the responsibilities of Panelists].

[(2) If the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120(u), the Chief Hearing Officer may select as a Panelist a person who is currently a Special Panelist or a person who previously was a Special Panelist not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed.]

(c) Extended Hearing Panel

Upon consideration of the complexity of the issues involved, the probable length of the hearing, or other factors that the Chief Hearing Officer deems material, the Chief Hearing Officer may determine that a matter shall be designated an Extended Hearing, and that such matter shall be considered by an Extended Hearing Panel. The Extended Hearing Panel shall be composed of a Hearing Officer and two Panelists, except as provided in Rule 9234(a), (c), (d), or (e). The Hearing Officer will serve as the chair of the Extended Hearing Panel. The Panelists shall be associated with a member of Nasdaq, or retired therefrom. The Chief Hearing Officer shall have discretion to compensate any or all Panelists of an Extended Hearing Panel at the rate then in effect for arbitrators appointed under FINRA[the] Rule 12000 and 13000[10000] Series. The Chief Hearing Officer shall select as a Panelist a person who meets the criteria set forth in paragraph (b)(1).

[(1) Except as provided in (2), the Chief Hearing Officer shall select as a Panelist a person who meets the criteria set forth in paragraph (b)(1).

(2) If the complaint alleges at least one cause of action involving a violation of a statute or a rule described in Rule 9120(u), the Chief Hearing Officer may select as a Panelist a person who is currently a Special Panelist or a person who previously was a Special Panelist not earlier than four years before the date the complaint was served upon the Respondent who was the first served Respondent in the disciplinary proceeding for which the Hearing Panel or the Extended Hearing Panel is being appointed.]

(d) and (e) No change.

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9251. Inspection and Copying of Documents in Possession of Staff

(a) Documents to be Available for Inspection and Copying

(1) Unless otherwise provided by this Rule, or by order of the Hearing Officer, the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation shall make available for inspection and copying by any Respondent, Documents prepared or obtained by Interested Staff in connection with the investigation that led to the institution of proceedings. Such Documents include but are not limited to:

- (A) requests for information issued pursuant to Rule 8210;
- (B) every other written request directed to persons not employed by Nasdaq to provide Documents or to be interviewed;
- (C) the Documents provided in response to any such requests described in (A) and (B) above;
- (D) all transcripts and transcript exhibits; and
- (E) all other Documents obtained from persons not employed by Nasdaq.

(2) The Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation shall promptly inform the Hearing Officer and each other Party if, after the issuance of a complaint, requests for information under Rule 8210 are issued under the same investigative file number under which the investigation leading to the institution of disciplinary proceedings was conducted. If Interested Staff receives Documents pursuant to a request for information under Rule 8210 after Documents have been made available to a Respondent for inspection and copying as set forth in paragraph (a), and if such Documents are material and relevant to the disciplinary proceeding in which such Respondent is a Party, the additional Documents shall be made available to the Respondent not later than 14 days after the Interested Staff receives such Documents. If a hearing on the merits is scheduled to begin, Interested Staff shall make the additional Documents available to the Respondent not less than ten days before the hearing. If Interested Staff receives such Documents ten or fewer days before a hearing on the merits is scheduled to begin or after such hearing begins, Interested Staff shall make the additional Documents available immediately to the Respondent.

(3) Nothing in subparagraph (a)(1) shall limit the discretion of the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation to make available any other Document or the authority of the Hearing Officer to order the production of any other Document.

(b) Documents That May Be Withheld

(1) The Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation may withhold a Document if:

- (A) the Document is privileged or constitutes attorney work product;
- (B) the Document is an examination or inspection report, an internal memorandum, or other note or writing prepared by a Nasdaq employee that shall not be offered in evidence;

(C) the Document would disclose (i) an examination, investigatory or enforcement technique or guideline of Nasdaq, a federal, state, or foreign regulatory authority, or any self-regulatory organization; (ii) the identity of a source, including a federal, state, or foreign regulatory authority or a self-regulatory organization that furnished information or was furnished information on a confidential basis regarding an investigation, an examination, an enforcement proceeding, or any other type of civil or criminal enforcement action; or (iii) an examination, an investigation, an enforcement proceeding, or any other type of civil or criminal enforcement action under consideration by, or initiated by Nasdaq, a federal, state, or foreign regulatory authority, or a self-regulatory organization; or

(D) the Hearing Officer grants leave to withhold a Document or category of Documents as not relevant to the subject matter of the proceeding, or for other good cause shown.

(2) Nothing in subparagraph (b)(1) authorizes the Nasdaq Regulation Department, Department of Enforcement or the Department of Market Regulation to withhold a Document, or a part thereof, that contains material exculpatory evidence.

(c) Withheld Document List

The Hearing Officer may require the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation to submit to the Hearing Officer a list of Documents withheld pursuant to subparagraphs (b)(1)(A) through (D) or to submit to the Hearing Officer any Document withheld. Upon review, the Hearing Officer may order the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation to make the list or any Document withheld available to the other Parties for inspection and copying. A motion to require the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation to produce a list of Documents withheld pursuant to paragraph (b) shall be based upon some reason to believe that a Document is being withheld in violation of the Code.

(d) Timing of Inspection and Copying

The Hearing Officer shall determine the schedule of production of documents pursuant to this Rule. Unless otherwise ordered by the Hearing Officer, the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation shall commence making Documents available to a Respondent for inspection and copying pursuant to this Rule not later than 21 days after service of the Respondent's answer or, if there are multiple Respondents, not later than 21 days after the last timely answer is filed. If a Respondent in a multi-Respondent case fails to answer, the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation shall make Documents available to all other Respondents not later than the later of:

(1) 21 days after the filing date of the last timely answer, or

(2) the expiration of the second period provided for filing an answer as set forth in Rule 9215(f).

(e) – (f) No change.

(g) Failure to Make Documents Available — Harmless Error

In the event that a Document required to be made available to a Respondent pursuant to this Rule is not made available by the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation, no rehearing or amended decision of a proceeding already heard or decided shall be required unless the Respondent establishes that the failure to make the Document available was not harmless error. The Hearing Officer, or, upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the Nasdaq Review Council, shall determine whether the failure to make the document available was not harmless error.

9252. Requests for Information

(a) No change.

(b) Standards for Issuance

A request that the Nasdaq Regulation Department compel the production of Documents or testimony shall be granted only upon a showing that: the information sought is relevant, material, and non-cumulative; the requesting Party has previously attempted in good faith to obtain the desired Documents and testimony through other means but has been unsuccessful in such efforts; and each of the persons from whom the Documents and testimony are sought is subject to Nasdaq’s jurisdiction. In addition, the Hearing Officer shall consider whether the request is unreasonable, oppressive, excessive in scope, or unduly burdensome, and whether the request should be denied, limited, or modified.

(c) No change.

9253. Production of Witness Statements

(a) Availability

Notwithstanding the provisions of Rule 9251(b),

(1) A Respondent in a disciplinary proceeding may file a motion requesting that the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation produce for inspection and copying any statement of any person called or to be called as a witness by the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation that pertains, or is expected to pertain, to his or her direct testimony and which is “a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement,” as that phrase is used in 18 U.S.C. § 3500(e)(2).

(2) A Respondent in a disciplinary proceeding may also file a motion requesting that the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation produce for inspection and copying any contemporaneously written

statement made by an Interested Staff member during a routine examination or inspection about the substance of oral statements made by a non-Nasdaq person when (a) either the Interested Staff member or non-Nasdaq person is called as a witness by the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation, and (b) that portion of the statement for which production is sought directly relates to the Interested Staff member's testimony or the testimony of the non-Nasdaq witness.

(b) Failure to Produce — Harmless Error

In the event that a statement required to be made available for inspection and copying by a Respondent is not provided by the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation, there shall be no rehearing of a proceeding already heard, or issuance of an amended decision in a proceeding already decided, unless the Respondent establishes that the failure to provide the statement was not harmless error. The Hearing Officer, or upon appeal or review, a Subcommittee, an Extended Proceeding Committee, or the Nasdaq Review Council, shall determine whether the failure to provide any statement was not harmless error.

* * * * *

9264. Motion for Summary Disposition

(a) Pre-hearing

After a Respondent's answer has been filed and Documents have been made available to that Respondent for inspection and copying pursuant to Rule 9251, the Respondent or the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation, without leave of the Hearing Officer, may make a motion for summary disposition of any or all the causes of action in the complaint with respect to that Respondent, as well as any defense raised in a Respondent's answer. All pre-hearing motions for summary disposition and supporting papers shall be filed at least 21 days before the time set for the hearing, or at such earlier time as ordered by the Hearing Officer. Notwithstanding the provisions of Rule 9146(d), any opposition or response to a pre-hearing motion for summary disposition shall be filed at least seven days before the time set for the hearing.

(b) After Commencement of Hearing on Merits

After a hearing on the merits has commenced, a Respondent or the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation may make a motion for summary disposition of any or all of the causes of action in the complaint with respect to that Respondent or defenses raised in that Respondent's answer only with leave of the Hearing Officer.

(c) – (e) No change.

* * * * *

9268. Decision of Hearing Panel or Extended Hearing Panel

(a) – (d) No change.

(e) Appeal or Review

(1) No change.

(2) The majority decision with respect to a Nasdaq member that is an affiliate of Nasdaq within the meaning of Rules [2140]2130 and 2160 shall constitute final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1) and may not be appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312.

9269. Default Decisions**(a) Issuance of Default Decisions**

(1) The Hearing Officer may issue a default decision against a Respondent that fails to answer the complaint within the time afforded under Rule 9215, or a Party that fails to appear at any hearing that a Party is required to attend under the Rule 9200 Series of which the Party has due notice.

(2) If the defaulting Party is the Respondent, the Hearing Officer may deem the allegations against that Respondent admitted. If the Defaulting Party is the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation, the Hearing Officer may issue a default decision ordering that the complaint be dismissed with prejudice.

(3) The Hearing Officer may order a Party that fails to appear at the pre-hearing conference or the hearing to pay the costs incurred by other Parties in connection with their appearance.

(4) The Office of Hearing Officers shall provide a copy of the default decision to each Nasdaq member with which a Respondent is associated.

(b) and (c) No change.

(d) Final Disciplinary Action of Nasdaq; Effectiveness of Sanctions

(1) If a default decision is not appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312 within 25 days after the date the Office of Hearing Officers serves it on the Parties, the default decision shall become the final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become effective on a date to be determined by Nasdaq Regulation Department staff, except that a bar or expulsion shall become effective immediately upon the default decision becoming the final disciplinary action of Nasdaq. The decision shall be served on a Respondent by courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar or an expulsion.

(2) A default decision with respect to a Nasdaq member that is an affiliate of Nasdaq within the meaning of Rules [2140]2130 and 2160 shall constitute final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1) and may not be appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312.

9270. Settlement Procedure

(a) and (b) No change.

(c) Content and Signature Requirements

An offer of settlement shall be in writing and signed by the person making the offer, and, if the person is represented by counsel or a representative, signed also by the counsel or representative. The offer of settlement shall contain in reasonable detail:

(1) – (4) No change.

(5) a proposed sanction to be imposed that is consistent with the current sanction guidelines or, if inconsistent with the sanction guidelines, a detailed statement supporting the proposed sanction must be provided;

(6) No change.

(7) the effective date of any sanction(s) imposed, or a statement that the effective date of the sanction(s) will be a date to be determined by Nasdaq Regulation Department staff.

(d) No change.

(e) Uncontested Offers of Settlement

If a Respondent makes an offer of settlement and the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation does not oppose it, the offer of settlement is uncontested. If an offer of settlement is determined to be uncontested by the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation before a hearing on the merits has begun, the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation shall transmit the uncontested offer of settlement and a proposed order of acceptance to the Nasdaq Review Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rules 2130 and 2160) with its recommendation. If an offer of settlement is determined to be uncontested by the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation after a hearing on the merits has begun, the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation shall transmit the offer of settlement and a proposed order of acceptance to the Hearing Panel or, if applicable, the Extended Hearing Panel for acceptance or rejection. If accepted by the Hearing Panel or, if applicable, Extended Hearing Panel, the offer of settlement and the order of acceptance shall be forwarded to the Nasdaq Review

Council (or to the Office of Disciplinary Affairs, in the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rules 2130 and 2160) to accept or reject.

(1) A proposed order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions (including, if applicable, a permanent cease and desist order) consistent with the terms of the offer of settlement.

(2) Before an offer of settlement and an order of acceptance shall become effective, they shall be submitted to and accepted by the Nasdaq Review Council or the Office of Disciplinary Affairs. The Office of Disciplinary Affairs may accept such offer of settlement and order of acceptance or refer them to the Exchange Review Council. The Review Subcommittee may accept or reject such offer of settlement and order of acceptance or refer them to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council. In the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rules 2130 and 21[4]60, the offer of settlement and order of acceptance shall be accepted or rejected by the Office of Disciplinary Affairs and shall not be referred to the Nasdaq Review Council.

(3) If the offer of settlement and order of acceptance are accepted by the Nasdaq Review Council, the Review Subcommittee, or the Office of Disciplinary Affairs, they shall become final and the Director of the Office of Disciplinary Affairs shall issue the order and notify the Office of Hearing Officers. The Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation shall provide a copy of an issued order of acceptance to each Nasdaq member with which a Respondent is associated.

(f) Contested Offers of Settlement

If a Respondent makes an offer of settlement and the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation opposes it, the offer of settlement is contested. When the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation opposes an offer of settlement, the Respondent's written offer and the Nasdaq Regulation Department, the Department of Enforcement's or the Department of Market Regulation's written opposition shall be submitted to a Hearing Panel or, if applicable, an Extended Hearing Panel. The Hearing Panel or, if applicable, the Extended Hearing Panel, may order the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation and the Respondent to attend a settlement conference.

(1) If a contested offer of settlement is approved by the Hearing Panel or, if applicable, Extended Hearing Panel, the Hearing Officer shall draft an order of acceptance of the offer of settlement. The order of acceptance shall make findings of fact, including a statement of the rule, regulation, or statutory provision violated, and impose sanctions (including, if applicable, a permanent cease and desist order) consistent with the terms of the offer of settlement. The offer of settlement, any written opposition thereto, and the order of acceptance shall be forwarded to the Nasdaq Review Council (or to the Office of

Disciplinary Affairs, in the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rules 2130 and 2160) to accept or reject.

(2) Before an offer of settlement and order of acceptance shall become effective, they shall be submitted to, and accepted by, the Nasdaq Review Council or the Office of Disciplinary Affairs. The Review Subcommittee may accept or reject such offer of settlement and order of acceptance or refer them to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council. In the case of a Respondent that is an affiliate of Nasdaq within the meaning of Rules [2140]2130 and 2160, the offer of settlement and order of acceptance shall be accepted or rejected by the Office of Disciplinary Affairs and shall not be referred to the Nasdaq Review Council.

(3) If the offer of settlement and order of acceptance are accepted by the Office of Disciplinary Affairs, the Nasdaq Review Council or the Review Subcommittee, the Chief Regulatory Officer shall issue the order[,], and notify the Office of Hearing Officers, and provide a copy of an issued order of acceptance to each Nasdaq member with which a Respondent is associated.

(g) – (j) No change.

* * * * *

9300. Review of Disciplinary Proceeding by Nasdaq Review Council and the Nasdaq Board; Application for Commission Review

* * * * *

9311. Appeal by Any Party; Cross-Appeal

(a) Time to File Notice of Appeal

A Respondent or the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation may file a written notice of appeal within 25 days after service of a decision issued pursuant to Rule 9268 or Rule 9269; provided, however, that a decision with respect to a Respondent that is an affiliate of Nasdaq within the meaning of Rules 2130 and 2160[2140] may not be appealed to the Nasdaq Review Council.

(b) – (f) No change.

9312. Review Proceeding Initiated By the Exchange Review Council

(a) Call for Review

(1) – (2) No change.

(3) Decision Regarding Affiliate of the Exchange

Notwithstanding anything herein to the contrary, a decision with respect to a member that is an affiliate of the Exchange within the meaning of Rules [2140]2130 and 2160 may not be called for review by the Exchange Review Council.

(b) – (d) No change.

* * * * *

9331. Appointment of Subcommittee or Extended Proceeding Committee

(a) Appointment by Nasdaq Review Council

Following the filing of a notice of appeal pursuant to Rule 9311 or a notice of review pursuant to Rule 9312, the Nasdaq Review Council or the Review Subcommittee shall appoint a Subcommittee or an Extended Proceeding Committee to participate, subject to Rule 9345, in a disciplinary proceeding appealed or called for review.

(1) No change.

(2) Extended Proceeding Committee

Upon consideration of the volume and complexity of the certified record, or other factors the Nasdaq Review Council or the Review Subcommittee deems material, the Nasdaq Review Council or the Review Subcommittee may determine that a disciplinary proceeding appealed or called for review shall be designated an Extended Proceeding and shall appoint an Extended Proceeding Committee to participate, subject to Rule 9345, in the appeal or review. The Extended Proceeding Committee shall be composed of two or more persons who shall be current or former members of the Nasdaq Review Council or former Directors. The Review Subcommittee shall have discretion to compensate any or all Panelists of an Extended Proceeding Committee at the rate then in effect for arbitrators appointed under the FINRA Rule [10000]12000 and 13000 Series.

(b) No change.

* * * * *

9351. Discretionary Review by Nasdaq Board

(a) Call for Review by Director

A Director may call a disciplinary proceeding for review by the Nasdaq Board if the call for review is made within the period prescribed in paragraph (b); provided, however, that a decision with respect to a member that is an affiliate of Nasdaq within the meaning of Rules 2130 and 2160[2140] may not be called for review.

(b) – (e) No change.

* * * * *

9400. Expedited Client Suspension Proceeding

(a) Initiation of Proceeding

(1) *Scope of Authority*. With the prior written authorization of the Chief Regulatory Officer (“CRO”) or such other senior officers as the CRO may designate, the Nasdaq

Regulation[ory] Department, the Department of Enforcement or the Department of Market Regulation may initiate an expedited suspension proceeding with respect to alleged violations of Rule 2170 or Chapter III, Section 16 (Disruptive Quoting and Trading Activity Prohibited).

(2) *Service of Notice*. The Exchange or FINRA shall initiate the proceeding by serving a notice on a Member or associated person of a Member (hereinafter “Respondent”). The Exchange or FINRA shall serve the notice by personal service or overnight commercial courier. The notice shall be effective upon service.

(3) No change.

(b) Appointment of Hearing Officers and Hearing Panel

(1) As soon as practicable after the Exchange or FINRA initiates a suspension proceeding, a Hearing Panel shall be assigned in accordance with paragraph (a) of Rule 9231(b).

(2) No change.

(c) Hearing

(1) – (6) No change.

(7) *Record and Evidence Not Admitted*. The record shall consist of the notice initiating the proceeding, the declaration, and the proposed order described in sub-paragraph (a)(3) above; the transcript of the hearing; all evidence considered by the Hearing Panel; and any other document or item accepted into the record by the Hearing Panel. The Nasdaq Regulation Department shall be the custodian of the record. Proffered evidence that is not accepted into the record by the Hearing Panel shall be retained by the custodian of the record until the date when the Exchange’s decision becomes final or, if applicable, upon the conclusion of any review by the SEC or the federal courts.

(8) *Failure to Appear at a Hearing*. If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a suspension order without further proceedings. If the Exchange or FINRA fails to appear at a hearing for which it has notice, the Hearing Panel may order that the suspension proceeding be dismissed.

(d) – (f) No change.

* * * * *

9521. Purpose and Definitions

(a) No change.

(b) Definitions

(1) and (2) No change.

(3) The term “disqualified person” means an associated person, or person seeking to become an associated person who is or becomes subject to a disqualification or is otherwise ineligible for association under the [Nasdaq By-Laws]Rules of the Exchange.

(4) No change.

9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) Initiation

(1) Issuance of Notice of Disqualification or Ineligibility

If staff of the Department of Member Regulation[Nasdaq Regulation staff] has reason to believe that a disqualification exists or that a member or person associated with a member otherwise fails to meet the eligibility requirements of Nasdaq, staff of the Department of Member Regulation[Nasdaq Regulation staff] shall issue a written notice to the member or applicant for membership under Rule 1013. The notice shall specify the grounds for such disqualification or ineligibility. [Nasdaq]Staff of the Department of Member Regulation [staff]shall not issue such written notice to members or applicants for membership under Rule 1013 with respect to disqualifications arising solely from findings or orders specified in Section 15(b)(4)(D), (E), or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, unless the member or applicant for membership under Nasdaq Rule 1013 is required to file an application pursuant to a Regulatory Alert entitled “Eligibility Proceedings: Amendments to Nasdaq Rule 9520 Series to Establish Procedures Applicable to Firms and Associated Persons Subject to Certain Statutory Disqualifications” (the “SD Regulatory Alert”).

(2) – (4) No change.

(b) and (c) No change.

(d) Ex Parte Communications

The prohibitions against ex parte communications set forth in Rule 9143 shall become effective under the Rule 9520 Series when Nasdaq Regulation Department staff has initiated the eligibility proceeding and Nasdaq Regulation Department staff has knowledge that a member intends to file an application or written request for relief pursuant to the Rule 9520 Series.

(e) Member Regulation Consideration

(1) No change.

(2) Matters that may be Approved by the Department of Member Regulation after the Filing of an Application

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, is authorized to approve an application filed by a disqualified member or sponsoring member if the disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification (other than a matter set forth in subparagraph(e)(1)):

(A) The disqualified person is already a participant in, a member (or equivalent) of, or a person associated with a member (or equivalent) of, a self-regulatory organization (other than Nasdaq), and the terms and conditions of the proposed admission to Nasdaq are the same in all material respects as those imposed or not disapproved in connection with such person's prior admission or continuance pursuant to an order of the Commission under SEC Rule 19h-1 or other substantially equivalent written communication;

(B) – (F) No change.

(3) No change.

9523. Acceptance of Member Regulation Recommendations and Supervisory Plans by Consent Pursuant to SEC Rule 19h-1

(a) With respect to all disqualifications, except those arising solely from findings or orders specified in Section 15(b)(4)(D), (E) or (H) of the Exchange Act or arising under Section 3(a)(39)(E) of the Exchange Act, after an application is filed, the Department of Member Regulation may recommend the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan where the disqualified member, sponsoring member, and/or disqualified person, as the case may be, consent to the recommendation and the imposition of the supervisory plan. The disqualified member, sponsoring member, and/or disqualified person, as the case may be, shall execute a letter consenting to the imposition of the supervisory plan.

(1) No change.

(A) – (C) No change.

(2) No change.

(3) If the disqualified member, sponsoring member, and/or disqualified person execute the letter consenting to the supervisory plan, it shall be submitted to the Nasdaq Regulation Department by the Department of Member Regulation with a proposed Notice under SEC Rule 19h-1, where required. The Nasdaq Regulation Department shall forward the supervisory plan and proposed Notice under SEC Rule 19h-1, if any, to the Chairman of the Statutory Disqualification Committee, acting on behalf of the Nasdaq Review Council. The Chairman of the Statutory Disqualification Committee may accept or reject the recommendation of the Department of Member Regulation and the supervisory plan or refer them to the Nasdaq Review Council for acceptance or rejection by the Nasdaq Review Council.

(4) If the recommendation and supervisory plan is accepted by the Nasdaq Review Council, the Chairman of the Statutory Disqualification Committee it shall be deemed final and, where required, the proposed Notice under SEC Rule 19h-1 will be filed by Nasdaq. If the recommendation and supervisory plan are rejected by the Chairman of the Statutory Disqualification Committee, the Nasdaq Review Council or the Nasdaq Regulation Department may take any other appropriate action with respect to the disqualified member, sponsoring member, and/or disqualified person. If the recommendation and supervisory plan are rejected, the disqualified member, sponsoring member, and/or disqualified person shall not be prejudiced by the execution of the letter consenting to the supervisory plan under subparagraph (a) and the letter may not be introduced into evidence in any proceeding.

(b) No change.

9524. Nasdaq Review Council Consideration

(a) Hearing Panel Consideration

(1) Appointment of Hearing Panel

When the disqualified member, sponsoring firm, or applicant requests a hearing, the Nasdaq Review Council or the Review Subcommittee shall appoint a Hearing Panel composed of two or more members, who shall be current or former members of the Nasdaq Review Council or the Statutory Disqualification Committee or former Directors (provided, however, that current members of the Nasdaq Review Council shall not serve on a Hearing Panel with respect to an affiliate of Nasdaq within the meaning of Rules 2130 and 2160)[2140]. The Hearing Panel shall conduct a hearing and recommend a decision on the request for relief.

(2) No change.

(3) Transmission of Documents

(A) Upon receipt of an application, the Central Registration Depository shall gather all of the information necessary to process the application, including (i) the Central Registration Depository records for the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the proposed supervisor; and (ii) all of the information submitted by the disqualified member or sponsoring member in support of the application. The Central Registration Depository will prepare an index of these documents, and simultaneously provide this index and copies of the documents to the disqualified member or sponsoring member, as the case may be, the Nasdaq Regulation Department, and the Department of Member Regulation. Such documents shall be served on the disqualified member or sponsoring member, as the case may be, by mail, facsimile, or overnight courier as soon as practicable. The Department of Member Regulation shall serve its recommendation and its supporting documents on the Nasdaq Regulation Department and the disqualified member or sponsoring member, as the case may be, within ten business days of the hearing, unless the Parties agree otherwise. The

disqualified member or sponsoring member, as the case may be, shall serve its documents on the Nasdaq Regulation Department and the Department of Member Regulation within ten business days of the hearing, unless the Parties agree otherwise. Nasdaq Regulation shall forward all documents transmitted to it pursuant to this subparagraph (a)(3) to the Hearing Panel.

(B) Not less than ten business days before the hearing, the Department of Member Regulation, which shall act as a Party in the eligibility proceeding, and the disqualified member or sponsoring member, as the case may be, shall serve proposed exhibit and witness lists on each other and the Nasdaq Regulation Department. The exhibit and witness lists shall be served by facsimile or overnight courier.

(C) No change.

(4) – (7) No change.

(8) Custodian of the Record

The custodian of the record shall be the Nasdaq Regulation Department.

(9) and **(10)** No change.

(b) Decision

(1) and (2) No change.

(3) Issuance of Decision After Expiration of Call for Review Period

The Nasdaq Review Council shall provide its proposed written decision to the Nasdaq Board. The Nasdaq Board may call the eligibility proceeding for review pursuant to Rule 9525. If the Nasdaq Board does not call the eligibility proceeding for review, the proposed written decision of the Nasdaq Review Council shall become final, and the Nasdaq Review Council shall serve its written decision on the disqualified member, sponsoring member, and/or disqualified person, as the case may be, and the Department of Member Regulation pursuant to Rules 9132 and 9134. In the case of a decision with respect to a Nasdaq member that is an affiliate of Nasdaq within the meaning of Rules 2130 and 2160[2140], the decision of the Hearing Panel shall become final without being provided to the Nasdaq Board, and the Hearing Panel shall serve its written decision.

The decision shall constitute final action of Nasdaq, unless the Nasdaq Review Council remands the eligibility proceeding. A decision to deny re-entry or continued association shall be effective immediately. A decision to approve shall be effective after the Commission issues an acknowledgment letter or, in cases involving Commission ordered sanctions, an order.

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9552. Failure to Provide Information or Keep Information Current

(a) No change.

(b) Service of Notice of Suspension

Except as provided below, Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) – (h) No change.

9553. Failure to Pay Nasdaq Dues, Fees and Other Charges

(a) Notice of Suspension, Cancellation or Bar

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to pay any fees, dues, assessment or other charge required to be paid under the Nasdaq By-Laws or Rules, or to submit a required report or information related to such payment, Nasdaq Regulation Department staff may issue a written notice to such member or person stating that the failure to comply within 21 days of service of the notice will

result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

(b) Service of Notice of Suspension, Cancellation or Bar

Except as provided below, Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete

(c) – (g) No change.

9554. Failure to Comply with an Arbitration Award or Related Settlement or an Order of Restitution or Settlement Providing for Restitution

(a) Notice of Suspension or Cancellation

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to comply with an arbitration award or a settlement agreement related to an arbitration or mediation under the Nasdaq By-Laws, or a FINRA order of restitution or FINRA settlement agreement providing for restitution, Nasdaq Regulation Department staff may provide written notice to such member or person stating that the failure to

comply within 21 days of service of the notice will result in a suspension or cancellation of membership or a suspension from associating with any member.

(b) Service of Notice of Suspension or Cancellation

Except as provided below, Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) – (g) No change.

9555. Failure to Meet the Eligibility or Qualification Standards or Prerequisites for Access to Services

(a) Notice to Member or Person of Suspension, Cancellation, Bar, or Limitation or Prohibition on Access to Services

(1) If a member or an associated person does not meet the eligibility or qualification standards set forth in the Nasdaq By-Laws or Rules, Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) may provide written notice to such member or person stating that the failure to become eligible or qualified will result in a

suspension or cancellation of membership or a suspension or bar from associating with any member.

(2) If a member, associated person, or other person does not meet the prerequisites for access to services offered by Nasdaq or a member thereof or cannot be permitted to continue to have access to services offered by Nasdaq or a member thereof with safety to investors, creditors, members, or Nasdaq, Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) may provide written notice to such member or person limiting or prohibiting access to services offered by Nasdaq or a member thereof.

(b) Service of Notice

Except as provided below, Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member or person with such notice (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) in accordance with Rule 9134 or by facsimile or email. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141, by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, mailing the notice by U.S. Postal Service first class mail, first class certified mail, first class registered mail, or Express Mail, sending the notice through a courier service, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete.

(c) – (f) No change.

(g) Request for Termination of the Limitation, Prohibition or Suspension

A member or person subject to a limitation, prohibition or suspension under this Rule may file a written request for termination of the limitation, prohibition or suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Nasdaq or FINRA department or office that issued the notice or, if another Nasdaq or FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the Nasdaq or FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

9556. Failure to Comply with Temporary and Permanent Cease and Desist Orders

(a) Notice of Suspension, Cancellation or Bar

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300 or 9800 Series, Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange), after receiving written authorization from the Chief Regulatory Officer, may issue a notice to such member or person stating that the failure to comply with the temporary or permanent cease and desist order within seven days of service of the notice will result in a suspension or cancellation of membership or a suspension or bar from associating with any member.

(b) Service of Notice

Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member or person subject to a notice issued under this Rule (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) by facsimile, email, overnight courier or personal delivery. Papers served on a member, person or counsel for such member or person, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member or person, (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. Papers served on counsel for a member or person, or other person authorized to represent others under

Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. A copy of a notice under this Rule that is served on a member or person associated with a member also shall be served on such member. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(c) and (d) No change.

(e) Request for a Hearing

A member or person served with a notice under this Rule may file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559. A request for a hearing shall be made before the effective date of the notice, as indicated in paragraph (d) of this Rule. A request for a hearing must set forth with specificity any and all defenses to the Nasdaq action.

(f) No change.

(g) Request for Termination of the Suspension

A member or person subject to a suspension imposed after the process described in paragraphs (a) through (f) of this Rule may file a written request for termination of the suspension on the ground of full compliance with the notice or decision. Such request shall be filed with the head of the Nasdaq or FINRA department or office that issued the notice or, if another Nasdaq or FINRA department or office is named as the party handling the matter on behalf of the issuing department or office, with the head of the Nasdaq or FINRA department or office that is so designated. The appropriate head of the department or office may grant relief for good cause shown.

(h) Subsequent Proceedings

If a member, person associated with a member or person subject to Nasdaq's jurisdiction fails to comply with a temporary or permanent cease and desist order issued under the Rule 9200, 9300, or 9800 Series, and has previously been served under paragraph (a) of this Rule with a notice for a failure to comply with any provision of the same temporary or permanent cease and desist order, Nasdaq Regulation Department staff, after receiving written authorization from the Chief Regulatory Officer, may file a petition with the Office of Hearing Officers seeking a hearing pursuant to Rule 9559 and the imposition of any fitting sanctions for such member's or person's failure to comply with the temporary or permanent cease and desist order.

(1) No change.

(2) The petition shall explicitly identify the provision of the permanent or temporary cease and desist order that is alleged to have been violated, contain a statement of facts specifying the alleged violation, describe with particularity the sanctions that Nasdaq Regulation Department staff seeks to have imposed, and note that a hearing under Rule 9559 is requested. Nasdaq Regulation Department staff may seek the imposition of any fitting sanction.

(3) and (4) No change.

9557. Procedures for Regulating Activities Under Rules 4110A and 4120A Regarding a Member Experiencing Financial or Operational Difficulties

(a) Notice of Requirements and/or Restrictions; Nasdaq Action

Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) may issue a notice directing a member to comply with the provisions of Rule 4110A or 4120A or restrict its business activities, either by limiting or ceasing to conduct those activities consistent with Rule 4110A or 4120A, if Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) has reason to believe that a condition specified in Rule 4110A or 4120A exists. A notice served under this Rule shall constitute Nasdaq action.

(b) Service of Notice

Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member subject to a notice issued under this Rule (or upon counsel representing the member, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member) by facsimile, email, overnight courier or personal delivery. Papers served on a member, counsel for such member, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member, (b)(2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on counsel for a member, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by

facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(c) Contents of Notice

(1) – (4) No change.

(5) inform the member that, pursuant to paragraph (f) of this Rule, the failure to comply with the requirements and/or restrictions imposed by an effective notice under this Rule shall be deemed, without further notice from Nasdaq Regulation Department staff, to result in automatic and immediate suspension unless Nasdaq Regulation Department staff issues a letter of withdrawal of all requirements and/or restrictions imposed by the notice pursuant to paragraph (g)(2) of this Rule;

(6) – (9) No change.

(d) Effectiveness of the Requirements and/or Restrictions

The requirements and/or restrictions imposed by a notice issued and served under this Rule are immediately effective, except that a timely request for a hearing shall stay the effective date for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), unless Nasdaq's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) determines that such a stay cannot be permitted with safety to investors, creditors or other members. Such a determination by Nasdaq's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate) cannot be appealed. An extension of the stay period is not permitted. Where a timely request for a hearing stays the action for ten business days after service of the notice or until the Office of Hearing Officers issues a written order under Rule 9559(o)(4)(A) (whichever period is less), the notice shall not be deemed to have taken effect during that entire period.

Any requirements and/or restrictions imposed by an effective notice shall remain in effect unless Nasdaq Regulation Department staff shall remove or reduce the requirements and/or restrictions pursuant to a letter of withdrawal of the notice issued as set forth in paragraph (g)(2) of this Rule.

(e) Request for a Letter of Withdrawal of the Notice; Request for a Hearing

A member served with a notice under this Rule may request from Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) a letter of withdrawal of the notice pursuant to paragraph (g)(2) of this Rule and/or file with the Office of Hearing Officers a written request for a hearing pursuant to Rule 9559.

(1) A request for a letter of withdrawal of the notice may be made at any time after service of a notice under this Rule. The member making the request must demonstrate to the satisfaction of Nasdaq Regulation Department staff that the requirements and/or restrictions imposed by the notice should be removed or reduced. If such a request is

denied by Nasdaq Regulation Department staff, the member shall not be precluded from making a subsequent request or requests.

(2) A request for a hearing shall be made within two business days after service of a notice under this Rule. A request for a hearing must set forth with specificity any and all defenses to the Nasdaq action. A request for a hearing may seek to contest:

(A) No change.

(B) Nasdaq Regulation Department staff's determination not to issue a letter of withdrawal of all requirements and/or restrictions imposed by the notice, if such was requested by the member.

(f) Enforcement of Notice

A member that has failed to comply with the requirements and/or restrictions imposed by an effective notice under this Rule shall be deemed, without further notice from Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange), automatically and immediately suspended. Such suspension shall remain in effect unless Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall issue a letter, pursuant to paragraph (g)(2) of this Rule, stating that the suspension is lifted.

(g) Additional Requirements and/or Restrictions or the Removal or Reduction of Requirements and/or Restrictions; Letter of Withdrawal of the Notice

(1) Additional Requirements and/or Restrictions

If a member continues to experience financial or operational difficulty specified in Rule 4110A or 4120A, notwithstanding an effective notice, Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) may impose additional requirements and/or restrictions by serving an additional notice under paragraph (b) of this Rule. The additional notice shall inform the member that it may apply for relief from the additional requirements and/or restrictions by filing a written request for a letter of withdrawal of the notice and/or a written request for a hearing before the Office of Hearing Officers under Rule 9559. The procedures delineated in this Rule shall be applicable to such additional notice.

(2) Removal or Reduction of Requirements and/or Restrictions and/or Lifting of Suspension; Letter of Withdrawal

(A) Removal or Reduction of Requirements and/or Restrictions

If, upon the member's demonstration to the satisfaction of Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange), Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) determines that any requirements and/or restrictions imposed by a notice under this Rule should be removed or reduced, Nasdaq Regulation Department staff (or FINRA, acting on behalf of the

Exchange) shall serve the member, pursuant to paragraph (b) of this Rule, a written letter of withdrawal that shall, in the sole discretion of Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange), withdraw the notice in whole or in part. A notice that is withdrawn in part shall remain in force, unless Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall remove the remaining requirements and/or restrictions.

(B) Lifting of Suspension

If, upon the member's demonstration to the satisfaction of Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange), Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) determines that a suspension imposed by a notice under this Rule should be lifted, Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member, pursuant to paragraph (b) of this Rule, a letter that shall, in the sole discretion of Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange), lift the suspension. Where all or some of the requirements and/or restrictions imposed by a notice issued under this Rule remain in force, the letter shall state that the member's failure to continue to comply with those requirements and/or restrictions that remain effective shall result in the member being immediately suspended.

(h) [Nasdaq Regulation Staff]For purposes of this Rule, "Nasdaq Regulation Department staff" shall mean:

(1) the head of the Nasdaq department or office (or FINRA acting on behalf of the Nasdaq) that issued the notice, or his or her written officer delegate; or

(2) if another Nasdaq (or FINRA acting on behalf of Nasdaq) department or office is named as the party handling the matter on behalf of the issuing department or office, the head of the Nasdaq (or FINRA acting on behalf of Nasdaq) department or office that is so designated, or his or her written officer delegate

9558. Summary Proceedings for Actions Authorized by Section 6(d)(3) of the Act

(a) Notice of Initiation of Summary Proceedings

The Chief Regulatory Officer of Nasdaq may provide written authorization to FINRA staff to issue on a case-by-case basis a written notice that summarily:

(1) No change.

(2) suspends a member who is in such financial or operating difficulty that FINRA[Association] staff determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or Nasdaq; or

(3) No change.

(b) Service of Notice

Nasdaq Regulation Department staff (or FINRA, acting on behalf of the Exchange) shall serve the member or person subject to a notice issued under this Rule (or upon counsel representing the member or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the member or person) by facsimile, email, overnight courier, or personal delivery. Papers served on a member, person or counsel for such member or person, or other person authorized to represent others under Rule 9141 by overnight courier or personal delivery shall conform to paragraphs (a)(1) and (3) and, with respect to a member or person, (b)(1) and (2) of Rule 9134. Papers served on a member by facsimile shall be sent to the member's facsimile number listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160, except that, if Nasdaq Regulation Department staff has actual knowledge that a member's FINRA Contact System facsimile number is out of date, duplicate copies shall be sent to the member by overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a member by email shall be sent to the member's email address listed in the FINRA Contact System submitted to Nasdaq pursuant to Rule 1160 and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(2) of Rule 9134. Papers served on a person by facsimile or email shall be sent to the person's last known facsimile number or email address and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) and (b)(1) of Rule 9134. A copy of a notice under this Rule that is served on a person associated with a member also shall be served on such member. Papers served on counsel for a member or person, or other person authorized to represent others under Rule 9141 by facsimile or email shall be sent to the facsimile number or email address that counsel or other person authorized to represent others under Rule 9141 provides and shall also be served by either overnight courier or personal delivery in conformity with paragraphs (a)(1) and (3) of Rule 9134. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service.

(c) – (g) No change.

9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series

(a) – (d) No change.

(e) Consolidation or Severance of Proceedings

Rule 9214 shall govern the consolidation or severance of proceedings, except that, where one of the notices that are the subject of consolidation under this Rule requires that a hearing be held before a Hearing Panel, the hearing of the consolidated matters shall be held before a Hearing Panel. Where two consolidated matters contain different timelines under this Rule, the Chief Hearing Officer or Hearing Officer assigned to the matter has discretion to determine which timeline is appropriate under the facts and circumstances of the case. Where one of the consolidated matters includes an action brought under a Rule

that does not permit a stay of the effectiveness of the notice or where Nasdaq's Chief Executive Officer (or such other senior officer as the Chief Executive Officer may designate), in the case of Rule 9557, or Hearing Officer, in the case of Rule 9558(d), determines that a request for a hearing shall not stay the effectiveness of the notice, the limitation, prohibition, condition, requirement, restriction, [or prohibition] or suspension specified in the notice shall not be stayed pending resolution of the case. Where one of the consolidated matters includes an action brought under Rule 9557 that is stayed for up to ten business days, the requirement and/or restriction specified in the notice shall not be further stayed.

(f) and (g) No change.

(h) Transmission of Documents

(1) Not less than two business days before the hearing in an action brought under Rule 9557, not less than six days before the hearing in an action brought under Rule 9556(h), not less than seven days before the hearing in an action brought under Rules 9556 (except Rule 9556(h)) and 9558, and not less than 14 days before the hearing in an action brought under Rules 9552 through 9555, Nasdaq Regulation Department staff shall provide to the respondent who requested the hearing or the respondent who has received a petition pursuant to Rule 9556(h), by facsimile, email, overnight courier or personal delivery, all documents that were considered in issuing the notice unless a document meets the criteria of Rule 9251(b)(1)(A), (B) or (C). Documents served by facsimile or email shall also be served by either overnight courier or personal delivery. A document that meets the criteria in this paragraph shall not constitute part of the record, but shall be retained until the date upon which the Nasdaq's final decision is served or, if applicable, upon the conclusion of any review by the Securities and Exchange Commission or the federal courts.

(2) Not less than two business days before the hearing in an action brought under Rule 9557, not less than three days before the hearing in an action brought under Rules 9556 and 9558, and not less than seven days before the hearing in an action brought under Rules 9552 through 9555, the parties shall exchange proposed exhibit and witness lists. The exhibit and witness lists shall be served by facsimile, email, by overnight courier or personal delivery. Documents served by facsimile or email shall also be served by either overnight courier or personal delivery.

(i) – (m) No change.

(n) Sanctions, Costs and Remands

(1) and **(2)** No change.

(3) In an action brought under Rule 9557, the Hearing Panel shall approve or withdraw the requirements and/or restrictions imposed by the notice. If the Hearing Panel approves the requirements and/or restrictions and finds that the respondent has not complied with

all of them, the Hearing Panel shall impose an immediate suspension on the respondent that shall remain in effect unless Nasdaq Regulation Department staff issues a letter of withdrawal of all requirements and/or restrictions pursuant to Rule 9557(g)(2).

(4) and (5) No change.

(o) and (p) No change.

(q) Call for Review by the Nasdaq Review Council

(1) For proceedings initiated under the Rule 9550 Series (other than Rule 9557), the Nasdaq Review Council's Review Subcommittee may call for review a proposed decision prepared by a Hearing Officer or, if applicable, Hearing Panel within 21 days after receipt of the decision from the Office of Hearing Officers; provided, however, that a decision under the Rule 9550 Series with respect to a Nasdaq member that is an affiliate of Nasdaq within the meaning of Rules 2130 and 2160 shall constitute final disciplinary action of Nasdaq for purposes of SEC Rule 19d-1(c)(1) and may not be called for review pursuant to Rule 9559. For proceedings initiated under Rule 9557, the Nasdaq Review Council's Review Subcommittee may call for review a written decision issued under paragraph (o)(4)(B) of this Rule by a Hearing Panel within 14 days after receipt of the written decision from the Office of Hearing Officers. Rule 9313(a) is incorporated herein by reference.

(2) – (6) No change.

(r) and (s) No change.

9600. Procedures for Exemptions

9610. Application

(a) Where to File

A member seeking exemptive relief as specifically permitted under any Nasdaq Rule referencing the 9600 Series shall file a written application with the appropriate FINRA [Association]department or staff and provide a copy of the application to the Nasdaq Regulation Department.

(b) – (c) No change.

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9630. Appeal

(a) Notice

An Applicant may file a written notice of appeal within 15 calendar days after service of a decision issued under Rule 9620. The notice of appeal shall be filed with the Nasdaq Regulation Department, with a copy of the notice also provided to the appropriate Nasdaq Regulation Department staff. The notice of appeal shall contain a brief statement of the

findings and conclusions as to which exception is taken. Appeals of decisions issued by Nasdaq Regulation Department staff pursuant to Rule 9620 shall be decided by the Nasdaq Review Council, except with respect to exemptive relief under Rule 1070 (Qualification Examinations and Waiver of Requirements), which shall be decided by the Waiver Subcommittee of the Nasdaq Review Council. If the Applicant does not want the decision on the appeal to be publicly available in whole or in part, the Applicant also shall include in its notice of appeal a detailed statement, including supporting facts, showing good cause for treating the decision as confidential in whole or in part. The notice of appeal shall be signed by the Applicant.

(b) Expedited Review

Where the failure to promptly review a decision to deny a request for exemption would unduly or unfairly harm the [a]Applicant, the Nasdaq Review Council or the Waiver Subcommittee of the Nasdaq Review Council, as the case may be, shall provide expedited review.

(c) No change.

(d) Oral Argument

(1) No change.

(2) With respect to exemptive relief requested under Rule 1070, the Waiver Subcommittee of the Nasdaq Review Council may order oral argument and consider any new evidence if the Applicant can show good cause for not including it in its application.

(e) No change.

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9800. Temporary Cease and Desist Orders

9810. Initiation of Proceeding

(a) Department of Enforcement or Department of Market Regulation

With the prior written authorization of FINRA's Chief Executive Officer or such other senior officers as the Chief Executive Officer may designate, and the Nasdaq Chief Regulatory Officer, the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation may initiate a temporary cease and desist proceeding with respect to alleged violations of Section 10(b) of the Exchange Act and SEC Rule 10b-5 thereunder; SEC Rules 15g-1 through 15g-9; Nasdaq Rule 2010A (if the alleged violation is unauthorized trading, or misuse or conversion of customer assets, or based on violations of Section 17(a) of the Securities Act); Nasdaq Rule 2120; or Nasdaq Rule 2150 (if the alleged violation is misuse or conversion of customer assets). The Nasdaq Regulation Department, the Department of Enforcement or the Department of

Market Regulation shall initiate the proceeding by serving a notice on a member or associated person (hereinafter “Respondent”) (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) and filing a copy thereof with the Office of Hearing Officers. The Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation shall serve the notice by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The notice shall be effective when service is complete.

(b) Contents of Notice

The notice shall set forth the rule or statutory provision that the Respondent is alleged to have violated and that the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation is seeking to have the Respondent ordered to cease violating. The notice also shall state whether the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation is requesting the Respondent to be required to take action, refrain from taking action or both. The notice shall be accompanied by:

- (1) a declaration of facts, signed by a person with knowledge of the facts contained therein, that specifies the acts or omissions that constitute the alleged violation;
- (2) a memorandum of points and authorities setting forth the legal theories upon which the Department of Enforcement or the Department of Market Regulation relies; and
- (3) a proposed order that contains the required elements of a temporary cease and desist order (except the date and hour of the order’s issuance), which are set forth in Rule 9840(b).

(c) No change.

(d) Filing of Underlying Complaint

If the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation has not issued a complaint under Rule 9211 against the Respondent relating to the subject matter of the temporary cease and desist proceeding and alleging violations of the rule or statutory provision specified in the notice described in paragraph (b), the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation shall serve and file such a complaint with the notice initiating the temporary cease and desist proceeding. Service of the complaint can be made in accordance with the service provisions in paragraph (a).

9820. Appointment of Hearing Officer and Hearing Panel

(a) As soon as practicable after the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation files a copy of the notice initiating a temporary cease and desist proceeding with the Office of Hearing Officers, the Chief Hearing Officer shall assign a Hearing Officer to preside over the temporary cease and desist proceeding. The Chief Hearing Officer shall appoint two Panelists to serve on a Hearing Panel with the Hearing Officer. Each Panelist shall be associated with a member of Nasdaq or retired therefrom. The Chief Hearing Officer shall select as a Panelist a person who:

(1) – (5) No change.

(b) No change.

9830. Hearing

(a) No change.

(b) Service of Notice of Hearing

The Office of Hearing Officers shall serve a notice of date, time, and place of the hearing on the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation and the Respondent (or upon counsel representing the Respondent, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) not later than seven days before the hearing, unless otherwise ordered by the Hearing Officer. Service shall be made by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the notice by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The notice shall be effective when service is complete.

(c) – (g) No change.

(h) Failure to Appear at Hearing

If a Respondent fails to appear at a hearing for which it has notice, the allegations in the notice and accompanying declaration may be deemed admitted, and the Hearing Panel may issue a temporary cease and desist order without further proceedings. If the Nasdaq Regulation Department, the Department of Enforcement or Department of Market Regulation fails to appear at a hearing for which it has notice, the Hearing Panel may order that the temporary cease and desist proceeding be dismissed.

9840. Issuance of Temporary Cease and Desist Order by Hearing Panel

(a) Basis for Issuance

The Hearing Panel shall issue a written decision stating whether a temporary cease and desist order shall be imposed. The Hearing Panel shall issue the decision not later than ten days after receipt of the hearing transcript, unless otherwise extended by the Chief Hearing Officer or Deputy Chief Hearing Officer for good cause shown. A temporary cease and desist order shall be imposed if the Hearing Panel finds:

(1) that the Nasdaq Regulation Department, the Department of Enforcement or Department of Market Regulation has made a showing of a likelihood of success on the merits; and

(2) that the alleged violative conduct or continuation thereof is likely to result in significant dissipation or conversion of assets or other significant harm to investors prior to the completion of the underlying disciplinary proceeding under the Rule 9200 and 9300 Series.

(b) – (c) No change.

(d) Service and Dissemination Requirements

The Office of Hearing Officers shall serve the Hearing Panel's decision and any temporary cease and desist order on the Nasdaq Regulation Department, the Department of Enforcement or the Department of Market Regulation and the Respondent (or upon counsel representing the Respondent or person, or other person authorized to represent others under Rule 9141, when counsel or other person authorized to represent others under Rule 9141 agrees to accept service for the Respondent) by personal service, overnight commercial courier, facsimile, or email. If service is made by facsimile or email, the Office of Hearing Officers shall send an additional copy of the Hearing Panel's decision and any temporary cease and desist order by personal service or overnight commercial courier. Service is complete upon sending the notice by facsimile or email, sending the notice by overnight courier, or delivering it in person, except that, where duplicate service is required, service is complete when the duplicate service is complete. The temporary cease and desist order shall be effective when service is complete. The Office of Hearing Officers shall provide a copy of the temporary cease and desist order to each Nasdaq member with which a Respondent is associated.

(e) No change.

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